

HOUSE BILL No. 1275

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-1-2-1; IC 22-2.

Synopsis: Overtime compensation for certain employees. Provides that, after December 31, 2021, certain employees must be paid compensation for employment in certain circumstances at a rate not less than 1.5 times the regular rate at which the employee is employed and, under certain circumstances, not less than two times the regular rate at which the employee is employed.

Effective: July 1, 2021.

Hatfield

January 14, 2021, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1275

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-1-2-1, AS AMENDED BY P.L.13-2008,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 1. (a) It is the intent of this chapter that state
4 offices be open and able to conduct public business at all times during
5 an eight and one-half (8 1/2) hour working day.

6 (b) Each employee shall work for a full seven and one-half (7 1/2)
7 hours each working day and provision for a one (1) hour lunch period
8 shall be provided each employee. Lunch hours of employees shall be
9 staggered to permit the conduct of business at all times during a
10 working day. Breaks shall be provided as set forth in IC 5-10-6-2.

11 (c) It shall be lawful for state offices to close their doors for business
12 from the close of the working day each Friday or in the event Friday is
13 a legal holiday, then from the close of the working day on the Thursday
14 which immediately precedes such legal holiday, until the
15 commencement of the working day on the next following Monday, or
16 in the event Monday is a legal holiday, then until the commencement
17 of the working day on the Tuesday which immediately follows such



1 legal holiday. ~~provided~~; However, ~~that~~ the state library may be kept
 2 open until noon Saturdays in the discretion of the Indiana library and
 3 historical board.

4 SECTION 2. IC 22-2-2-4, AS AMENDED BY P.L.147-2020,
 5 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2021]: Sec. 4. (a) No employer having employees subject to
 7 any provisions of this section shall discriminate, within any
 8 establishment in which employees are employed, between employees
 9 on the basis of sex by paying to employees in such establishment a rate
 10 less than the rate at which the employer pays wages to employees of the
 11 opposite sex in such establishment for equal work on jobs the
 12 performance of which requires equal skill, effort, and responsibility,
 13 and which are performed under similar working conditions, except
 14 where such payment is made pursuant to:

- 15 (1) a seniority system;
- 16 (2) a merit system;
- 17 (3) a system which measures earnings by quantity or quality of
 18 production; or
- 19 (4) a differential based on any other factor other than sex.

20 (b) An employer who is paying a wage rate differential in violation
 21 of subsection (a) shall not, in order to comply with subsection (a),
 22 reduce the wage rate of any employee, and no labor organization, or its
 23 agents, representing employees of an employer having employees
 24 subject to subsection (a) shall cause or attempt to cause such an
 25 employer to discriminate against an employee in violation of
 26 subsection (a).

27 (c) Except as provided in subsection (d), every employer employing
 28 at least two (2) employees during a work week shall, in any work week
 29 in which the employer is subject to this chapter, pay each of the
 30 employees in any work week beginning on or after June 30, 2007,
 31 wages of not less than the minimum wage payable under the federal
 32 Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).

33 (d) An employer subject to subsection (c) is permitted to apply a tip
 34 credit in determining the amount of cash wage paid to tipped
 35 employees. In determining the wage an employer is required to pay a
 36 tipped employee, the amount paid the employee by the employee's
 37 employer must be an amount equal to:

- 38 (1) the cash wage paid the employee, which for purposes of the
 39 determination may be not less than the cash wage required to be
 40 paid to employees covered under the federal Fair Labor Standards
 41 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 42 1996, which amount is two dollars and thirteen cents (\$2.13) an



- 1 hour; and
 2 (2) an additional amount on account of the tips received by the
 3 employee, which amount is equal to the difference between the
 4 wage specified in subdivision (1) and the wage in effect under
 5 subsection (c).
 6 An employer is responsible for supporting the amount of tip credit
 7 taken through reported tips by the employees.
 8 (e) This section does not apply if an employee:
 9 (1) provides companionship services to the aged and infirm (as
 10 defined in 29 CFR 552.6); and
 11 (2) is employed by an employer or agency other than the family
 12 or household using the companionship services, as provided in 29
 13 CFR 552.109 (a).
 14 (f) Except as otherwise provided in this section, no employer shall
 15 employ any employee:
 16 (1) for a work week longer than forty (40) hours unless the
 17 employee receives compensation for employment in excess of
 18 forty (40) hours at a rate not less than one and one-half (1.5) times
 19 the regular rate at which the employee is employed, **except as**
 20 **provided in subdivision (3);**
 21 (2) **after December 31, 2021, longer during a workday than**
 22 **the prior scheduled time unless the employee receives**
 23 **compensation for employment in excess of the prior scheduled**
 24 **hours above specified at a rate not less than one and one-half**
 25 **(1.5) times the regular rate at which the employee is**
 26 **employed; or**
 27 (3) **for a work week beginning on or after January 1, 2022,**
 28 **longer than fifty-two (52) hours unless the employee receives**
 29 **compensation for employment in excess of the hours above**
 30 **fifty-two (52) hours specified at a rate not less than two (2)**
 31 **times the regular rate at which the employee is employed.**
 32 **Subdivisions (1), (2), and (3) may apply in a single work week.**
 33 (g) For purposes of this section the following apply:
 34 (1) "Overtime compensation" means the compensation required
 35 by subsection (f).
 36 (2) "Compensatory time" and "compensatory time off" mean
 37 hours during which an employee is not working, which are not
 38 counted as hours worked during the applicable work week or
 39 other work period for purposes of overtime compensation, and for
 40 which the employee is compensated at the employee's regular
 41 rate.
 42 (3) "Regular rate" means the rate at which an employee is



1 employed is considered to include all remuneration for
2 employment paid to, or on behalf of, the employee, but is not
3 considered to include the following:

4 (A) Sums paid as gifts, payments in the nature of gifts made at
5 Christmas time or on other special occasions, as a reward for
6 service, the amounts of which are not measured by or
7 dependent on hours worked, production, or efficiency.

8 (B) Payments made for occasional periods when no work is
9 performed due to vacation, holiday, illness, failure of the
10 employer to provide sufficient work, or other similar cause,
11 reasonable payments for traveling expenses, or other expenses,
12 incurred by an employee in the furtherance of the employer's
13 interests and properly reimbursable by the employer, and other
14 similar payments to an employee which are not made as
15 compensation for the employee's hours of employment.

16 (C) Sums paid in recognition of services performed during a
17 given period if:

18 (i) both the fact that payment is to be made and the amount
19 of the payment are determined at the sole discretion of the
20 employer at or near the end of the period and not pursuant
21 to any prior contract, agreement, or promise causing the
22 employee to expect the payments regularly;

23 (ii) the payments are made pursuant to a bona fide profit
24 sharing plan or trust or bona fide thrift or savings plan,
25 meeting the requirements of the administrator set forth in
26 appropriately issued regulations, having due regard among
27 other relevant factors, to the extent to which the amounts
28 paid to the employee are determined without regard to hours
29 of work, production, or efficiency; or

30 (iii) the payments are talent fees paid to performers,
31 including announcers, on radio and television programs.

32 (D) Contributions irrevocably made by an employer to a
33 trustee or third person pursuant to a bona fide plan for
34 providing old age, retirement, life, accident, or health
35 insurance or similar benefits for employees.

36 (E) Extra compensation provided by a premium rate paid for
37 certain hours worked by the employee in any day or work
38 week because those hours are hours worked in excess of eight
39 (8) in a day or in excess of the maximum work week
40 applicable to the employee under subsection (f) or in excess of
41 the employee's normal working hours or regular working
42 hours, as the case may be.



- 1 (F) Extra compensation provided by a premium rate paid for
 2 work by the employee on Saturdays, Sundays, holidays, or
 3 regular days of rest, or on the sixth or seventh day of the work
 4 week, where the premium rate is not less than one and one-half
 5 (1.5) times the rate established in good faith for like work
 6 performed in nonovertime hours on other days.
- 7 (G) Extra compensation provided by a premium rate paid to
 8 the employee, in pursuance of an applicable employment
 9 contract or collective bargaining agreement, for work outside
 10 of the hours established in good faith by the contract or
 11 agreement as the basic, normal, or regular workday (not
 12 exceeding eight (8) hours) or work week (not exceeding the
 13 maximum work week applicable to the employee under
 14 subsection (f)) where the premium rate is not less than one and
 15 one-half (1.5) times the rate established in good faith by the
 16 contract or agreement for like work performed during the
 17 workday or work week.
- 18 (h) No employer shall be considered to have violated subsection (f)
 19 by employing any employee for a work week in excess of that specified
 20 in subsection (f) without paying the compensation for overtime
 21 employment prescribed therein if the employee is so employed:
- 22 (1) in pursuance of an agreement, made as a result of collective
 23 bargaining by representatives of employees certified as bona fide
 24 by the National Labor Relations Board, which provides that no
 25 employee shall be employed more than one thousand forty (1,040)
 26 hours during any period of twenty-six (26) consecutive weeks; or
 27 (2) in pursuance of an agreement, made as a result of collective
 28 bargaining by representatives of employees certified as bona fide
 29 by the National Labor Relations Board, which provides that
 30 during a specified period of fifty-two (52) consecutive weeks the
 31 employee shall be employed not more than two thousand two
 32 hundred forty (2,240) hours and shall be guaranteed not less than
 33 one thousand eight hundred forty (1,840) hours (or not less than
 34 forty-six (46) weeks at the normal number of hours worked per
 35 week, but not less than thirty (30) hours per week) and not more
 36 than two thousand eighty (2,080) hours of employment for which
 37 the employee shall receive compensation for all hours guaranteed
 38 or worked at rates not less than those applicable under the
 39 agreement to the work performed and for all hours in excess of
 40 the guaranty which are also in excess of the maximum work week
 41 applicable to the employee under subsection (f) or two thousand
 42 eighty (2,080) in that period at rates not less than one and



1 one-half (1.5) times the regular rate at which the employee is
 2 employed.

3 **An agreement made before January 1, 2022, continues in full force**
 4 **and effect until the date of termination of the agreement. An**
 5 **agreement entered into after December 31, 2021, must contain**
 6 **payment for overtime hours as set forth in subsection (f).**

7 (i) No employer shall be considered to have violated subsection (f)
 8 by employing any employee for a work week in excess of the maximum
 9 work week applicable to the employee under subsection (f) if the
 10 employee is employed pursuant to a bona fide individual contract, or
 11 pursuant to an agreement made as a result of collective bargaining by
 12 representatives of employees, if the duties of the employee necessitate
 13 irregular hours of work, and the contract or agreement includes the
 14 following:

15 (1) Specifies a regular rate of pay of not less than the minimum
 16 hourly rate provided in subsections (c) and (d) (whichever is
 17 applicable) and compensation at not less than one and one-half
 18 (1.5) times that rate for all hours worked in excess of the
 19 maximum work week.

20 (2) Provides a weekly guaranty of pay for not more than sixty (60)
 21 hours based on the rates so specified.

22 (j) No employer shall be considered to have violated subsection (f)
 23 by employing any employee for a work week in excess of the maximum
 24 work week applicable to the employee under that subsection if,
 25 pursuant to an agreement or understanding arrived at between the
 26 employer and the employee before performance of the work, the
 27 amount paid to the employee for the number of hours worked by the
 28 employee in the work week in excess of the maximum work week
 29 applicable to the employee under that subsection:

30 (1) in the case of an employee employed at piece rates, is
 31 computed at piece rates not less than one and one-half (1.5) times
 32 the bona fide piece rates applicable to the same work when
 33 performed during nonovertime hours;

34 (2) in the case of an employee performing two (2) or more kinds
 35 of work for which different hourly or piece rates have been
 36 established, is computed at rates not less than one and one-half
 37 (1.5) times those bona fide rates applicable to the same work
 38 when performed during nonovertime hours; or

39 (3) is computed at a rate not less than one and one-half (1.5) times
 40 the rate established by the agreement or understanding as the
 41 basic rate to be used in computing overtime compensation
 42 thereunder, provided that the rate so established shall be



- 1 substantially equivalent to the average hourly earnings of the
2 employee, exclusive of overtime premiums, in the particular work
3 over a representative period of time;
4 and if the employee's average hourly earnings for the work week
5 exclusive of payments described in this section are not less than the
6 minimum hourly rate required by applicable law, and extra overtime
7 compensation is properly computed and paid on other forms of
8 additional pay required to be included in computing the regular rate.
- 9 (k) Extra compensation paid as described in this section shall be
10 creditable toward overtime compensation payable pursuant to this
11 section.
- 12 (l) No employer shall be considered to have violated subsection (f)
13 by employing any employee of a retail or service establishment for a
14 work week in excess of the applicable work week specified therein, if:
- 15 (1) the regular rate of pay of the employee is in excess of one and
16 one-half (1.5) times the minimum hourly rate applicable to the
17 employee under section 2 of this chapter; and
18 (2) more than half of the employee's compensation for a
19 representative period (not less than one (1) month) represents
20 commissions on goods or services.
- 21 In determining the proportion of compensation representing
22 commissions, all earnings resulting from the application of a bona fide
23 commission rate shall be considered commissions on goods or services
24 without regard to whether the computed commissions exceed the draw
25 or guarantee.
- 26 (m) No employer engaged in the operation of a hospital or an
27 establishment which is an institution primarily engaged in the care of
28 the sick, the aged, or individuals with a mental illness or defect who
29 reside on the premises shall be considered to have violated subsection
30 (f) if, pursuant to an agreement or understanding arrived at between the
31 employer and the employee before performance of the work, a work
32 period of fourteen (14) consecutive days is accepted in lieu of the work
33 week of seven (7) consecutive days for purposes of overtime
34 computation and if, for the employee's employment in excess of eight
35 (8) hours in any workday and in excess of eighty (80) hours in that
36 fourteen (14) day period, the employee receives compensation at a rate
37 not less than one and one-half (1.5) times the regular rate at which the
38 employee is employed.
- 39 (n) No employer shall employ any employee in domestic service in
40 one (1) or more households for a work week longer than forty (40)
41 hours unless the employee receives compensation for that employment
42 in accordance with subsection (f).



1 (o) In the case of an employee of an employer engaged in the
 2 business of operating a street, a suburban or interurban electric railway,
 3 or a local trolley or motorbus carrier (regardless of whether or not the
 4 railway or carrier is public or private or operated for profit or not for
 5 profit), in determining the hours of employment of such an employee
 6 to which the rate prescribed by subsection (f) applies, there shall be
 7 excluded the hours the employee was employed in charter activities by
 8 the employer if both of the following apply:

9 (1) The employee's employment in the charter activities was
 10 pursuant to an agreement or understanding with the employer
 11 arrived at before engaging in that employment.

12 (2) If employment in the charter activities is not part of the
 13 employee's regular employment.

14 (p) Any employer may employ any employee for a period or periods
 15 of not more than ten (10) hours in the aggregate in any work week in
 16 excess of the maximum work week specified in subsection (f) without
 17 paying the compensation for overtime employment prescribed in
 18 subsection (f), if during that period or periods the employee is
 19 receiving remedial education that:

20 (1) is provided to employees who lack a high school diploma or
 21 educational attainment at the eighth grade level;

22 (2) is designed to provide reading and other basic skills at an
 23 eighth grade level or below; and

24 (3) does not include job specific training.

25 (q) Subsection (f) does not apply to an employee of a motion picture
 26 theater.

27 (r) Subsection (f) does not apply to an employee of a seasonal
 28 amusement or recreational establishment, an organized camp, or a
 29 religious or nonprofit educational conference center that is exempt
 30 under the federal Fair Labor Standards Act of 1938, as amended (29
 31 U.S.C. 213).

32 (s) Subsection (f) does not apply to an employee of an air carrier
 33 subject to Title II of the federal Railway Labor Act (45 U.S.C. 181 et
 34 seq.) to the extent that the hours worked by the employee during a work
 35 week in excess of forty (40) hours are not required by the air carrier but
 36 are arranged through a voluntary agreement between employees to
 37 trade or reassign their scheduled work hours.

38 SECTION 3. IC 22-2-19 IS ADDED TO THE INDIANA CODE AS
 39 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 40 1, 2021]:

41 **Chapter 19. Overtime Compensation**

42 **Sec. 1. As used in this chapter, "department" refers to the**



1 department of labor created by IC 22-1-1-1.

2 **Sec. 2. As used in this chapter, "employee" means a person**
 3 **employed or permitted to work or perform any service for**
 4 **remuneration or under any contract of hire, written or oral,**
 5 **express or implied, by an employer in any occupation subject to the**
 6 **provisions of the federal Fair Labor Standards Act. The term:**

7 (1) **includes an employee of the state who is subject to**
 8 **IC 4-1-2-1(b) and an employee of a state educational**
 9 **institution (as defined in IC 21-7-13-32); and**

10 (2) **does not include an employee exempt or partially exempt**
 11 **from the overtime pay requirements of the federal Fair Labor**
 12 **Standards Act.**

13 **Sec. 3. As used in this chapter, "employer" means an employer**
 14 **that is subject to the provisions of the federal Fair Labor**
 15 **Standards Act but does not include the following:**

16 (1) **The federal government, including the armed forces of the**
 17 **United States.**

18 (2) **A railroad doing business in Indiana.**

19 **Sec. 4. As used in this chapter, "Fair Labor Standards Act"**
 20 **means the federal Fair Labor Standards Act of 1938, as amended**
 21 **(29 U.S.C. 201 et seq.).**

22 **Sec. 5. As used in this chapter, "regular rate" means the rate at**
 23 **which an employee is employed and includes all remuneration for**
 24 **employment paid to, or on behalf of, the employee, but does not**
 25 **include the following:**

26 (1) **Sums paid as gifts, payments in the nature of gifts made at**
 27 **Christmas time or on other special occasions, or as a reward**
 28 **for service, the amounts of which are not measured by or**
 29 **dependent on hours worked, production, or efficiency.**

30 (2) **Payments made for occasional periods when no work is**
 31 **performed due to vacation, holiday, illness, failure of the**
 32 **employer to provide sufficient work, or other similar cause,**
 33 **reasonable payments for traveling expenses, or other**
 34 **expenses, incurred by an employee in the furtherance of the**
 35 **employer's interests and properly reimbursable by the**
 36 **employer, and other similar payments to an employee that are**
 37 **not made as compensation for the employee's hours of**
 38 **employment.**

39 (3) **Sums paid in recognition of services performed during a**
 40 **given period if:**

41 (A) **both the fact that payment is to be made and the**
 42 **amount of the payment are determined at the sole**



- 1 discretion of the employer at or near the end of the period
 2 and not under any prior contract, agreement, or promise
 3 causing the employee to expect the payments regularly;
 4 (B) the payments are made under a bona fide profit
 5 sharing plan or trust or bona fide thrift or savings plan,
 6 meeting the requirements of the administrator set forth in
 7 appropriately issued regulations, having due regard among
 8 other relevant factors, to the extent to which the amounts
 9 paid to the employee are determined without regard to
 10 hours of work, production, or efficiency; or
 11 (C) the payments are talent fees paid to performers,
 12 including announcers, on radio and television programs.
 13 (4) Contributions irrevocably made by an employer to a
 14 trustee or third person under a bona fide plan for providing
 15 old age, retirement, life, accident, or health insurance or
 16 similar benefits for employees.
 17 (5) Extra compensation provided by a premium rate paid for
 18 certain hours worked by the employee in any day or work
 19 week because those hours are hours worked in accordance
 20 with section 6 of this chapter.
 21 (6) Extra compensation provided by a premium rate paid to
 22 the employee, under an applicable employment contract or
 23 collective bargaining agreement, for work outside of the hours
 24 established in good faith by the contract or agreement as the
 25 basic, normal, or regular workday or work week.
- 26 **Sec. 6. After December 31, 2021, an employer may not employ**
 27 **an employee:**
 28 (1) longer during a workday than the prior scheduled time
 29 unless the employee receives compensation for employment in
 30 excess of the prior scheduled hours above specified at a rate
 31 not less than one and one-half (1.5) times the regular rate at
 32 which the employee is employed;
 33 (2) longer for a work week in excess of the work week agreed
 34 upon between the employee and employer unless the employee
 35 receives compensation for employment in excess of the hours
 36 above the agreed upon work week at a rate not less than one
 37 and one-half (1.5) times the regular rate at which the
 38 employee is employed, except as provided in subdivision (3);
 39 or
 40 (3) for a work week longer than fifty-two (52) hours unless the
 41 employee receives compensation for employment in excess of
 42 the hours above fifty-two (52) hours specified at a rate not less



1 than two (2) times the regular rate at which the employee is
2 employed.

3 Subdivisions (1), (2), and (3) may apply in a single work week.

4 Sec. 7. A labor agreement entered into before January 1, 2022,
5 continues in full force and effect until the date of termination of the
6 agreement. A labor agreement entered into after December 31,
7 2021, must contain payment for overtime hours in the manner
8 provided as set forth in section 6 of this chapter.

9 Sec. 8. (a) The department and authorized inspectors and agents
10 of the department shall:

11 (1) enforce and ensure compliance with the provisions of this
12 chapter;

13 (2) investigate any violations of any of the provisions of this
14 chapter; and

15 (3) institute or cause to be instituted actions for compensation
16 due as provided under this chapter.

17 (b) The commissioner of the department may refer claims for
18 compensation due under this chapter to the attorney general, and
19 the attorney general may initiate civil actions on behalf of the
20 claimant or may refer the claim to an attorney admitted to the
21 practice of law in Indiana.

22 (c) It is unlawful for any person to:

23 (1) interfere with, obstruct, or hinder an inspector or agent of
24 the department while the inspector or agent performs official
25 duties of the department; or

26 (2) refuse to properly answer questions asked by an inspector
27 or agent of the department.

28 Sec. 9. This chapter does not prohibit an employer from
29 providing compensation in excess of that required by this chapter.

