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506

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/23/90

FURTHER:

Date of 5-Day Notice: 3/11/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3/15/90

Labor and Commerce Committee considered SB 506

Act exempting certain employment of line haul truck drivers from overtime wage requirements.

and recommended:

- replace with _____ CS _____ same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

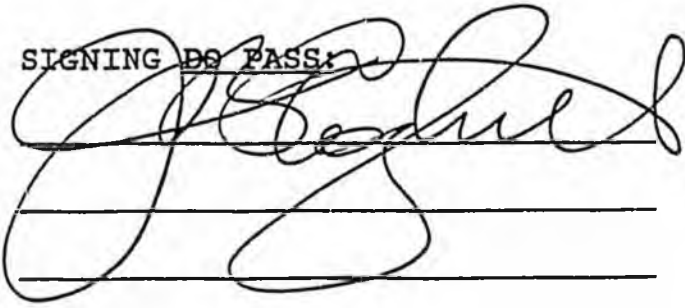
fiscal note(s) _____

zero fiscal note(s)
Dept of Labor 3/5/90

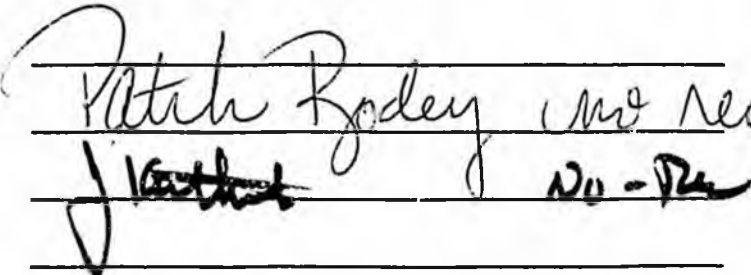
appropriation-no fiscal note

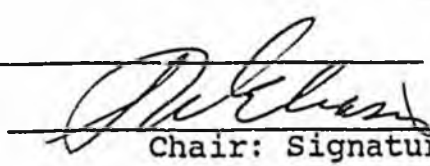
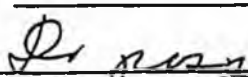
Governor's bill w/fiscal note

SIGNING DO PASS:



OTHER RECOMMENDATIONS:


Patricia Rodey no rec
J. [unclear] no - [unclear]

 
Chair: Signature and Recommendation

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : SB 506
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: " An Act exempting certain
employment of line haul truck drivers..."
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Agency Affected: Labor
BRU: Labor Standards & Safety
Components: Wage & Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANECJS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact on FY 90.

Prepared by: Tom Stuart, Director *Stuart* Phone: 264-2452
Division: Labor Standards & Safety Date: 3/5/90
Approved by Commissioner: Jim Sampson *J. Sampson* Date: 3/5/90
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

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NENANA

SENATOR JALMAR KERTTULA
PALMER

MEMORANDUM

TO: Senate Labor and Commerce Committee Members

FROM: Senator Dick Eliason, Chair
Senate Labor and Commerce Committee 

DATE: February 21, 1990

RE: Proposed legislation

Attached is a proposed legislation addressing a problem recently brought to my attention. Please let me know if you have any concerns about this legislation being introduced as a Senate Labor and Commerce Committee bill.

In October, 1988, the Washington State Supreme Court ruled that the State of Washington Minimum Wage Act was not inconsistent with the Federal Motor Carriers Act for the purpose of compliance with the state's overtime pay requirements. Prior to the ruling, motor carriers typically paid a flat rate per mile to the owner/operators of trucks which carry freight over long distances. After the ruling, there was considerable concern by both motor freight companies and owner/operators about problems created by the decision, including possible retroactive payments and the way in which the Department of Labor would draft new regulations.

The Alaska motor carriers followed the events in Washington with interest, as Alaska's overtime wage statutes are very similar to Washington State statutes, and a similar court decision would likely occur here if a suit was filed.

The State of Washington has recently passed legislation to allow the historic practice of flat rate/mile compensation so long as it reasonably approximates payment under the overtime

statute. The legislation was supported by both management and labor in Washington.

This proposed legislation contains the same language as adopted in Washington. This approach will eliminate uncertainty within the motor freight industry in Alaska, and is supported by management, labor, and the Department of Labor. The legislation assures that the intent of the overtime statute will be followed while allowing motor carriers the flexibility of doing so under a method which all carriers are familiar.

SENATE BILL 506

An Act exempting certain employment of line haul truck drivers from overtime requirements

Senate Bill 506 places in statute the current practice of compensating truck drivers on a flat rate per mile so long as it reasonably approximates payment under the overtime statute. This approach is supported by management, labor, and the Alaska Department of Labor.

SB 506 assures that the intent of the overtime statute will be followed while allowing motor carriers the flexibility of working under a method which all carriers are familiar.

ADDITIONAL INFORMATION

1. This legislation was introduced because of a recent court decision in the State of Washington. In October, 1988, the Washington State Supreme Court ruled that the State of Washington Minimum Wage should be used to determine overtime pay for truck drivers. Prior to the ruling, motor carriers typically paid a flat rate per mile to the owner/operator of trucks which carry freight over long distances. After the ruling, there was considerable concern by both motor freight companies and owner/operators about problems created by the decision. Since Alaska's overtime wage statutes are very similar to Washington State statutes, and a similar court decision would likely occur here if a suit was filed, the motor carriers requested the introduction of SB 506.

2. The State of Washington has recently passed legislation similar to SB 506 and it appears to be working very smoothly.

3. The changes on pages 1 and 2 are clean-up changes at the discretion of the drafter.

BY THE LABOR & COMMERCE COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act exempting certain employment of line haul
7 truck drivers from overtime wage requirements."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 23.10.060 is amended to read:

10 Sec. 23.10.060. PAYMENT FOR OVERTIME. (a) An employer who
11 employs employees engaged in commerce [,] or other business, or in the
12 production of goods or materials in the state [ALASKA] may not employ
13 an employee [NOT ACTING IN A SUPERVISORY CAPACITY, EITHER MALE OR
14 FEMALE,] for a workweek longer than 40 hours or for more than eight
15 hours a day. This section does not apply to the employment of a
16 person acting in a supervisory capacity.

17 (b) If an [, EXCEPT THAT IF THE] employer finds it necessary to
18 employ an employee in excess of 40 hours a week or eight hours a day,
19 compensation for the overtime at the rate of one and one-half times
20 the regular rate of pay shall be paid.

21 (c) This section [, AND THIS PROVISION] is considered included
22 in all contracts of employment.

23 (d) This section does not apply with respect to

24 (1) an employee employed by an employer employing less than
25 four employees in the regular course of business, as "regular course
26 of business" is defined by regulations of the commissioner;

27 (2) [REPEALED

28 (3) REPEALED

29 (4)] an employee employed in handling, packing, storing,

1 pasteurizing, drying, preparing in their raw or natural state, or
2 canning agricultural or horticultural commodities for market, or in
3 making cheese or butter or other dairy products;

4 (3) [(5)] an employee of an employer engaged in small
5 mining operations where not more than 12 employees are employed, if
6 the employee is employed not in excess of 12 hours a day or 56 hours a
7 week during a period or periods of not more than 14 workweeks in the
8 aggregate in a calendar year during the mining season, as the season
9 is defined by the commissioner;

10 (4) [(6)] REPEALED

11 (7)] an employee engaged in agriculture;

12 (5) [(8)] an employee employed in connection with the
13 publication of a weekly, semiweekly, or daily newspaper with a circu-
14 lation of less than 1,000;

15 (6) [(9)] a switchboard operator employed in a public
16 telephone exchange that [WHICH] has fewer than 750 stations;

17 (7) [(10)] an employee of an employer engaged in the busi-
18 ness of operating taxicabs;

19 (8) [(11)] an employee in an otherwise exempted employment
20 or proprietor in a retail or service establishment engaged in handling
21 telegraphic, telephone, or radio messages for the public under an
22 agency or contract arrangement with a telegraph or communications
23 company where the telegraph message or communications revenue of the
24 agency does not exceed \$500 a month;

25 (9) [(12)] an employee employed as a seaman;

26 (10) [(13)] an employee employed in planting or tending
27 trees, cruising, or surveying, or bucking, or felling timber, or in
28 preparing or transporting logs or other forestry products to the mill,
29 processing plant, railroad, or other transportation terminal, if the

1 number of employees employed by the employer in the forestry or lum-
2 bering operations does not exceed 12;

3 (11) [(14)] an individual employed as an outside buyer of
4 poultry, eggs, cream, or milk in their raw or natural state;

5 (12) [(15)] casual employees as may be liberally defined by
6 regulations of the commissioner;

7 (13) [(16)] an employee of a hospital whose employment in-
8 cludes the provision of medical services;

9 (14) [(17)] work performed by an employee under a flexible
10 work hour plan if the plan is included as part of a collective bar-
11 gaining agreement;

12 (15) [(18)] work performed by an employee under a voluntary
13 flexible work hour plan if

14 (A) the employee and the employer have signed a writ-
15 ten agreement and the written agreement has been filed with the
16 department; and

17 (B) the department has issued a certificate approving
18 the plan which states the work is for 40 hours a week and not
19 more than 10 hours a day; for work over 40 hours a week or 10
20 hours a day under a flexible work hour plan not included as part
21 of a collective bargaining agreement, compensation at the rate of
22 one and one-half times the regular rate of pay shall be paid for
23 the overtime;

24 (16) an individual employed as a line haul truck driver for
25 a trip that exceeds 100 road miles one way if the compensation system
26 under which the truck driver is paid includes overtime pay for work in
27 excess of 40 hours a week or for more than eight hours a day and the
28 compensation system requires a rate of pay comparable to the rate of
29 pay required by this section.

ALASKA TRUCKING ASSOCIATION, INC.3443 Minnesota Drive • Anchorage, Alaska 99503 • Phone (907) 276-1148 • Fax (907) 274-1946

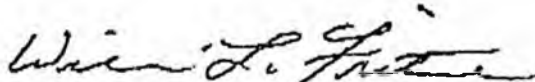
March 14, 1990

TO MEMBERS OF THE ALASKA STATE LEGISLATURE:

Alaska Trucking Association, Inc. would like to speak in support of Senate Bill 506 concerning overtime issues for long haul truck drivers in Alaska.

Historically, payment by the mile to long haul truck drivers has included calculation for overtime work at rates comparable to those paid by hourly calculation for work requiring similar skills and an equivalent level of competence. Any interpretation to the contrary is in error, and would be extremely detrimental to the industry we represent.

Please be assured that the provisions in Senate Bill 506 are supported fully by Alaska Trucking Association, Inc. and the numerous companies and individuals we represent.



William L. Fritsch
General Manager

WLF:bjs

Executive Vice President's Report

On October 20, 1988 the Washington Supreme Court handed down its decision in the case of *Common Carriers, Inc. versus the State of Washington*. The decision stated in effect that there was no conflict between the Federal Motor Carrier Act and the Washington State Minimum Wage Act, and that these two could be enforced simultaneously and without conflict.

This meant the requirement for payment of time and one-half for overtime work in excess of 40 hours per week, which had been established by the Washington State Minimum Wage Act, was now imposed upon those motor carriers engaged in interstate commerce. These carriers had previously been exempted from these state requirements by the Federal Motor Carrier Act. However, since most carriers had already been paying time and one-half or its equivalent, this court decision did not affect them significantly, or at least that was their impression.

At the present time the Department of Labor and Industries is auditing somewhere in excess of 50 individual companies in the state with a eye to enforcing the payment of overtime retroactively up to two years. Their interpretation presently is that unless a labor contract states specifically that the salary involved reflects at least time and one-half for hours worked beyond 40 hours a week, they will be required to compensate an employee for time worked up to two years previously.

Let me stress that the Department has been most cooperative in affording us opportunities to discuss the nature of our business with them and to offer arguments

as to why certain procedures within the industry do presently reflect the payment of overtime. They, however, are charged with the administration of this law and, of course, have no alternative but to proceed with the application of the findings of the court.

Many of our members expressed concern about their practice of paying a flat mileage rate, a flat rate for the haul involved, or a percent of gross for services performed and whether this would be accepted as constituting payment of time and a half for overtime. We therefore introduced a bill which stated that drivers paid on some basis other than straight time with time and a half for overtime would be exempted from the requirements of this law, provided the compensation was "reasonably equivalent" to time and a half as required under the state's Minimum Wage Act.

After several discussions, both the Department of Labor and Industries and the Teamsters supported the legislation, which was enacted and signed into law in April of this year.

We have had several discussions with the Department on the appropriate rules for implementation of this law, and appeared in force at a hearing conducted by Mark McDermott, Assistant Director of Employees, ESAC of the Department of Labor and Industries, who is in charge of drafting the appropriate regulations along with Paul Parker, Rules Officer. A hearing on the proposed rules took place in Olympia on Thursday, August 31, 1989, and the following individuals appeared on behalf of their companies:



Marty Sangster, Executive Vice President

Don Frey, Vice President,
Metro Hauling, Inc.
Wayne Klenda, General Manager,
Fedderly Marlon Freight Lines

Don Lemmons, President,
Interstate Wood Products

Eldon Renfro, President,
Renfro Trucking

Mac Williams, Director, Industrial
Relations, Puget Sound Freight Lines

Dan Lavaty, Line Haul Payroll Manager,
Consolidated Freightways

Steve Hillstead, Puget Sound Group
Manager, Consolidated Freightways

Marty Sangster, Executive Vice President,
WTA

We retained legal counsel, Phil Talmadge, who did an excellent job of analysis of the regulations from a legal standpoint.

We had hoped to select a company whose set of circumstances would afford an objective review in court of the issue of retroactive overtime pay, and were awaiting the development of the final rules in order to select the most representative for a court test of retroactivity. This approach to the issue was rendered moot on August 10, 1989 when the Department of Labor and Industries, through the Attorney General's office, served a Summons and Complaint against "PUGET SOUND TRUCK LINES, INC., individually and as representative of the Washington Trucking Association, and as a representative of all employer motor carriers similarly situated subject to RCW 49".

A question of whether a class action can be brought by the State against the defendants is questionable, but nevertheless it brings the matter to a head. President John Bredeson called a meeting of the Legislative Committee on September 7, 1989, at which a lengthy discussion and evaluation of the situation was held. Puget

(Continued on page 12)



Executive Committee Meeting on overtime Issue

NEW SECTION

WAC 296-24-102 SCOPE AND APPLICATION. Application of this section is limited to retail establishments operating between the hours of 11:00 p.m. and 6:00 a.m. with the exception of restaurants, taverns, or any lodging facility.

NEW SECTION

WAC 296-24-10201 GENERAL REQUIREMENTS. (1) All employers operating late night retail establishments shall provide crime prevention training to their employees.

(2) Crime prevention training shall be a part of the accident prevention program requirements imposed pursuant to WAC 296-24-040.

(3) The employer shall provide training to ensure that the purpose and function of robbery and violence prevention are understood by employees and that the knowledge and skills required for their safety have been provided. The employer shall:

(a) Provide training and training materials that outline security policies, safety and security procedures, and personal safety and crime avoidance techniques.

(b) Provide formal instruction through a training seminar or training video presentation and upon completion require the employee to sign off on the date, time, and place of training. The training documentation will be placed in the employee's personnel file. The following elements shall be included in the crime prevention training program:

(i) An explanation of the importance of keeping the store clean, neat, and uncluttered thereby making it as unattractive as possible to robbers.

(ii) Provide explanation of the purpose of maintaining an unobstructed view of the cash register from outside the store, provided the cash register is located in a position visible from the street.

(iii) Provide instruction on reasons for operating only minimum number of cash registers at night.

(iv) Keeping the cash register fund to a minimum.

(v) Taking extra precautions after dark, i.e., keep alert, observe lighting and dark corners, spot possible hiding places.

(vi) Violence prevention measures in case of robbery.

(vii) Effective use of posters, signs, and symbols to designate specific hazards to be avoided that failure to recognize may lead to an accidental injury or additional danger to workers.

(viii) Provide a refresher course on crime prevention on or near the employee's anniversary date. Videotape and crime prevention material shall be available for employee's review at their request.

(4) In addition to providing crime prevention training as defined in this section, all employers operating late night retail establishments shall:

(a) Post a conspicuous sign in the window or door which states that there is a safe on the premises and it is not accessible to the employees on the premises and that the cash register contains only the minimal amount of cash needed to conduct business. No employer shall be subject to citation and penalty for having monies in the cash register in excess of the minimal amount needed to conduct business.

(b) All displays, and any other material posted in window(s) or door(s) should be arranged so as to provide a clear and unobstructed view of the cash register; provided the cash register is located in such a position so as to be visible from the street.

(c) Have a drop-safe, limited access safe, or comparable device on the premises.

(d) Operate the outside lights for that portion of the approach and parking area that is necessary to accommodate customers during all light hours the late night retail establishment is open. This may be accomplished through:

(i) Surveillance lighting - to detect and observe pedestrian and vehicular entrances.

(ii) Providing adequate illuminance - adequate illuminance throughout the pedestrian and vehicular entrance areas should be a minimum of one foot candle to comply with ANSI/IES R27-1983.

Purpose: To implement 1989 amendments to RCW 49.46.130.

Statutory Authority for Adoption: RCW 43.22.270, 49.46.130 and chapter 104, Laws of 1989.

Pursuant to notice filed as WSR 89-15-060 on July 19, 1989; and WSR 89-20-040 on October 2, 1989.

Changes Other than Editing from Proposed to Adopted Version: Instead of requiring that the employer and employee agree upon a compensation scheme other than pay on an hourly basis, the permanent rule requires only that the base rate of pay, upon which overtime is calculated, be established in advance of the work performed. The permanent rule clarifies that the department may require an employer to substantiate its use of a compensation scheme other than payment on an hourly basis. The permanent rule also clarifies that the formula contained in rule is recommended, not mandated. The permanent rule increases the flexibility and accountability required of an alternative compensation scheme. A formula should reflect the actual work done over a representative time period within the past two years.

Effective Date of Rule: Thirty-one days after filing.

November 1, 1989

Joseph A. Dear

Director

NEW SECTION

WAC 296-122-011 SPECIAL RECORDKEEPING REQUIREMENTS. (1) In addition to the records required by WAC 296-122-010, employers who employ individuals as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act shall maintain records indicating the base rate of pay, the overtime rate of pay, the hours worked by each employee for each type of work, and the formulas and projected work hours used to substantiate any deviation from payment on an hourly basis pursuant to WAC 296-122-012. The records shall indicate the period of time for which the base rate of pay and the overtime rate of pay are in effect.

For the purposes of this section and WAC 296-122-012, "base rate of pay" means the amount of compensation paid per hour or per unit of work in a workweek of forty hours or less. A base rate of pay shall be established in advance of the work performed and may be based on hours or work units such as mileage, performance of specified duties, or a specified percentage of the gross proceeds charged for specified work. A base rate of pay shall not be established that will result in compensation at less than the minimum wage prescribed in RCW 49.46.020. "Overtime rate of pay" means the amount of compensation paid for hours worked within the state of Washington in excess of forty hours per week and shall be at least one and one-half times the base rate of pay.

(2) The records required by this section shall be made available by the employer at the request of the department. Any current or past employee may obtain copies of the formula, the base rate of pay, the overtime rate of pay, and that employee's records. Job applicants seeking employment by the employer as truck or bus driver are subject to the provisions of the Federal Motor Carrier

WSR 89-22-120

PERMANENT RULES

DEPARTMENT OF LABOR AND INDUSTRIES

(Filed November 1, 1989, 2:48 p.m.)

Date of Adoption: November 1, 1989.

49.46.090

Title 49 RCW: Labor Regulations

of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty. (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more

favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions. (1) No employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed, except that the provisions of this subsection (1) shall not apply to any person exempted pursuant to RCW 49.46.010(5) as now or hereafter amended and the provision of this subsection shall not apply to employees who request compensating time off in lieu of overtime pay nor to any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel, nor to seasonal employees who are employed at conventions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year, nor to any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay, nor to an individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week.

(2) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) in a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred and forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he is employed; *Provided*, That this section shall not apply to any individual employed (1) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management