



# House of Representatives

## File No. 744

General Assembly

February Session, 2008

**(Reprint of File No. 18)**

House Bill No. 5480  
As Amended by House Amendment Schedule  
"A"

Approved by the Legislative Commissioner  
April 28, 2008

### **AN ACT CONCERNING THE CALCULATION OF OVERTIME.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (1) of section 31-76b of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *January 1, 2011*):

4 (1) The "regular rate" at which an employee is employed shall be  
5 deemed to include all remuneration for employment paid to, or on  
6 behalf of, the employee, but shall not be deemed to include (A) sums  
7 paid as gifts; payments in the nature of gifts made at Christmas time or  
8 on other special occasions, as a reward for service, the amounts of  
9 which are not measured by or dependent on hours worked,  
10 production or efficiency; (B) payments made for occasional periods  
11 when no work is performed due to vacation, holiday, illness, failure of  
12 the employer to provide sufficient work, or other similar cause;  
13 reasonable payments for traveling expenses, or other expenses,  
14 incurred by an employee in the furtherance of the employer's interests  
15 and properly reimbursable by the employer; and other similar

16 payments to an employee that are not made as compensation for the  
17 employee's hours of employment; (C) sums paid in recognition of  
18 services performed during a given period if either, (i) both the fact that  
19 payment is to be made and the amount of the payment are determined  
20 at the sole discretion of the employer at or near the end of the period  
21 and not pursuant to any prior contract, agreement or promise causing  
22 the employee to expect such payments regularly; (ii) the payments are  
23 made pursuant to a bona fide profit-sharing plan or trust or bona fide  
24 thrift or savings plan, meeting the approval of the Labor  
25 Commissioner who shall give due regard, among other relevant  
26 factors, to the extent to which the amounts paid to the employee are  
27 determined with regard to hours of work, production or efficiency; (D)  
28 contributions irrevocably made by an employer to a trustee or third  
29 person pursuant to a bona fide plan for providing old-age, retirement,  
30 life, accident or health insurance or similar benefits for employees; (E)  
31 extra compensation provided by a premium rate paid for certain hours  
32 worked by the employee in any day or workweek because such hours  
33 are hours worked in excess of eight in a day or in excess of the  
34 maximum workweek applicable to such employee under section 31-  
35 76c, or in excess of the employee's normal working hours or regular  
36 working hours, as the case may be; (F) extra compensation provided  
37 by a premium rate paid for work by the employee on Saturdays,  
38 Sundays, holidays or regular days of rest, or on the sixth or seventh  
39 day of the workweek, where such premium rate is not less than one  
40 and one-half times the rate established in good faith for like work  
41 performed in nonovertime hours on other days; or (G) extra  
42 compensation provided by a premium rate paid to the employee, in  
43 pursuance of an applicable employment contract or collective-  
44 bargaining agreement, for work outside of the hours established in  
45 good faith by the contract or agreement as the basic, normal or regular  
46 workday, not exceeding the maximum workweek applicable to such  
47 employee under section 31-76c, where such premium rate is not less  
48 than one and one-half times the rate established in good faith by the  
49 contract or agreement for like work performed during such workday  
50 or workweek. For the purpose of calculating the overtime rate of

51 compensation required to be paid to an employee who is (i) employed  
52 as a delivery driver or sales merchandiser, (ii) paid on a base salary  
53 and commission basis, and (iii) not exempt from the overtime  
54 requirements of this chapter, the employee's regular rate shall be one-  
55 fortieth of the employee's weekly remuneration, including,  
56 notwithstanding the provisions of subparagraph (B) of this  
57 subdivision, payments made for any period when no work is  
58 performed due to a holiday. For such employees, paid holiday hours  
59 shall constitute hours worked for purposes of determining eligibility  
60 for overtime compensation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2008	31-76b(1)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill requires that paid holidays be counted as part of delivery drivers and sales merchandisers regular work week when determining if the employee is due overtime pay for working more than 40 hours in a week. As the state and municipalities do not have this type of employee, the bill has no fiscal impact.

House "A" limited the changes in the calculation of overtime to delivery drivers and sales merchandisers. House "A" also changed the bill's effective date to January 1, 2011, from October 1, 2008. House "A" eliminated the cost to the state and municipalities.

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**OLR Bill Analysis****HB 5480 (as amended by House "A")\******AN ACT CONCERNING THE CALCULATION OF OVERTIME.*****SUMMARY:**

Under current law, paid holidays are not considered part of an employee's regular pay that is counted toward determining if the employee has worked more than 40 hours in a week and is due overtime pay for hours over 40.

The bill requires that paid holidays count towards determining overtime only for employees who are (1) earning both salary and commission and (2) employed as delivery drivers or sales merchandisers.

By law, an employee's "regular rate" includes all remuneration for employment paid to, or on behalf of, the employee. But certain types of pay are exempt, such as payments made when no work is performed due to vacation, illness, failure of the employer to provide sufficient work, reasonable travel and other expenses, and other specified types of pay.

\*House Amendment "A" removes the provision in the original bill (File 18) that counted paid holidays in the overtime calculation for all employees who are not exempt from overtime and changes the effective date from October 1, 2008 to January 1, 2011.

EFFECTIVE DATE: January 1, 2011

**BACKGROUND*****Overtime Rules***

State and federal laws require that, for all employees subject to

overtime rules, the overtime hourly rate is one and a half times the employee's regular rate. The regular rate is 1/40<sup>th</sup> of the employee's weekly remuneration (total pay). The law exempts some employees, such as salespeople and executives, from overtime pay requirements.

Sometimes a union contract or employer policy provides a more generous overtime plan than law requires. For example, some employers provide overtime for any hours more than eight worked in a single day. Under such rule a person could earn some overtime pay without working more than 40 hours in a week.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 9      Nay 2      (02/28/2008)