

# AN ACT

To amend sections 4111.03 and 4111.10 and to enact section 4111.031 of the Revised Code to except traveling to and from a worksite and performing certain routine tasks from the overtime pay requirement and to prohibit opt-out class actions for overtime violations.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 4111.03 and 4111.10 be amended and section 4111.031 of the Revised Code be enacted to read as follows:

Sec. 4111.03. (A) ~~An~~ Except as provided in section 4111.031 of the Revised Code, an employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended, and, effective beginning on the effective date of this amendment, sections 2 and 4 of the "Portal to Portal Act of 1947," 29 U.S.C. 252 and 254.

Any employee employed in agriculture shall not be covered by the overtime provision of this section.

A motor carrier may elect to apply the overtime provision of this section to an individual who is excluded from the provision under division (D)(3)(i) of this section.

(B) If a county employee or township employee elects to take compensatory time off in lieu of overtime pay, for any overtime worked, compensatory time may be granted by the employee's administrative superior, on a time and one-half basis, at a time mutually convenient to the employee and the administrative superior within one hundred eighty days after the overtime is worked.

(C) A township appointing authority or a county appointing authority with the exception of the county department of job and family services may, by rule or resolution as is appropriate, indicate the authority's intention not to be bound by division (B) of this section, and to adopt a different policy for the calculation and payment of overtime than that established by that division. Upon adoption, the alternative overtime policy prevails. Prior to the adoption of an alternative overtime policy, a township appointing authority or a county appointing authority with the exception of the county department of job and family services shall give a written notice of the alternative policy to each employee at least ten days prior to its effective date.

(D) As used in this section and section 4111.031 of the Revised Code:

(1) "Employ" means to suffer or to permit to work.

(2) "Employer" means the state of Ohio, its instrumentalities, and its political subdivisions and their instrumentalities, any individual, partnership, association, corporation, business trust, or any

person or group of persons, acting in the interest of an employer in relation to an employee, but does not include either of the following:

(a) An employer whose annual gross volume of sales made for business done is less than one hundred fifty thousand dollars, exclusive of excise taxes at the retail level which are separately stated;

(b) A franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.

(3) "Employee" means any individual employed by an employer but does not include:

(a) Any individual employed by the United States;

(b) Any individual employed as a baby-sitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;

(c) Any individual engaged in the delivery of newspapers to the consumer;

(d) Any individual employed as an outside salesperson compensated by commissions or employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, as amended;

(e) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;

(f) A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state;

(g) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in Section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under Section 501(a) of that code;

(h) Any individual employed directly by the house of representatives or directly by the senate;

(i) An individual who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property and to whom all of the following factors apply:

(i) The individual owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the individual leases the vehicle or vessel under a bona fide lease agreement that is not a temporary replacement lease agreement. For purposes of this division, a bona fide lease agreement does not include an agreement between the individual and the motor carrier transporting property for which, or on whose behalf, the individual provides services.

(ii) The individual is responsible for supplying the necessary personal services to operate the vehicle or vessel used to provide the service.

(iii) The compensation paid to the individual is based on factors related to work performed, including on a mileage-based rate or a percentage of any schedule of rates, and not solely on the basis of the hours or time expended.

(iv) The individual substantially controls the means and manner of performing the services,

in conformance with regulatory requirements and specifications of the shipper.

(v) The individual enters into a written contract with the carrier for whom the individual is performing the services that describes the relationship between the individual and the carrier to be that of an independent contractor and not that of an employee.

(vi) The individual is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the individual may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.

(vii) The individual is responsible for any economic loss or economic gain from the arrangement with the carrier.

(4) "Motor carrier" has the same meaning as in section 4923.01 of the Revised Code.

Sec. 4111.031. (A)(1) Except as provided in divisions (B) and (C) of this section, an employer is not required to pay the overtime wage rate under section 4111.03 of the Revised Code to an employee for any time that the employee spends performing any of the following activities:

(a) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform;

(b) Activities that are preliminary to or postliminary to the principal activity or activities;

(c) Activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours.

(2) Division (A)(1) of this section applies to an activity described in that division that occurs either prior to the time on any particular workday at which the employee commences, or subsequent to the time on any particular workday at which the employee ceases, such principal activity or activities.

(B) Division (A) of this section does not apply if an employee engages in an activity described in division (A)(1)(b) of this section under either of the following circumstances:

(1) The employee performs the activity during the regular work day or during prescribed hours.

(2) The employee performs the activity at the specific direction of the employer.

(C) Division (A) of this section does not apply if an employee engages in an activity described in that division under either of the following circumstances:

(1) The employee performs the activity pursuant to an express provision of a written or unwritten contract in effect, at the time of performance, between the employee or the employee's agent or collective bargaining representative and the employee's employer.

(2) The employee performs the activity pursuant to a custom or practice applicable to the activity, in effect at the time of performance, at the establishment or other place where the employee is employed, and the custom or practice is not inconsistent with a contract described in division (C) (1) of this section.

Sec. 4111.10. (A) Any employer who pays any employee less than wages to which the employee is entitled under section 4111.03 of the Revised Code, is liable to the employee affected for the full amount of the overtime wage rate, less any amount actually paid to the employee by the employer, and for costs and reasonable attorney's fees as may be allowed by the court. Any

agreement between the employee and the employer to work for less than the overtime wage rate is no defense to an action.

(B) At the written request of any employee paid less than the wages to which the employee is entitled under section 4111.03 of the Revised Code, the director of commerce may take an assignment of a wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim. The employer shall pay the costs and reasonable attorney's fees allowed by the court.

(C) No employee shall join as a party plaintiff in any civil action that is brought under this section by an employee, person acting on behalf of an employee, or person acting on behalf of all similarly situated employees unless that employee first gives written consent to become such a party plaintiff and that consent is filed with the court in which the action is brought.

SECTION 2. That existing sections 4111.03 and 4111.10 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 47

134th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_