

HOUSE BILL No. 1333

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-2-2.

Synopsis: Minimum wage. Makes changes to the definition of "employee" for the purposes of the minimum wage statute. Increases the minimum wage paid to certain employees in Indiana as follows: (1) After June 30, 2023, from \$7.25 an hour to \$9.02 an hour. (2) After December 31, 2023, from \$9.02 an hour to \$10.07 an hour. (3) After December 31, 2024, from \$10.07 an hour to \$11.11 an hour. (4) After December 31, 2025, from \$11.11 an hour to \$12.10 an hour. Provides that after December 31, 2026, and each subsequent December 31, the hourly minimum wage increases at the same percentage as any increase in the Consumer Price Index for the preceding calendar year. Increases the cash wage paid to tipped employees as follows: (1) After June 30, 2023, from \$2.13 an hour to \$3.30 an hour. (2) After December 31, 2023, from \$3.30 an hour to \$4.71 an hour. (3) After December 31, 2024, from \$4.71 an hour to \$6.12 an hour. (4) After December 31, 2025, from \$6.12 an hour to \$7.54 an hour. Provides that after December 31, 2026, and continuing for each subsequent December 31, the cash wage required to be paid to employees is equal to 70% of the hourly minimum wage. Provides that, if the federal minimum wage or cash wage is higher than the state minimum wage or cash wage, employers are required to pay the higher federal rate. Makes technical corrections and corresponding changes.

Effective: July 1, 2022.

Boy

January 11, 2022, read first time and referred to Committee on Employment, Labor and Pensions.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1333

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 22-2-2-3, AS AMENDED BY P.L.7-2019,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 3. As used in this chapter:
4 "Commissioner" means the commissioner of labor or the
5 commissioner's authorized representative.
6 "Department" means the department of labor.
7 "Occupation" means an industry, trade, business, or class of work
8 in which employees are gainfully employed.
9 "Employer" means any individual, partnership, association, limited
10 liability company, corporation, business trust, the state, or other
11 governmental agency or political subdivision during any work week in
12 which they have two (2) or more employees. However, **except as**
13 **provided in section 14 of this chapter**, it shall not include any
14 employer who is subject to the minimum wage provisions of the federal
15 Fair Labor Standards Act of 1938, as amended (~~29 U.S.C. 201-209~~).
16 **(29 U.S.C. 201 et seq.)**.
17 "Employee" means any person employed or permitted to work or



1 perform any service for remuneration or under any contract of hire,
 2 written or oral, express or implied by an employer in any occupation,
 3 but shall not include any of the following:

4 (a) Persons less than sixteen (16) years of age.

5 (b) Persons engaged in an independently established trade,
 6 occupation, profession, or business who, in performing the
 7 services in question, are free from control or direction both under
 8 a contract of service and in fact.

9 (c) Persons performing services not in the course of the
 10 employing unit's trade or business.

11 (d) Persons employed on a commission basis.

12 (e) Persons employed by their own parent, spouse, or child.

13 (f) Members of any religious order performing any service for that
 14 order, any ordained, commissioned, or licensed minister, priest,
 15 rabbi, sexton, or Christian Science reader, and volunteers
 16 performing services for any religious or charitable organization.

17 (g) Persons performing services as student nurses in the employ
 18 of a hospital or nurses training school while enrolled and
 19 regularly attending classes in a nurses training school chartered
 20 or approved under law, or students performing services in the
 21 employ of persons licensed as both funeral directors and
 22 embalmers as a part of their requirements for apprenticeship to
 23 secure an embalmer's license or a funeral director's license from
 24 the state, or during their attendance at any schools required by law
 25 for securing an embalmer's or funeral director's license.

26 (h) Persons who have completed a four (4) year course in a
 27 medical school approved by law when employed as interns or
 28 resident physicians by any accredited hospital.

29 (i) Students performing services for any school, college, or
 30 university in which they are enrolled and are regularly attending
 31 classes.

32 (j) Persons with physical or mental disabilities performing
 33 services for nonprofit organizations organized primarily for the
 34 purpose of providing employment for persons with disabilities or
 35 for assisting in their therapy and rehabilitation **only if the persons**
 36 **performing services under this subdivision are provided with:**

37 **(1) housing by the nonprofit organization; or**

38 **(2) housing and support by a relative or family member.**

39 (k) Persons employed as insurance producers, insurance
 40 solicitors, and outside salesmen, if all their services are performed
 41 for remuneration solely by commission.

42 (l) Persons performing services for any camping, recreational, or



1 guidance facilities operated by a charitable, religious, or
2 educational nonprofit organization.

3 (m) Persons engaged in agricultural labor. The term shall include
4 only services performed:

5 (1) on a farm, in connection with cultivating the soil, or in
6 connection with raising or harvesting any agricultural or
7 horticultural commodity, including the raising, shearing,
8 feeding, caring for, training, and management of livestock,
9 bees, poultry, and furbearing animals and wildlife;

10 (2) in the employ of the owner or tenant or other operator of a
11 farm, in connection with the operation, management,
12 conservation, improvement, or maintenance of the farm and its
13 tools and equipment if the major part of the service is
14 performed on a farm;

15 (3) in connection with:

16 (A) the production or harvesting of maple sugar or maple
17 syrup or any commodity defined as an agricultural
18 commodity in the Agricultural Marketing Act, as amended
19 (12 U.S.C. 1141j);

20 (B) the raising or harvesting of mushrooms;

21 (C) the hatching of poultry; or

22 (D) the operation or maintenance of ditches, canals,
23 reservoirs, or waterways used exclusively for supplying and
24 storing water for farming purposes; and

25 (4) in handling, planting, drying, packing, packaging,
26 processing, freezing, grading, storing, or delivering to storage,
27 to market, or to a carrier for transportation to market, any
28 agricultural or horticultural commodity, but only if service is
29 performed as an incident to ordinary farming operation or, in
30 the case of fruits and vegetables, as an incident to the
31 preparation of fruits and vegetables for market. However, this
32 exception shall not apply to services performed in connection
33 with any agricultural or horticultural commodity after its
34 delivery to a terminal market or processor for preparation or
35 distribution for consumption.

36 As used in this subdivision, "farm" includes stock, dairy, poultry,
37 fruit, furbearing animals, and truck farms, nurseries, orchards, or
38 greenhouses or other similar structures used primarily for the
39 raising of agricultural or horticultural commodities.

40 (n) Those persons employed in executive, administrative, or
41 professional occupations who have the authority to employ or
42 discharge and who earn one hundred fifty dollars (\$150) or more



1 a week, and outside salesmen.

2 (o) Any person not employed for more than four (4) weeks in any
3 four (4) consecutive three (3) month periods.

4 (p) Any employee with respect to whom the Interstate Commerce
5 Commission has power to establish qualifications and maximum
6 hours of service under the federal Motor Carrier Act of 1935 (49
7 U.S.C. 304(3)) or any employee of a carrier subject to IC 8-2.1.

8 (q) A person engaged in services as a direct seller. The term shall
9 include only services performed:

10 (1) by a person that is in the trade or business of:

11 (A) selling, or soliciting the sale of, consumer products or
12 services to any buyer on a buy-sell basis,
13 deposit-commission basis, or similar basis, in any place
14 other than in a permanent retail establishment; or

15 (B) selling, or soliciting the sale of, consumer products or
16 services in any place other than in a permanent retail
17 establishment;

18 (2) when substantially all the remuneration, whether or not
19 paid in cash, for the performance of the services is directly
20 related to sales or other output, including the performance of
21 services, rather than the number of hours worked; and

22 (3) when the services performed by the person are performed
23 pursuant to a written contract and the contract provides that
24 the person who performs the services will not be treated as an
25 employee for tax purposes under the contract.

26 **"Gainfully employed" means that an employee is receiving**
27 **consistent work and payment from an employer.**

28 SECTION 2. IC 22-2-2-4, AS AMENDED BY P.L.147-2020,
29 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2022]: Sec. 4. (a) No employer having employees subject to
31 any provisions of this section shall discriminate, within any
32 establishment in which employees are employed, between employees
33 on the basis of sex by paying to employees in such establishment a rate
34 less than the rate at which the employer pays wages to employees of the
35 opposite sex in such establishment for equal work on jobs the
36 performance of which requires equal skill, effort, and responsibility,
37 and which are performed under similar working conditions, except
38 where such payment is made pursuant to:

39 (1) a seniority system;

40 (2) a merit system;

41 (3) a system which measures earnings by quantity or quality of
42 production; or



1 (4) a differential based on any other factor other than sex.

2 (b) An employer who is paying a wage rate differential in violation
3 of subsection (a) shall not, in order to comply with subsection (a),
4 reduce the wage rate of any employee, and no labor organization, or its
5 agents, representing employees of an employer having employees
6 subject to subsection (a) shall cause or attempt to cause such an
7 employer to discriminate against an employee in violation of
8 subsection (a).

9 (c) Except as provided in subsection ~~(d)~~, (j), every employer
10 employing at least two (2) employees during a work week shall, in any
11 work week in which the employer is subject to this chapter, pay each
12 of the employees in any work week beginning on or after June 30,
13 2007, **and before July 1, 2023**, wages of not less than the minimum
14 wage payable under the federal Fair Labor Standards Act of 1938, as
15 amended (29 U.S.C. 201 et seq.).

16 **(d) Except as provided in subsection (j), every employer shall,**
17 **in any work week in which the employer is subject to this chapter,**
18 **pay each of the employees in any work week beginning after June**
19 **30, 2023, and before January 1, 2024, wages of not less than nine**
20 **dollars and two cents (\$9.02) an hour.**

21 (e) Except as provided in subsection (j), every employer shall, in
22 any work week in which the employer is subject to this chapter,
23 pay each of the employees in any work week beginning after
24 December 31, 2023, and before January 1, 2025, wages of not less
25 than ten dollars and seven cents (\$10.07) an hour.

26 (f) Except as provided in subsection (j), every employer shall, in
27 any work week in which the employer is subject to this chapter,
28 pay each of the employees in any work week beginning after
29 December 31, 2024, and before January 1, 2026, wages of not less
30 than eleven dollars and eleven cents (\$11.11) an hour.

31 (g) Except as provided in subsection (j), every employer shall, in
32 any work week in which the employer is subject to this chapter,
33 pay each of the employees in any work week beginning after
34 December 31, 2025, and before January 1, 2027, wages of not less
35 than twelve dollars and ten cents (\$12.10) an hour.

36 (h) Except as provided in subsection (j), every employer shall,
37 in any work week in which the employer is subject to this chapter,
38 pay each of the employees in any work week beginning after
39 December 31, 2026, and continuing for each subsequent December
40 31, an increase in the hourly minimum wage set by this section in
41 the same percentage as any increase in the Consumer Price Index
42 for Urban Wage Earners and Clerical Workers for the preceding



1 calendar year.

2 (i) If the minimum hourly wage required under subsections (d)
3 through (h) (whichever is applicable) is less than the minimum
4 wage payable under the federal Fair Labor Standards Act of 1938,
5 as amended (29 U.S.C. 201 et seq.), an employer shall pay the
6 minimum wage payable under the federal Fair Labor Standards
7 Act of 1938, as amended (29 U.S.C. 201 et seq.).

8 ~~(d)~~ (j) An employer subject to ~~subsection (e)~~ subsections (c)
9 through (i) (whichever is applicable) is permitted to apply a tip credit
10 in determining the amount of cash wage paid to tipped employees. In
11 determining the wage an employer is required to pay a tipped
12 employee, the amount paid the employee by the employee's employer
13 must be an amount equal to:

14 (1) the cash wage paid the employee, which for purposes of the
15 determination may be not less than:

16 (A) in any work week beginning before July 1, 2023, the
17 cash wage required to be paid to employees covered under the
18 federal Fair Labor Standards Act of 1938, as amended (29
19 U.S.C. 203(m)(1)) on August 20, 1996, which amount is two
20 dollars and thirteen cents (\$2.13) an hour; ~~and~~

21 (B) in any work week beginning after June 30, 2023, and
22 before January 1, 2024, three dollars and thirty cents
23 (\$3.30) an hour;

24 (C) in any work week beginning after December 31, 2023,
25 and before January 1, 2025, four dollars and seventy-one
26 cents (\$4.71) an hour;

27 (D) in any work week beginning after December 31, 2024,
28 and before January 1, 2026, six dollars and twelve cents
29 (\$6.12) an hour;

30 (E) in any work week beginning after December 31, 2025,
31 and before January 1, 2027, seven dollars and fifty-four
32 cents (\$7.54) an hour;

33 (F) in any work week beginning after December 31, 2026,
34 and continuing for each subsequent December 31, the cash
35 wage required to be paid to employees is equal to seventy
36 percent (70%) of the hourly minimum wage required
37 under subsections (h) and (i) (whichever is applicable); or
38 (G) if the cash wage required under clauses (A) through
39 (F) (whichever is applicable) is less than the minimum
40 wage payable under the federal Fair Labor Standards Act
41 of 1938, as amended (29 U.S.C. 201 et seq.), an employer
42 shall pay the cash wage payable under the federal Fair



- 1 **Labor Standards Act of 1938, as amended (29 U.S.C. 201**
 2 **et seq.); and**
 3 (2) an additional amount on account of the tips received by the
 4 employee, which amount is equal to the difference between the
 5 wage specified in subdivision (1) and the wage in effect under
 6 ~~subsection (e)~~: **subsections (c) through (i) (whichever is**
 7 **applicable).**
 8 An employer is responsible for supporting the amount of tip credit
 9 taken through reported tips by the employees.
 10 ~~(e)~~ **(k)** This section does not apply if an employee:
 11 (1) provides companionship services to the aged and infirm (as
 12 defined in 29 CFR 552.6); and
 13 (2) is employed by an employer or agency other than the family
 14 or household using the companionship services, as provided in 29
 15 CFR 552.109 (a).
 16 **This subsection expires July 1, 2023.**
 17 ~~(f)~~ **(l)** Except as otherwise provided in this section, no employer
 18 shall employ any employee for a work week longer than forty (40)
 19 hours unless the employee receives compensation for employment in
 20 excess of forty (40) hours at a rate not less than one and one-half (1.5)
 21 times the regular rate at which the employee is employed.
 22 ~~(g)~~ **(m)** For purposes of this section the following apply:
 23 (1) "Overtime compensation" means the compensation required
 24 by subsection ~~(f)~~: **(l)**.
 25 (2) "Compensatory time" and "compensatory time off" mean
 26 hours during which an employee is not working, which are not
 27 counted as hours worked during the applicable work week or
 28 other work period for purposes of overtime compensation, and for
 29 which the employee is compensated at the employee's regular
 30 rate.
 31 (3) "Regular rate" means the rate at which an employee is
 32 employed is considered to include all remuneration for
 33 employment paid to, or on behalf of, the employee, but is not
 34 considered to include the following:
 35 (A) Sums paid as gifts, payments in the nature of gifts made at
 36 Christmas time or on other special occasions, as a reward for
 37 service, the amounts of which are not measured by or
 38 dependent on hours worked, production, or efficiency.
 39 (B) Payments made for occasional periods when no work is
 40 performed due to vacation, holiday, illness, failure of the
 41 employer to provide sufficient work, or other similar cause,
 42 reasonable payments for traveling expenses, or other expenses,



1 incurred by an employee in the furtherance of the employer's
2 interests and properly reimbursable by the employer, and other
3 similar payments to an employee which are not made as
4 compensation for the employee's hours of employment.

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

7 (i) both the fact that payment is to be made and the amount
8 of the payment are determined at the sole discretion of the
9 employer at or near the end of the period and not pursuant
10 to any prior contract, agreement, or promise causing the
11 employee to expect the payments regularly;

12 (ii) the payments are made pursuant to a bona fide profit
13 sharing plan or trust or bona fide thrift or savings plan,
14 meeting the requirements of the administrator set forth in
15 appropriately issued regulations, having due regard among
16 other relevant factors, to the extent to which the amounts
17 paid to the employee are determined without regard to hours
18 of work, production, or efficiency; or

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

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

25 (E) Extra compensation provided by a premium rate paid for
26 certain hours worked by the employee in any day or work
27 week because those hours are hours worked in excess of eight
28 (8) in a day or in excess of the maximum work week
29 applicable to the employee under subsection ~~(F)~~ (I) or in excess
30 of the employee's normal working hours or regular working
31 hours, as the case may be.

32 (F) Extra compensation provided by a premium rate paid for
33 work by the employee on Saturdays, Sundays, holidays, or
34 regular days of rest, or on the sixth or seventh day of the work
35 week, where the premium rate is not less than one and one-half
36 (1.5) times the rate established in good faith for like work
37 performed in nonovertime hours on other days.

38 (G) Extra compensation provided by a premium rate paid to
39 the employee, in pursuance of an applicable employment
40 contract or collective bargaining agreement, for work outside
41 of the hours established in good faith by the contract or
42 agreement as the basic, normal, or regular workday (not



1 exceeding eight (8) hours) or work week (not exceeding the
 2 maximum work week applicable to the employee under
 3 subsection ~~(f)~~ **(l)**) where the premium rate is not less than one
 4 and one-half (1.5) times the rate established in good faith by
 5 the contract or agreement for like work performed during the
 6 workday or work week.

7 ~~(f)~~ **(n)** No employer shall be considered to have violated subsection
 8 ~~(f)~~ **(l)** by employing any employee for a work week in excess of that
 9 specified in subsection ~~(f)~~ **(l)** without paying the compensation for
 10 overtime employment prescribed therein if the employee is so
 11 employed:

12 (1) in pursuance of an agreement, made as a result of collective
 13 bargaining by representatives of employees certified as bona fide
 14 by the National Labor Relations Board, which provides that no
 15 employee shall be employed more than one thousand forty (1,040)
 16 hours during any period of twenty-six (26) consecutive weeks; or
 17 (2) in pursuance of an agreement, made as a result of collective
 18 bargaining by representatives of employees certified as bona fide
 19 by the National Labor Relations Board, which provides that
 20 during a specified period of fifty-two (52) consecutive weeks the
 21 employee shall be employed not more than two thousand two
 22 hundred forty (2,240) hours and shall be guaranteed not less than
 23 one thousand eight hundred forty (1,840) hours (or not less than
 24 forty-six (46) weeks at the normal number of hours worked per
 25 week, but not less than thirty (30) hours per week) and not more
 26 than two thousand eighty (2,080) hours of employment for which
 27 the employee shall receive compensation for all hours guaranteed
 28 or worked at rates not less than those applicable under the
 29 agreement to the work performed and for all hours in excess of
 30 the guaranty which are also in excess of the maximum work week
 31 applicable to the employee under subsection ~~(f)~~ **(l)** or two
 32 thousand eighty (2,080) in that period at rates not less than one
 33 and one-half (1.5) times the regular rate at which the employee is
 34 employed.

35 ~~(f)~~ **(o)** No employer shall be considered to have violated subsection
 36 ~~(f)~~ **(l)** by employing any employee for a work week in excess of the
 37 maximum work week applicable to the employee under subsection ~~(f)~~
 38 **(l)** if the employee is employed pursuant to a bona fide individual
 39 contract, or pursuant to an agreement made as a result of collective
 40 bargaining by representatives of employees, if the duties of the
 41 employee necessitate irregular hours of work, and the contract or
 42 agreement includes the following:



1 (1) Specifies a regular rate of pay of not less than the minimum
 2 hourly rate provided in subsections (c) ~~and (d)~~ **through (j)**
 3 (whichever is applicable) and compensation at not less than one
 4 and one-half (1.5) times that rate for all hours worked in excess
 5 of the maximum work week.

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

8 ~~(j)~~ **(p)** No employer shall be considered to have violated subsection
 9 ~~(i)~~ **(l)** by employing any employee for a work week in excess of the
 10 maximum work week applicable to the employee under that subsection
 11 if, pursuant to an agreement or understanding arrived at between the
 12 employer and the employee before performance of the work, the
 13 amount paid to the employee for the number of hours worked by the
 14 employee in the work week in excess of the maximum work week
 15 applicable to the employee under that subsection:

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

20 (2) in the case of an employee performing two (2) or more kinds
 21 of work for which different hourly or piece rates have been
 22 established, is computed at rates not less than one and one-half
 23 (1.5) times those bona fide rates applicable to the same work
 24 when performed during nonovertime hours; or

25 (3) is computed at a rate not less than one and one-half (1.5) times
 26 the rate established by the agreement or understanding as the
 27 basic rate to be used in computing overtime compensation
 28 thereunder, provided that the rate so established shall be
 29 substantially equivalent to the average hourly earnings of the
 30 employee, exclusive of overtime premiums, in the particular work
 31 over a representative period of time;

32 and if the employee's average hourly earnings for the work week
 33 exclusive of payments described in this section are not less than the
 34 minimum hourly rate required by applicable law, and extra overtime
 35 compensation is properly computed and paid on other forms of
 36 additional pay required to be included in computing the regular rate.

37 ~~(k)~~ **(q)** Extra compensation paid as described in this section shall be
 38 creditable toward overtime compensation payable pursuant to this
 39 section.

40 ~~(h)~~ **(r)** No employer shall be considered to have violated subsection
 41 ~~(i)~~ **(l)** by employing any employee of a retail or service establishment
 42 for a work week in excess of the applicable work week specified



- 1 therein, if:
- 2 (1) the regular rate of pay of the employee is in excess of one and
- 3 one-half (1.5) times the minimum hourly rate applicable to the
- 4 employee under section 2 of this chapter; and
- 5 (2) more than half of the employee's compensation for a
- 6 representative period (not less than one (1) month) represents
- 7 commissions on goods or services.
- 8 In determining the proportion of compensation representing
- 9 commissions, all earnings resulting from the application of a bona fide
- 10 commission rate shall be considered commissions on goods or services
- 11 without regard to whether the computed commissions exceed the draw
- 12 or guarantee.
- 13 ~~(m)~~ **(s)** No employer engaged in the operation of a hospital or an
- 14 establishment which is an institution primarily engaged in the care of
- 15 the sick, the aged, or individuals with a mental illness or defect who
- 16 reside on the premises shall be considered to have violated subsection
- 17 ~~(f)~~ **(l)** if, pursuant to an agreement or understanding arrived at between
- 18 the employer and the employee before performance of the work, a work
- 19 period of fourteen (14) consecutive days is accepted in lieu of the work
- 20 week of seven (7) consecutive days for purposes of overtime
- 21 computation and if, for the employee's employment in excess of eight
- 22 (8) hours in any workday and in excess of eighty (80) hours in that
- 23 fourteen (14) day period, the employee receives compensation at a rate
- 24 not less than one and one-half (1.5) times the regular rate at which the
- 25 employee is employed.
- 26 ~~(n)~~ **(t)** No employer shall employ any employee in domestic service
- 27 in one (1) or more households for a work week longer than forty (40)
- 28 hours unless the employee receives compensation for that employment
- 29 in accordance with subsection ~~(f)~~ **(l)**.
- 30 ~~(o)~~ **(u)** In the case of an employee of an employer engaged in the
- 31 business of operating a street, a suburban or interurban electric railway,
- 32 or a local trolley or motorbus carrier (regardless of whether or not the
- 33 railway or carrier is public or private or operated for profit or not for
- 34 profit), in determining the hours of employment of such an employee
- 35 to which the rate prescribed by subsection ~~(f)~~ **(l)** applies, there shall be
- 36 excluded the hours the employee was employed in charter activities by
- 37 the employer if both of the following apply:
- 38 (1) The employee's employment in the charter activities was
- 39 pursuant to an agreement or understanding with the employer
- 40 arrived at before engaging in that employment.
- 41 (2) If employment in the charter activities is not part of the
- 42 employee's regular employment.



1 ~~(p)~~ (v) Any employer may employ any employee for a period or
 2 periods of not more than ten (10) hours in the aggregate in any work
 3 week in excess of the maximum work week specified in subsection ~~(f)~~
 4 (l) without paying the compensation for overtime employment
 5 prescribed in subsection ~~(f)~~; (l), if during that period or periods the
 6 employee is receiving remedial education that:

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

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

11 (3) does not include job specific training.

12 ~~(q)~~ (w) Subsection ~~(f)~~ (l) does not apply to an employee of a motion
 13 picture theater.

14 ~~(r)~~ (x) Subsection ~~(f)~~ (l) does not apply to an employee of a seasonal
 15 amusement or recreational establishment, an organized camp, or a
 16 religious or nonprofit educational conference center that is exempt
 17 under the federal Fair Labor Standards Act of 1938, as amended ~~(29~~
 18 ~~U.S.C. 213)~~; (29 U.S.C. 201 et seq.).

19 ~~(s)~~ (y) Subsection ~~(f)~~ (l) does not apply to an employee of an air
 20 carrier subject to Title II of the federal Railway Labor Act (45 U.S.C.
 21 181 et seq.) to the extent that the hours worked by the employee during
 22 a work week in excess of forty (40) hours are not required by the air
 23 carrier but are arranged through a voluntary agreement between
 24 employees to trade or reassign their scheduled work hours.

25 SECTION 3. IC 22-2-2-14 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2022]: **Sec. 14. (a) This section applies to an employer that is**
 28 **subject to the minimum wage provisions of the federal Fair Labor**
 29 **Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).**

30 **(b) Except as provided in subsection (c), if the minimum hourly**
 31 **wage required under section 4 of this chapter is higher than the**
 32 **minimum wage provisions of the federal Fair Labor Standards Act**
 33 **of 1938, as amended (29 U.S.C. 201 et seq.), an employer shall pay**
 34 **the minimum hourly wage required under section 4 of this chapter.**
 35 **However, if the minimum wage provisions of the federal Fair**
 36 **Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.)**
 37 **are higher than the minimum hourly wage required under section**
 38 **4 of this chapter, an employer shall pay the minimum wage**
 39 **required under the provisions of the federal Fair Labor Standards**
 40 **Act of 1938, as amended (29 U.S.C. 201 et seq.).**

41 **(c) Subsection (b) does not apply to an employee subject to 29**
 42 **U.S.C. 206(g) or 29 U.S.C. 213.**

