

1 SENATE BILL NO. 18

2 INTRODUCED BY HALLIGAN

3 BY REQUEST OF THE LEGISLATIVE COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE BRANCH
6 TO ESTABLISH CERTAIN LEAVE AND OVERTIME PROVISIONS FOR LEGISLATIVE EMPLOYEES;
7 AMENDING SECTIONS 2-18-606 AND 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
8 DATE."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 **Section 1.** Section 2-18-606, MCA, is amended to read:

13 **"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop
14 a parental leave policy for permanent state employees. The policy must permit an employee to take a
15 reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or
16 placement of a child, for a period not to exceed 15 working days if:

17 (a) the employee is adopting a child; or

18 (b) the employee is a birth father.

19 (2) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

20 (3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of
21 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the
22 agency."
23

24 **Section 2.** Section 39-3-406, MCA, is amended to read:

25 **"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect
26 to:

27 (a) students participating in a distributive education program established under the auspices of an
28 accredited educational agency;

29 (b) persons employed in private homes whose duties consist of menial chores, such as babysitting,
30 mowing lawns, and cleaning sidewalks;

1 (c) persons employed directly by the head of a household to care for children dependent upon the
2 head of the household;

3 (d) immediate members of the family of an employer or persons dependent upon an employer for
4 half or more of their support in the customary sense of being a dependent;

5 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
6 services to a nonprofit organization on a fully or partially reimbursed basis;

7 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
8 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

9 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
10 30 days of their employment;

11 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
12 may not exceed 180 days from their initial date of employment and further provided that during this
13 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
14 in this part;

15 (i) retired or semiretired persons performing part-time incidental work as a condition of their
16 residence on a farm or ranch;

17 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
18 these terms are defined by regulations of the commissioner;

19 (k) any individual employed by the United States of America;

20 (l) resident managers employed in lodging establishments or personal care facilities who, under the
21 terms of their employment, live in the establishment or facility;

22 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
23 basis who is primarily employed in selling or marketing products or services in the food distribution industry
24 for a food broker, wholesaler, or association;

25 (n) a direct seller as defined in 26 U.S.C. 3508.

26 (2) The provisions of 39-3-405 do not apply to:

27 (a) an employee with respect to whom the United States secretary of transportation has power to
28 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

29 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

30 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or

1 natural state;

2 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
3 selling advertising for a newspaper;

4 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
5 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
6 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
7 engaged in the business of selling the vehicles or implements to ultimate purchasers;

8 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
9 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
10 or aircraft to ultimate purchasers;

11 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
12 selling office supplies, computers, or other office equipment for an office equipment dealer;

13 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
14 advertising for a radio or television station employer;

15 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
16 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
17 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
18 maximum workweek applicable to them under 39-3-405;

19 (j) an employee employed in agriculture or in connection with the operation or maintenance of
20 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
21 basis and that are used exclusively for supply and storing of water for agricultural purposes;

22 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
23 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
24 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

25 (i) primarily employed during a workweek in agriculture by a farmer; and

26 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
27 than that prescribed by 39-3-404;

28 (l) an employee of an establishment commonly recognized as a country elevator, including an
29 establishment that sells products and services used in the operation of a farm, if no more than five
30 employees are employed by the establishment;

1 (m) a driver employed by an employer engaged in the business of operating taxicabs;

2 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
3 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
4 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
5 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
6 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
7 basis, at an annual rate of not less than \$10,000;

8 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
9 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
10 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
11 not exceed eight;

12 (p) an employee of a sheriff's department who is working under an established work period in lieu
13 of a workweek pursuant to 7-4-2509(1);

14 (q) an employee of a municipal or county government who is working under a work period not
15 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
16 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
17 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
18 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

19 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
20 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
21 a 14-day period established through either a collective bargaining agreement when a collective bargaining
22 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
23 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
24 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

25 (s) a firefighter who is working under a work period established in a collective bargaining agreement
26 entered into between a public employer and a firefighters' organization or its exclusive representative;

27 (t) an officer or other employee of a police department in a city of the first or second class who
28 is working under a work period established by the chief of police under 7-32-4118;

29 (u) an employee of a department of public safety working under a work period established pursuant
30 to 7-32-115;

1 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
2 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
3 than half of the employee's compensation for a period of not less than 1 month is derived from
4 commissions on goods and services;

5 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
6 as defined in 37-47-101;

7 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
8 a second- or third-class city or a town;

9 (y) an employee of the consolidated legislative branch as provided in 5-2-503."

10

11 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

12

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0018, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act clarifying the authority of the Legislative Branch to establish certain leave and overtime provisions for legislative employees.


ASSUMPTIONS:

1. Legislative Branch employees, with the exception of legislative librarians, are exempt from the federal Family Medical and Leave Act of 1993, 29 U.S.C. 2601 through 2654 (FMLA).
2. Action would be required by the Legislative Council committee to extend provisions of the FMLA to Legislative Branch employees under the option provided in this bill. Absent such action, assumption number 1 remains true.
3. Section 39-3-406, MCA, deals with minimum wage and overtime compensation. This bill would exempt employees of the Legislative Branch from the provisions of Sections 39-3-404 and 39-3-405, MCA. Passage would allow the Legislative Branch to determine which permanent positions will receive overtime pay for time worked over 40 hours in a week and which positions will accrue compensatory time. Such determination is subject to Legislative Council committee action and no immediate fiscal impact is discernible.
4. There is no fiscal impact on the Department of Administration (DOA).

FISCAL IMPACT:

No net impact.

 1-6-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-7-97
MIKE HALLIGAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0018, as introduced

SB 18

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BUSINESS & LABOR

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8 DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
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SENATE BILL NO. 18
INTRODUCED BY HALLIGAN
BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE BRANCH TO ESTABLISH CERTAIN LEAVE AND OVERTIME PROVISIONS FOR LEGISLATIVE EMPLOYEES; AMENDING SECTIONS 2-18-606 AND 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-18-606, MCA, is amended to read:

"2-18-606. Parental leave for state employees. (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or placement of a child, for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

(3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency."

Section 2. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

1 (c) persons employed directly by the head of a household to care for children dependent upon the
2 head of the household;

3 (d) immediate members of the family of an employer or persons dependent upon an employer for
4 half or more of their support in the customary sense of being a dependent;

5 (e) any persons not regular employees of a nonprofit organization who voluntarily offer their
6 services to a nonprofit organization on a fully or partially reimbursed basis;

7 (f) handicapped workers engaged in work that is incidental to training or evaluation programs or
8 whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

9 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed
10 30 days of their employment;

11 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion
12 may not exceed 180 days from their initial date of employment and further provided that during this
13 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established
14 in this part;

15 (i) retired or semiretired persons performing part-time incidental work as a condition of their
16 residence on a farm or ranch;

17 (j) any individual employed in a bona fide executive, administrative, or professional capacity as
18 these terms are defined by regulations of the commissioner;

19 (k) any individual employed by the United States of America;

20 (l) resident managers employed in lodging establishments or personal care facilities who, under the
21 terms of their employment, live in the establishment or facility;

22 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary
23 basis who is primarily employed in selling or marketing products or services in the food distribution industry
24 for a food broker, wholesaler, or association;

25 (n) a direct seller as defined in 26 U.S.C. 3508.

26 (2) The provisions of 39-3-405 do not apply to:

27 (a) an employee with respect to whom the United States secretary of transportation has power to
28 establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

29 (b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

30 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or

1 natural state;

2 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in
3 selling advertising for a newspaper;

4 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily
5 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements
6 if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily
7 engaged in the business of selling the vehicles or implements to ultimate purchasers;

8 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is
9 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,
10 or aircraft to ultimate purchasers;

11 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in
12 selling office supplies, computers, or other office equipment for an office equipment dealer;

13 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling
14 advertising for a radio or television station employer;

15 (i) an employee employed as a driver or driver's helper making local deliveries who is compensated
16 for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that
17 the plan has the general purpose and effect of reducing hours worked by the employees to or below the
18 maximum workweek applicable to them under 39-3-405;

19 (j) an employee employed in agriculture or in connection with the operation or maintenance of
20 ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop
21 basis and that are used exclusively for supply and storing of water for agricultural purposes;

22 (k) an employee employed in agriculture by a farmer, notwithstanding other employment of the
23 employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to
24 the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

25 (i) primarily employed during a workweek in agriculture by a farmer; and

26 (ii) paid for employment in connection with the livestock auction operations at a wage rate not less
27 than that prescribed by 39-3-404;

28 (l) an employee of an establishment commonly recognized as a country elevator, including an
29 establishment that sells products and services used in the operation of a farm, if no more than five
30 employees are employed by the establishment;

1 (m) a driver employed by an employer engaged in the business of operating taxicabs;

2 (n) an employee who is employed with the employee's spouse by a nonprofit educational institution
3 to serve as the parents of children who are orphans or one of whose natural parents is deceased or who
4 are enrolled in the institution and reside in residential facilities of the institution so long as the children are
5 in residence at the institution and so long as the employee and the employee's spouse reside in the facilities
6 and receive, without cost, board and lodging from the institution and are together compensated, on a cash
7 basis, at an annual rate of not less than \$10,000;

8 (o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or
9 transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation
10 terminal if the number of employees employed by the employer in the forestry or lumbering operations does
11 not exceed eight;

12 (p) an employee of a sheriff's department who is working under an established work period in lieu
13 of a workweek pursuant to 7-4-2509(1);

14 (q) an employee of a municipal or county government who is working under a work period not
15 exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a
16 collective bargaining unit represents the employee or by mutual agreement of the employer and employee
17 when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work
18 period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

19 (r) an employee of a hospital or other establishment primarily engaged in the care of the sick,
20 disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in
21 a 14-day period established through either a collective bargaining agreement when a collective bargaining
22 unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit
23 is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be
24 compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

25 (s) a firefighter who is working under a work period established in a collective bargaining agreement
26 entered into between a public employer and a firefighters' organization or its exclusive representative;

27 (t) an officer or other employee of a police department in a city of the first or second class who
28 is working under a work period established by the chief of police under 7-32-4118;

29 (u) an employee of a department of public safety working under a work period established pursuant
30 to 7-32-115;

1 (v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times
2 the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more
3 than half of the employee's compensation for a period of not less than 1 month is derived from
4 commissions on goods and services;

5 (w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter
6 as defined in 37-47-101;

7 (x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in
8 a second- or third-class city or a town;

9 (y) an employee of the consolidated legislative branch as provided in 5-2-503."

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11 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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