



February 12, 1999

SENATE BILL No. 432

DIGEST OF SB0432 (Updated February 11, 1999 11:00 am - DI 73)

Citations Affected: IC 20-8.1; IC 22-2.

Synopsis: Employee matters. Permits a child who is 17 years of age to work before 6 a.m. Provides that an employee of a seasonal amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center that is exempt under the Fair Labor Standards Act who is covered by the Indiana minimum wage law is not entitled to overtime wages for a work week longer than 40 hours.

Effective: July 1, 1999.

Harrison

January 13, 1999, read first time and referred to Committee on Pensions and Labor.
February 11, 1999, reported favorably — Do Pass.

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SB 432—LS 7491/DI 96+



February 12, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 432

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-8.1-4-20 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. (a) This section
3 applies only to occupations for which a child who is fourteen (14) years
4 of age or older and less than eighteen (18) years of age must obtain an
5 employment certificate under this chapter.
6 (b) The following apply only to a child who is fourteen (14) years
7 of age or older and less than sixteen (16) years of age:
8 (1) The child may not work before 7:00 a.m. or after 7:00 p.m.
9 However, the child may work until 9:00 p.m. from June 1 through
10 Labor Day.
11 (2) The child may not work:
12 (A) more than three (3) hours on a school day;
13 (B) more than eighteen (18) hours in a school week;
14 (C) more than eight (8) hours on a nonschool day; or
15 (D) more than forty (40) hours in a nonschool week.
16 (c) A child who is at least sixteen (16) years of age and less than
17 ~~eighteen (18)~~ **seventeen (17)** years of age may not work:

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- 1 (1) for more than eight (8) hours in any one (1) day;
 2 (2) for more than forty (40) hours in any one (1) week;
 3 (3) for more than six (6) days in any one (1) week; or
 4 (4) before 6:00 a.m.
- 5 **(d) A child who is at least seventeen (17) years of age and less**
 6 **than eighteen (18) years of age may not work:**
 7 **(1) for more than eight (8) hours in any one (1) day;**
 8 **(2) for more than forty (40) hours in any one (1) week; or**
 9 **(3) for more than six (6) days in any one (1) week.**
- 10 ~~(e)~~ (e) A child who is at least sixteen (16) years of age and less than
 11 seventeen (17) years of age may work until 10:00 p.m. on nights that
 12 are followed by a school day in any occupation except those which the
 13 commissioner of labor determines to be dangerous to life or limb or
 14 injurious to health or morals.
- 15 ~~(f)~~ (f) An employer may employ a child who is at least sixteen (16)
 16 years of age and less than seventeen (17) years of age to work until
 17 midnight if:
 18 (1) the work will be performed:
 19 (A) while schools are closed for summer vacation; or
 20 (B) on days that are not followed by a school day; and
 21 (2) the employer has:
 22 (A) obtained written permission from a child's parent; and
 23 (B) placed the written permission on file in the employer's
 24 office.
- 25 ~~(g)~~ (g) If an employer has obtained written permission required
 26 under subsection (e), the employer may employ a child who is at least
 27 sixteen (16) years of age but less than eighteen (18) years of age for
 28 periods that do not exceed a total of nine (9) hours in any one (1) day
 29 and a total of forty-eight (48) hours in any one (1) week during summer
 30 vacation from school.
- 31 ~~(h)~~ (h) A child who is:
 32 (1) seventeen (17) years of age or older but less than eighteen (18)
 33 years of age; and
 34 (2) a student in grades 9 through 12;
 35 may work until 11:30 p.m. on nights that are followed by a school day.
 36 A child covered by this subsection may work later than 11:30 p.m. on
 37 nights followed by a school day if the employer has obtained written
 38 permission from the child's parent and placed the permission on file in
 39 the employer's office. However, the nights followed by a school day on
 40 which a child works later than 11:30 p.m. may not be consecutive and
 41 may not exceed two (2) nights per week.
- 42 ~~(i)~~ (i) Children who are sixteen (16) years of age or older and less



1 than eighteen (18) years of age may be employed the same daily and
 2 weekly hours and at the same times of day as adults if they fit into any
 3 one (1) of the following categories:

- 4 (1) They are a high school graduate.
 5 (2) They have completed an approved vocational or special
 6 education program.
 7 (3) They are not enrolled in a regular school term.

8 SECTION 2. IC 22-2-2-4 IS AMENDED TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Every employer employing
 10 four (4) or more employees during a work week shall:

- 11 (1) in any work week beginning on or after July 1, 1968, in which
 12 he is subject to the provisions of this chapter, pay each of his
 13 employees wages of not less than one dollar and twenty-five cents
 14 (\$1.25) per hour;
 15 (2) in any work week beginning on or after July 1, 1977, in which
 16 he is subject to this chapter, pay each of his employees wages of
 17 not less than one dollar and fifty cents (\$1.50) per hour;
 18 (3) in any work week beginning on or after January 1, 1978, in
 19 which he is subject to this chapter, pay each of his employees
 20 wages of not less than one dollar and seventy-five cents (\$1.75)
 21 per hour; and
 22 (4) in any work week beginning on or after January 1, 1979, in
 23 which he is subject to this chapter, pay each of his employees
 24 wages of not less than two dollars (\$2) per hour.

25 (b) Except as provided in subsection (c), every employer employing
 26 at least two (2) employees during a work week shall, in any work week
 27 in which the employer is subject to this chapter, pay each of the
 28 employees in any work week beginning on and after July 1, 1990, and
 29 before October 1, 1998, wages of not less than three dollars and
 30 thirty-five cents (\$3.35) per hour.

31 (c) An employer subject to subsection (b) is permitted to apply a "tip
 32 credit" in determining the amount of cash wage paid to tipped
 33 employees. In determining the wage an employer is required to pay a
 34 tipped employee, the amount paid the employee by the employee's
 35 employer shall be an amount equal to:

- 36 (1) the cash wage paid the employee which for purposes of the
 37 determination shall be not less than the cash wage required to be
 38 paid to employees covered under the federal Fair Labor Standards
 39 Act of 1938, as amended (29 U.S.C. 210(m)(1)) on August 20,
 40 1996, which amount is two dollars and thirteen cents (\$2.13) an
 41 hour; and
 42 (2) an additional amount on account of the tips received by the



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1 employee, which amount is equal to the difference between the
 2 wage specified in subdivision (1) and the wage in effect under
 3 subsections (b), (f), and (g).

4 An employer is responsible for supporting the amount of tip credit
 5 taken through reported tips by the employees.

6 (d) No employer having employees subject to any provisions of this
 7 section shall discriminate, within any establishment in which
 8 employees are employed, between employees on the basis of sex by
 9 paying to employees in such establishment a rate less than the rate at
 10 which he pays wages to employees of the opposite sex in such
 11 establishment for equal work on jobs the performance of which
 12 requires equal skill, effort, and responsibility, and which are performed
 13 under similar working conditions, except where such payment is made
 14 pursuant to:

- 15 (1) a seniority system;
- 16 (2) a merit system;
- 17 (3) a system which measures earnings by quantity or quality of
 18 production; or
- 19 (4) a differential based on any other factor other than sex.

20 (e) An employer who is paying a wage rate differential in violation
 21 of subsection (d) shall not, in order to comply with subsection (d),
 22 reduce the wage rate of any employee, and no labor organization, or its
 23 agents, representing employees of an employer having employees
 24 subject to subsection (d) shall cause or attempt to cause such an
 25 employer to discriminate against an employee in violation of
 26 subsection (d).

27 (f) Except as provided in subsection (c), every employer employing
 28 at least two (2) employees during a work week shall, in any work week
 29 in which the employer is subject to this chapter, pay each of the
 30 employees in any work week beginning on or after October 1, 1998,
 31 and before March 1, 1999, wages of not less than four dollars and
 32 twenty-five cents (\$4.25) per hour.

33 (g) Except as provided in subsections (c) and (i), every employer
 34 employing at least two (2) employees during a work week shall, in any
 35 work week in which the employer is subject to this chapter, pay each
 36 of the employees in any work week beginning on or after March 1,
 37 1999, wages of not less than five dollars and fifteen cents (\$5.15) an
 38 hour.

39 (h) This section does not apply if an employee:

- 40 (1) provides companionship services to the aged and infirm (as
 41 defined in 29 CFR 552.6); and
- 42 (2) is employed by an employer or agency other than the family

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1 or household using the companionship services, as provided in 29
2 CFR 552.109 (a).

3 (i) This subsection applies only to an employee who has not attained
4 the age of twenty (20) years. Instead of the rates prescribed by
5 subsections (c), (f), and (g), an employer may pay an employee of the
6 employer, during the first ninety (90) consecutive calendar days after
7 the employee is initially employed by the employer, a wage which is
8 not less than four dollars and twenty-five cents (\$4.25) per hour,
9 effective March 1, 1999. However, no employer may take any action
10 to displace employees (including partial displacements such as
11 reduction in hours, wages, or employment benefits) for purposes of
12 hiring individuals at the wage authorized in this subsection.

13 (j) Except as otherwise provided in this section, no employer shall
14 employ any employee for a workweek longer than forty (40) hours
15 unless the employee receives compensation for employment in excess
16 of the hours above specified at a rate not less than one and one-half
17 (1.5) times the regular rate at which he is employed.

18 (k) For purposes of this section the following apply:

19 (1) "Overtime compensation" means the compensation required
20 by subsection (j).

21 (2) "Compensatory time" and "compensatory time off" mean
22 hours during which an employee is not working, which are not
23 counted as hours worked during the applicable workweek or other
24 work period for purposes of overtime compensation, and for
25 which the employee is compensated at the employee's regular
26 rate.

27 (3) "Regular rate" means the rate at which an employee is
28 employed is considered to include all remuneration for
29 employment paid to, or on behalf of, the employee, but is not
30 considered to include the following:

31 (A) Sums paid as gifts, payments in the nature of gifts made at
32 Christmas time or on other special occasions, as a reward for
33 service, the amounts of which are not measured by or
34 dependent on hours worked, production, or efficiency.

35 (B) Payments made for occasional periods when no work is
36 performed due to vacation, holiday, illness, failure of the
37 employer to provide sufficient work, or other similar cause,
38 reasonable payments for traveling expenses, or other expenses,
39 incurred by an employee in the furtherance of his employer's
40 interests and properly reimbursable by the employer, and other
41 similar payments to an employee which are not made as
42 compensation for his hours of employment.



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(C) Sums paid in recognition of services performed during a given period if:

(i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly;

(ii) the payments are made pursuant to a bona fide profit sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriately issued regulations, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the employee under subsection (h) or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where the premium rate is not less than one and one-half (1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to the employee under subsection (a)) where the premium rate is not less than one and one-half (1.5) times the rate established in good faith by

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1 the contract or agreement for like work performed during the
2 workday or workweek.

3 (l) No employer shall be considered to have violated subsection (j)
4 by employing any employee for a workweek in excess of that specified
5 in subsection (a) without paying the compensation for overtime
6 employment prescribed therein if the employee is so employed:

7 (1) in pursuance of an agreement, made as a result of collective
8 bargaining by representatives of employees certified as bona fide
9 by the National Labor Relations Board, which provides that no
10 employee shall be employed more than one thousand forty (1,040)

11 hours during any period of twenty-six (26) consecutive weeks; or

12 (2) in pursuance of an agreement, made as a result of collective

13 bargaining by representatives of employees certified as bona fide

14 by the National Labor Relations Board, which provides that

15 during a specified period of fifty-two (52) consecutive weeks the

16 employee shall be employed not more than two thousand two

17 hundred forty (2,240) hours and shall be guaranteed not less than

18 one thousand eight hundred forty (1,840) hours (or not less than

19 forty-six (46) weeks at the normal number of hours worked per

20 week, but not less than thirty (30) hours per week) and not more

21 than two thousand eighty (2,080) hours of employment for which

22 the employee shall receive compensation for all hours guaranteed

23 or worked at rates not less than those applicable under the

24 agreement to the work performed and for all hours in excess of

25 the guaranty which are also in excess of the maximum workweek

26 applicable to the employee under subsection (a) or two thousand

27 eighty (2,080) in that period at rates not less than one and

28 one-half (1.5) times the regular rate at which the employee is

29 employed. ⌘

30 (m) No employer shall be considered to have violated subsection (j)

31 by employing any employee for a workweek in excess of the maximum

32 workweek applicable to the employee under subsection (a) if the

33 employee is employed pursuant to a bona fide individual contract, or

34 pursuant to an agreement made as a result of collective bargaining by

35 representatives of employees, if the duties of the employee necessitate

36 irregular hours of work, and the contract or agreement includes the

37 following:

38 (1) Specifies a regular rate of pay of not less than the minimum

39 hourly rate provided in subsections (c), (f), (g), and (i) (whichever

40 is applicable) and compensation at not less than one and one-half

41 (1.5) times that rate for all hours worked in excess of the

42 maximum workweek.

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1 (2) Provides a weekly guaranty of pay for not more than sixty
 2 hours based on the rates so specified.
 3 (n) No employer shall be considered to have violated subsection (j)
 4 by employing any employee for a workweek in excess of the maximum
 5 workweek applicable to the employee under that subsection if, pursuant
 6 to an agreement or understanding arrived at between the employer and
 7 the employee before performance of the work, the amount paid to the
 8 employee for the number of hours worked by him in the workweek in
 9 excess of the maximum workweek applicable to the employee under
 10 that subsection:
 11 (1) in the case of an employee employed at piece rates, is
 12 computed at piece rates not less than one and one-half (1.5) times
 13 the bona fide piece rates; applicable to the same work when
 14 performed during nonovertime hours; ~~or~~
 15 (2) in the case of an employee performing two (2) or more kinds
 16 of work for which different hourly or piece rates have been
 17 established, is computed at rates not less than one and one-half
 18 (1.5) times those bona fide rates; applicable to the same work
 19 when performed during nonovertime hours; or
 20 (3) is computed at a rate not less than one and one-half (1.5) times
 21 the rate established by the agreement or understanding as the
 22 basic rate to be used in computing overtime compensation
 23 thereunder, provided that the rate so established shall be
 24 substantially equivalent to the average hourly earnings of the
 25 employee, exclusive of overtime premiums, in the particular work
 26 over a representative period of time;
 27 and if the employee's average hourly earnings for the workweek
 28 exclusive of payments described in this section are not less than the
 29 minimum hourly rate required by applicable law, and extra overtime
 30 compensation is properly computed and paid on other forms of
 31 additional pay required to be included in computing the regular rate.
 32 (o) Extra compensation paid as described in this section shall be
 33 creditable toward overtime compensation payable pursuant to this
 34 section.
 35 (p) No employer shall be considered to have violated subsection (j)
 36 by employing any employee of a retail or service establishment for a
 37 workweek in excess of the applicable workweek specified therein, if:
 38 (1) the regular rate of pay of the employee is in excess of one and
 39 one-half (1.5) times the minimum hourly rate applicable to the
 40 employee under section 2 of this chapter; and
 41 (2) more than half of the employee's compensation for a
 42 representative period (not less than one (1) month) represents

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1 commissions on goods or services.
2 In determining the proportion of compensation representing
3 commissions, all earnings resulting from the application of a bona fide
4 commission rate shall be considered commissions on goods or services
5 without regard to whether the computed commissions exceed the draw
6 or guarantee.

7 (q) No employer engaged in the operation of a hospital or an
8 establishment which is an institution primarily engaged in the care of
9 the sick, the aged, or the mentally ill or defective who reside on the
10 premises shall be considered to have violated subsection (j) if, pursuant
11 to an agreement or understanding arrived at between the employer and
12 the employee before performance of the work, a work period of
13 fourteen (14) consecutive days is accepted in lieu of the workweek of
14 seven (7) consecutive days for purposes of overtime computation and
15 if, for his employment in excess of eight (8) hours in any workday and
16 in excess of eighty (80) hours in that fourteen (14) day period, the
17 employee receives compensation at a rate not less than one and
18 one-half (1.5) times the regular rate at which the employee is
19 employed.

20 (r) No employer shall employ any employee in domestic service in
21 one (1) or more households for a workweek longer than forty (40)
22 hours unless the employee receives compensation for that employment
23 in accordance with subsection (j).

24 (s) In the case of an employee of an employer engaged in the
25 business of operating a street, suburban or interurban electric railway,
26 or local trolley or motorbus carrier (regardless of whether or not the
27 railway or carrier is public or private or operated for profit or not for
28 profit), in determining the hours of employment of such an employee
29 to which the rate prescribed by subsection (j) applies there shall be
30 excluded the hours the employee was employed in charter activities by
31 the employer if both of the following apply:

32 (1) The employee's employment in the charter activities was
33 pursuant to an agreement or understanding with the employer
34 arrived at before engaging in that employment.

35 (2) If employment in the charter activities is not part of the
36 employee's regular employment.

37 (t) Any employer may employ any employee for a period or periods
38 of not more than ten (10) hours in the aggregate in any workweek in
39 excess of the maximum workweek specified in subsection (j) without
40 paying the compensation for overtime employment prescribed in
41 subsection (j), if during that period or periods the employee is receiving
42 remedial education that:

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- 1 (1) is provided to employees who lack a high school diploma or
- 2 educational attainment at the eighth grade level;
- 3 (2) is designed to provide reading and other basic skills at an
- 4 eighth grade level or below; and
- 5 (3) does not include job specific training.
- 6 (u) Subsection (j) does not apply to an employee of a motion picture
- 7 theater.
- 8 **(v) Subsection (j) does not apply to an employee of a seasonal**
- 9 **amusement or recreational establishment, an organized camp, or**
- 10 **a religious or nonprofit educational conference center that is**
- 11 **exempt under the federal Fair Labor Standards Act of 1938, as**
- 12 **amended (29 U.S.C. 213).**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 432, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 432 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 0.

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