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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 731  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. K. Smith and Kelly

Paul Luzzi, Attorney

### SUMMARY

- Requires public-sector employers and certain private-sector employers to pay an executive, administrative, or professional employee at a rate of 1.5 times the employee's wage rate for any hours above 40 worked by the employee in a workweek.
- Exempts an executive, administrative, or professional employee from the overtime pay requirement if the employee is paid on a salary basis a weekly rate of \$913 for the period beginning on the bill's effective date and ending on the January 1 that falls three years after the bill's effective date.
- Requires, beginning September 30 three years after the bill's effective date, and every three years thereafter, the Director of Commerce to adjust the salary level for the exemption to the 40th percentile of weekly earnings of full-time nonhourly workers in the lowest wage census region in the second quarter of the year as most recently published by the U.S. Bureau of Labor Statistics.
- Exempts teachers, attorneys, physicians, dentists, optometrists, and interns pursuing those professions from the overtime pay requirement, unless they are paid at an hourly rate.

### DETAILED ANALYSIS

#### **Overtime pay for executive, administrative, and professional employees**

Except as described under "**Salary threshold**" and "**Specific exemptions**," below, the bill requires a public-sector employer and a private-sector employer whose annual gross revenue, minus sales tax, is more than \$150,000, to pay an executive, administrative, or

professional employee at a rate of 1.5 times the employee's wage rate for any hours above 40 worked by the employee in a workweek ("overtime pay").<sup>1</sup>

Under current law, the overtime pay provisions of Ohio's Minimum Fair Wage Standards Law<sup>2</sup> (MFWSL) do not apply to an executive, administrative, or professional employee who is exempt from the overtime requirements of the federal Fair Labor Standards Act (FLSA).<sup>3</sup> The U.S. Secretary of Labor, who administers and enforces the FLSA, has adopted regulations to define the terms "executive," "administrative," or "professional." Currently, to be considered a bona fide executive, administrative, or professional employee under the Secretary's definitions, an individual must meet certain minimum requirements related to the individual's primary job duties and, in most instances, must be paid on a salary basis at not less than \$684 per week exclusive of board, lodging, or other facilities.<sup>4</sup>

## Salary threshold

Under the bill, an executive, administrative, or professional employee is exempt from the overtime pay requirement if the employee is compensated on a salary basis at one of the following rates, exclusive of board, lodging, and other facilities:

1. Beginning on the bill's effective date, and ending on the January 1 that falls three years after the bill's effective date, a weekly rate of pay that is not less than \$913 per week;
2. Beginning on the January 1 that falls three years after the bill's effective date, a weekly rate of pay calculated by the Director of Commerce as described under "**Triennial adjustment**," below.<sup>5</sup>

The compensation rate required for the exemption may be translated into equivalent amounts for periods longer than one week, including on a biweekly, semimonthly, or monthly basis. An individual employed in an administrative or professional capacity who is paid on a fee basis, rather than a salary basis, satisfies the rate required for the exemption if the hourly rate obtained by dividing the amount paid to the individual by the number of hours worked on the job multiplied by 40 equals the minimum salary per week required for the exemption.<sup>6</sup>

For purposes of the bill, a person is "paid on a fee basis" if the person is paid an agreed sum for a single job, regardless of the amount of time to complete it; and the job is unique, rather than a series of tasks repeated an indefinite number of times.<sup>7</sup>

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<sup>1</sup> R.C. 4111.03, with conforming changes in R.C. 119.14.

<sup>2</sup> R.C. Chapter 4111.

<sup>3</sup> R.C. 4111.03(D)(3)(e), by reference to 29 United States Code (U.S.C.) 201 *et seq.*

<sup>4</sup> 29 U.S.C. 213(a)(1) and 29 Code of Federal Regulations (C.F.R.) 541.100, 541.200, and 541.300.

<sup>5</sup> R.C. 4111.03(D)(3) and 4111.031(B).

<sup>6</sup> R.C. 4111.031(D).

<sup>7</sup> R.C. 4111.031(A).

## Triennial adjustment

Beginning on the September 30 that is immediately before the January 1 that is three years after the bill's effective date, the Director must calculate the salary rate for the exemption by calculating the weekly rate of pay for the 40th percentile of weekly earnings of full-time nonhourly workers in the lowest wage census region in the second quarter of the year for which data has been most recently published by the U.S. Department of Labor's Bureau of Labor Statistics. The Director must adjust the salary threshold for the exemption every three years using the same statistic.<sup>8</sup>

## Specific exemptions

The bill's overtime pay requirement does not apply to any of the following individuals, unless the individual is paid on an hourly basis:

1. An individual employed at an educational establishment as a teacher, including a college professor;
2. An attorney who has been admitted to the bar by the Supreme Court in compliance with its published rules and who is engaged in the practice of law;
3. A licensed physician who is engaged in the practice of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
4. A licensed dentist who is practicing dentistry;
5. A licensed optometrist who is engaged in the practice of optometry;
6. An individual who holds the requisite academic degree required for any of the professions listed under (3) to (5) above who is engaged in an internship or resident program pursuant to the practice of the profession.<sup>9</sup>

The individuals listed above currently appear to be exempt from the overtime pay requirements in both the FLSA and the MFWSL because they are considered bona fide professional employees regardless of their salary level.<sup>10</sup>

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## HISTORY

Action	Date
Introduced	07-21-20

H0731-I-133/ks

<sup>8</sup> R.C. 4111.031(C).

<sup>9</sup> R.C. 4111.032.

<sup>10</sup> 29 U.S.C. 213 and 29 C.F.R. 541.303 and 541.304.