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S.B. 47
134th General Assembly

Final Analysis

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Primary Sponsors: Sens. Brenner and Peterson

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Christina Hambleton, LSC Fellow

SUMMARY

- Prohibits an employee from joining as a party plaintiff in a lawsuit alleging a violation of Ohio's overtime requirement unless that employee first gives written consent to become a party plaintiff and that consent is filed with the court in which the lawsuit is brought.
- Exempts an employer from Ohio's requirement to pay overtime wages when an employee is traveling to and from a worksite or performing specific tasks.
- Incorporates into Ohio's overtime requirement specified sections of the federal Portal to Portal Act of 1947, which addresses when to pay overtime for travel to and from work and activities that are preliminary and postliminary to an employee's principal activities.

DETAILED ANALYSIS

Ohio's Overtime Law¹ requires an employer to pay an employee overtime pay of one and a half times the employee's regular hourly wage rate for hours worked in excess of 40 hours in a seven-day workweek, in the manner and methods provided in and subject to the exemptions of the federal Fair Labor Standards Act² (FLSA).

The act prohibits an employee from joining a lawsuit for overtime violations unless the employee consents in writing and the consent is filed with the court. It also exempts certain tasks from the Ohio Overtime Law. Additionally, the act specifically subjects employers to portions of the federal Portal to Portal Act of 1947,³ which grant immunity from liability under the FLSA when

¹ R.C. 4111.03.

² 29 United States Code (U.S.C.) 201 *et seq.*

³ 29 U.S.C. 251 *et seq.*

an employer does not pay overtime under certain circumstances. These circumstances are similar to those the act exempts from Ohio's Overtime Law.

Collective actions for state overtime violations

Under the act, an employee may not be joined as a party plaintiff in a lawsuit alleging a violation of Ohio's overtime requirement unless that employee first gives written consent to become a party plaintiff and the consent is filed with the court in which the lawsuit was filed. The requirement that an employee opt in to a collective action for overtime violations is similar to provisions in both the FLSA and the law implementing the minimum wage amendment to the Ohio Constitution.⁴

Overtime compensation exemption

Subject to the exceptions below, the act exempts an employer from Ohio's requirement to pay overtime wages to an employee for any time the employee spends doing any of the following:

- Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform;
- Activities that are preliminary or postliminary to the principal activity or activities;
- Activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours.

The act's exemption applies to any activity described above that occurs before the time on any particular workday that the employee commences the principal activity or after the time on any particular workday that employee stops performing the principal activity.⁵

Exceptions to the exemption

The act's exemption from the overtime requirement does not apply to any of the activities listed above under either of the following circumstances:

- The employee performs the activity pursuant to a contract between the employee, or the employee's agent or collective bargaining representative, and the employer.
- The employee performs the activity pursuant to a custom or practice at the employee's place of employment and the custom or practice is not inconsistent with a contract described above.

⁴ R.C. 4111.10; *see also* R.C. 4111.14 (implementing Ohio Constitution, Article II, Section 34a) and 29 U.S.C. 216(b).

⁵ R.C. 4111.03 and 4111.031(A).

Additionally, the act's exemption from the overtime requirement for tasks that are preliminary or postliminary to an employee's principal work activities does not apply if the employee performs the task under either of the following circumstances:

- The employee performs the task during the regular work day or during prescribed hours;
- The employee performs the task at the employer's specific direction.⁶

Incorporation of Portal to Portal Act

The act specifies that Ohio's overtime requirement is subject to the exemptions found in Sections 252 and 254 of the federal Portal to Portal Act of 1947.⁷

Section 252

Section 252 of the Portal to Portal Act grants an employer immunity from liability or punishment for failing to pay an employee overtime compensation for any activity the employee engaged in before May 14, 1947 (the date the federal act was enacted), unless the activity was compensable under certain circumstances specified by that act.⁸ Because Section 252 applies only to activities occurring before May 14, 1947, it is unclear how incorporating this immunity into Ohio's overtime requirement affects overtime liability.

Section 254

Section 254 of the Portal to Portal Act grants an employer immunity from liability or punishment for failing to pay an employee overtime compensation for any of the following activities if an employee engaged in the activity on or after May 14, 1947:

- Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities that the employee is employed to perform;
- Performing activities that are preliminary or postliminary to the principal activity or activities that the employee is employed to perform.

The immunity granted by Section 254 does not apply if either of the activities listed above are compensable under either of the following:

- An express provision of a contract in effect at the time the employee performed the activity, including a collective bargaining agreement;
- A custom or practice in effect at the time of the activity that is not inconsistent with a contract in effect at the time the employee engaged in the activity, including a collective bargaining agreement.⁹

⁶ R.C. 4111.031(B) and (C).

⁷ R.C. 4111.03(A).

⁸ 29 U.S.C. 252.

⁹ 29 U.S.C. 254.

The immunity granted by Section 254 overlaps with two of the exemptions to Ohio's overtime requirement created by the act. Section 254, however, does not expressly grant immunity from the federal overtime requirement for activities requiring insubstantial or insignificant periods of time beyond the employee's scheduled working hours. Additionally, the act lists two situations in which the exemption for activities that are preliminary or postliminary to an employee's principal activity does not apply under Ohio's overtime law, but Section 254 is silent with respect to those situations.

It is unclear how incorporating Section 254 into Ohio's Overtime Law and also providing similar, but not the same exemptions, affect overtime liability.

Interaction between state and federal law

The FLSA and Ohio's Overtime Law both regulate overtime wages that an employer must pay employees. An employer may be subject to one or both laws. The FLSA specifies that if an employer is subject to both laws, the employer is governed by the law that establishes the lower maximum workweek.¹⁰ Under continuing law, Ohio has the same maximum workweek as specified in the FLSA (40 hours per week).¹¹

HISTORY

Action	Date
Introduced	02-03-21
Reported, S. Ways and Means	09-15-21
Passed Senate (25-7)	09-22-21
Reported, H. Commerce and Labor	03-09-22
Passed House (56-37)	03-23-22
Senate concurred in House amendments (25-8)	03-30-22

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¹⁰ 29 U.S.C. 218.

¹¹ R.C. 4111.03 and 29 U.S.C. 207(a).