

HOUSE BILL 1040

K3
HB 974/18 – ECM

9lr0903

By: **Delegates Stewart, Acevero, Carr, Fennell, W. Fisher, Glenn, Ivey, Jackson, Kelly, Korman, Lehman, R. Lewis, Moon, Mosby, Palakovich Carr, Turner, Wells, Wilkins, and K. Young**

Introduced and read first time: February 8, 2019

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Exemptions From Overtime Pay – Administrative,**
3 **Executive, or Professional Capacity**
4 **(Overtime Modernization Act of 2019)**

5 FOR the purpose of altering the conditions under which an individual who works in a
6 certain administrative, executive, or professional capacity qualifies for an exemption
7 from overtime pay; requiring that an individual be compensated on a salary basis at
8 a certain amount to qualify as an individual who is employed in an administrative,
9 executive, or professional capacity; providing that a certain required amount of
10 compensation may be paid on a fee basis for certain individuals or translated into
11 certain equivalent amounts; authorizing the Commissioner of Labor and Industry to
12 adopt certain regulations; and generally relating to exemptions from overtime pay.

13 BY repealing and reenacting, with amendments,
14 Article – Labor and Employment
15 Section 3–403
16 Annotated Code of Maryland
17 (2016 Replacement Volume and 2018 Supplement)

18 BY adding to
19 Article – Labor and Employment
20 Section 3–403.1
21 Annotated Code of Maryland
22 (2016 Replacement Volume and 2018 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – Labor and Employment
25 Section 3–410 and 3–415
26 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2016 Replacement Volume and 2018 Supplement)

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

Article – Labor and Employment

3–403.

This subtitle does not apply to an individual who:

(1) is employed in a capacity that the Commissioner defines, by regulation, to be administrative, executive, or professional **AND MEETS THE REQUIREMENTS UNDER § 3–403.1 OF THIS SUBTITLE;**

(2) is employed in a nonadministrative capacity at an organized camp, including a resident or day camp;

(3) is under the age of 16 years and is employed no more than 20 hours in a week;

(4) is employed as an outside salesman;

(5) is compensated on a commission basis;

(6) is a child, parent, spouse, or other member of the immediate family of the employer;

(7) is employed in a drive-in theater;

(8) is employed as part of the training in a special education program for emotionally, mentally, or physically handicapped students under a public school system;

(9) is employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood;

(10) engages in the activities of a charitable, educational, nonprofit, or religious organization if:

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer–employee relationship;

(11) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other similar establishment that:

1 (i) sells food and drink for consumption on the premises; and

2 (ii) has an annual gross income of \$400,000 or less;

3 (12) is employed in agriculture if, during each quarter of the preceding
4 calendar year, the employer used no more than 500 agricultural–worker days;

5 (13) is engaged principally in the range production of livestock; or

6 (14) is employed as a hand–harvest laborer and is paid on a piece–rate basis
7 in an operation that, in the region of employment, has been and customarily and generally
8 is recognized as having been paid on that basis, if:

9 (i) the individual:

10 1. commutes daily from the permanent residence of the
11 individual to the farm where the individual is employed; and

12 2. during the preceding calendar year, was employed in
13 agriculture less than 13 weeks; or

14 (ii) the individual:

15 1. is under the age of 17;

16 2. is employed on the same farm as a parent of the individual
17 or a person standing in the place of the parent; and

18 3. is paid at the same rate that an employee who is at least
19 17 years old is paid on the same farm.

20 **3–403.1.**

21 **(A) (1) TO QUALIFY AS AN INDIVIDUAL WHO IS EMPLOYED IN AN**
22 **ADMINISTRATIVE, EXECUTIVE, OR PROFESSIONAL CAPACITY UNDER § 3–403 OF**
23 **THIS SUBTITLE, AN INDIVIDUAL SHALL BE COMPENSATED ON A SALARY BASIS AT AN**
24 **AMOUNT PER WEEK, EXCLUSIVE OF BOARD, LODGING, OR OTHER FACILITIES, THAT**
25 **IS \$900 OR MORE.**

26 **(2) THE REQUIRED AMOUNT OF COMPENSATION PER WEEK UNDER**
27 **PARAGRAPH (1) OF THIS SUBSECTION MAY BE:**

28 **(I) FOR AN INDIVIDUAL EMPLOYED IN AN ADMINISTRATIVE**
29 **CAPACITY OR A PROFESSIONAL CAPACITY, PAID ON A FEE BASIS; OR**

30 **(II) TRANSLATED INTO EQUIVALENT AMOUNTS FOR PERIODS OF**

1 TIME LONGER THAN 1 WEEK, INCLUDING COMPENSATION THAT IS PAID ON A
2 BIWEEKLY, SEMIMONTHLY, OR MONTHLY BASIS.

3 (B) THE COMMISSIONER MAY ADOPT REGULATIONS TO IMPLEMENT THIS
4 SECTION.

5 3-410.

6 In addition to any regulation specifically required by this subtitle, regulations that
7 the Commissioner adopts to carry out this subtitle may include:

8 (1) definitions of the terms “administrative capacity”, “executive capacity”,
9 “professional capacity”, and “outside salesman”;

10 (2) a scale of wages that is suitable for learners and apprentices but is at
11 least 80% of the minimum wage under this subtitle; and

12 (3) a wage for a special case or class of case if the Commissioner finds the
13 wage appropriate to:

14 (i) avoid undue hardship;

15 (ii) prevent the curtailment of employment opportunity; and

16 (iii) safeguard the minimum wage under this subtitle.

17 3-415.

18 (a) Except as otherwise provided in this section, each employer shall pay an
19 overtime wage of at least 1.5 times the usual hourly wage, computed in accordance with §
20 3-420 of this subtitle.

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

22 (1) subject to 49 U.S.C. § 10501;

23 (2) a nonprofit concert promoter, legitimate theater, music festival, music
24 pavilion, or theatrical show; or

25 (3) an amusement or recreational establishment, including a swimming
26 pool, if the establishment:

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

28 (ii) for any 6 months during the preceding calendar year, has
29 average receipts that do not exceed one-third of the average receipts for the other 6 months.

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

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

4 (2) a mechanic, partsperson, or salesperson who primarily sells or services
5 automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in
6 selling those vehicles to ultimate buyers and is not a manufacturer;

7 (3) a driver if the employer is engaged in the business of operating taxicabs;
8 or

9 (4) unless a collective bargaining agreement between an employer and a
10 labor organization provides otherwise, an employee of the employer if:

11 (i) the employer is subject to Title II of the federal Railway Labor
12 Act;

13 (ii) the employer does not require the employee to work more than
14 40 hours during 1 workweek; and

15 (iii) the employee voluntarily enters into an agreement with another
16 employee to trade scheduled work hours and as a result the employee works more than 40
17 hours during a single workweek.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2019.