

SENATE BILL 405

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3lr1197
CF HB 127

By: **Senators Middleton, Garagiola, and Klausmeier**

Introduced and read first time: January 28, 2013

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 1, 2013

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Payment of Overtime Wages**

3 FOR the purpose of limiting the applicability of an overtime wage provision of law to
4 exclude a certain employer that is subject to Title II of the federal Railway
5 Labor Act, under certain circumstances; and generally relating to the payment
6 of overtime wages.

7 BY repealing and reenacting, with amendments,
8 Article – Labor and Employment
9 Section 3–415
10 Annotated Code of Maryland
11 (2008 Replacement Volume and 2012 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – Labor and Employment
14 Section 3–420
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2012 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Labor and Employment**

20 3–415.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) Except as otherwise provided in this section, each employer shall pay an
2 overtime wage of at least 1.5 times the usual hourly wage, computed in accordance
3 with § 3–420 of this subtitle.

4 (b) This section does not apply to an employer that is:

5 (1) subject to 49 U.S.C. § 10501;

6 (2) an establishment that is a hotel or motel;

7 (3) an establishment that is a restaurant;

8 (4) considered a gasoline service station because the employer is
9 engaged primarily in selling gasoline and lubricating oil, even if the employer sells
10 other merchandise or performs minor repair work;

11 (5) a bona fide private country club;

12 (6) a not for profit entity and is engaged primarily in providing
13 temporary at-home care services, such as companionship or delivery of prepared
14 meals, to aged or sick individuals, individuals with disabilities, or individuals with a
15 mental disorder;

16 (7) a not for profit concert promoter, legitimate theater, music festival,
17 music pavilion, or theatrical show; or

18 (8) an amusement or recreational establishment, including a
19 swimming pool, if the establishment:

20 (i) operates for no more than 7 months in a calendar year; or

21 (ii) for any 6 months during the preceding calendar year, has
22 average receipts in excess of one-third of the average receipts for the other 6 months.

23 (c) This section does not apply to an employer with respect to:

24 (1) an employee for whom the United States Secretary of
25 Transportation may set qualifications and maximum hours of service under 49 U.S.C.
26 § 31502;

27 (2) a mechanic, partsperson, or salesperson who primarily sells or
28 services automobiles, farm equipment, trailers, or trucks, if the employer is engaged
29 primarily in selling those vehicles to ultimate buyers and is not a manufacturer; **[or]**

30 (3) a driver if the employer is engaged in the business of operating
31 taxicabs; **OR**

1 **(4) UNLESS A COLLECTIVE BARGAINING AGREEMENT BETWEEN**
2 **AN EMPLOYER AND A LABOR ORGANIZATION PROVIDES OTHERWISE, AN**
3 **EMPLOYEE OF THE EMPLOYER IF:**

4 **(I) THE EMPLOYER IS SUBJECT TO TITLE II OF THE**
5 **FEDERAL RAILWAY LABOR ACT;**

6 **(II) THE EMPLOYER DOES NOT REQUIRE THE EMPLOYEE TO**
7 **WORK MORE THAN 40 HOURS DURING 1 WORKWEEK; AND**

8 **(III) THE EMPLOYEE VOLUNTARILY ENTERS INTO AN**
9 **AGREEMENT WITH ANOTHER EMPLOYEE TO TRADE SCHEDULED WORK HOURS**
10 **AND AS A RESULT THE EMPLOYEE WORKS MORE THAN 40 HOURS DURING A**
11 **SINGLE WORKWEEK.**

12 3-420.

13 (a) Except as otherwise provided in this section, an employer shall compute
14 the wage for overtime under § 3-415 of this subtitle on the basis of each hour over 40
15 hours that an employee works during 1 workweek.

16 (b) Notwithstanding § 3-415(b)(8) of this subtitle, an employer that is not a
17 not for profit organization and is a concert promoter, legitimate theater, music festival,
18 music pavilion, or theatrical show shall pay overtime for a craft or trade employee as
19 required in subsection (a) of this section.

20 (c) The wage for overtime may be computed on the basis of each hour over 60
21 hours that an employee works during 1 workweek for an employee who:

22 (1) is engaged in agriculture; and

23 (2) is exempt from the overtime provisions of the federal Act.

24 (d) The wage for overtime may be computed on the basis of each hour over 48
25 hours that an employee works during 1 workweek:

26 (1) for an employee of a bowling establishment; and

27 (2) for an employee of an institution that:

28 (i) is not a hospital; but

29 (ii) is engaged primarily in the care of individuals who:

SENATE BILL 405

1 1. are aged, intellectually disabled, or sick or have a
2 mental disorder; and

3 2. reside at the institution.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.