



*BEFORE THE SENATE TRANSPORTATION, COMMERCE & WORKFORCE
COMMITTEE
PROPONENT TESTIMONY ON SENATE BILL 243*

Chairman McColley, Vice Chair Johnson, Ranking Member Antonio, and members of the Senate Transportation, Commerce and Workforce Committee, thank you for the opportunity to provide proponent testimony on Senate Bill 243 (SB 243). My name is Kevin Shimp and I am the Director of Labor and Legal Affairs for the Ohio Chamber of Commerce.

The Ohio Chamber is the state's leading business advocate, and we represent over 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

In our efforts to champion free enterprise, the Ohio Chamber supports SB 243 because it will help employers navigate the challenges associated with having their workforce working from home. Likewise, the legislation will assist employers in understanding and evaluating their legal risk by codifying in Ohio law an important aspect of the federal Fair Labor Standard Act (FLSA) known as the de minimis doctrine. Under this US Supreme Court common law doctrine, insubstantial and insignificant periods of time beyond scheduled working hours need not be recorded or compensated in order to comply with the FLSA.

When SB 243 was first introduced and heard in this committee in January of 2020, the Ohio Chamber believed the bill modernized Ohio's overtime statute to reflect the realities of the 21st Century workforce where almost every employee has access to work documents on their cell phone. Our belief then – which we still hold today – was employers should not be held responsible for failing to pay an overtime wage when an hourly employee outside of normal work hours, on their own initiative, and without informing their employer spends a small amount of unsupervised time checking work materials like emails or voicemails.

However, at the time of the bill's introduction, having hourly employees working in unsupervised settings like a work from home environment was not as commonplace as it is now less than a year later thanks to the coronavirus.

The stay-at-home orders and the Governor's recommendation to work from home whenever possible meant many employers from Fortune 500 companies to small business owners across Ohio closed

their physical offices and began having all their employees – including hourly wage earners – working virtually. As a consequence of having to take action to stop the spread of the coronavirus in accordance with public health orders, the number of hourly workers working from home and the likelihood an employer will face potential litigation over failing to pay overtime for unsupervised time skyrocketed.

SB 243 addresses this new increased risk of litigation by clarifying an employer's obligation under Ohio's overtime statute to pay for an hourly employee's unsupervised time. Under the legislation, the de minimis doctrine is added to the overtime statute – RC 4111.03 – which makes it clear a small amount of time performing tasks that are preliminary or postliminary are not compensable when the employee engages in the task without specific direction from their employer or outside the regular work day.

This clarification of an employer's obligation under Ohio law can benefit both employers and employees in the Buckeye State. For employers, providing certainty about the legal risks of having hourly employees working unsupervised from home enables them to make better decisions about where they allow employees to work and what employees have access to work materials after work.

Likewise, for employees, the certainty provided by SB 243 may mean more employers are willing to let hourly employees work from home and it may enable more companies to provide hourly employee with access to work materials on electronic devices like a cell phone or personal laptop – which in turn gives hourly workers more control over when and how they accomplish their work.

In closing, the Ohio Chamber urges your favorable consideration of SB 243 because its enactment will minimize the likelihood the coronavirus results in businesses facing more wage and hour lawsuits by codifying the US Supreme Court's longstanding de minimis doctrine.

I welcome any questions from the committee and thank you for the opportunity to testify today.