



Reprinted
February 17, 1999

SENATE BILL No. 432

DIGEST OF SB432 (Updated February 15, 1999 3:08 pm - DI 84)

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.
February 16, 1999, read second time, amended, ordered engrossed.

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



1 ~~(h)~~ (i) Children who are sixteen (16) years of age or older and less
2 than eighteen (18) years of age may be employed the same daily and
3 weekly hours and at the same times of day as adults if they fit into any
4 one (1) of the following categories:

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

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

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

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

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

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

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1 (2) an additional amount on account of the tips received by the
 2 employee, which amount is equal to the difference between the
 3 wage specified in subdivision (1) and the wage in effect under
 4 subsections (b), (f), and (g).

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

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

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

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

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

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

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

- 41 (1) provides companionship services to the aged and infirm (as
 42 defined in 29 CFR 552.6); and



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1 (2) is employed by an employer or agency other than the family
 2 or household using the companionship services, as provided in 29
 3 CFR 552.109 (a).

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

14 (j) Except as otherwise provided in this section, no employer shall
 15 employ any employee for a workweek longer than forty (40) hours
 16 unless the employee receives compensation for employment in excess
 17 of the hours above specified at a rate not less than one and one-half
 18 (1.5) times the regular rate at which he is employed.

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

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

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

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

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

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



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- 1 compensation for his hours of employment.
2 (C) Sums paid in recognition of services performed during a
3 given period if:
4 (i) both the fact that payment is to be made and the amount
5 of the payment are determined at the sole discretion of the
6 employer at or near the end of the period and not pursuant
7 to any prior contract, agreement, or promise causing the
8 employee to expect the payments regularly;
9 (ii) the payments are made pursuant to a bona fide profit
10 sharing plan or trust or bona fide thrift or savings plan,
11 meeting the requirements of the administrator set forth in
12 appropriately issued regulations, having due regard among
13 other relevant factors, to the extent to which the amounts
14 paid to the employee are determined without regard to hours
15 of work, production, or efficiency; or
16 (iii) the payments are talent fees paid to performers,
17 including announcers, on radio and television programs.
18 (D) Contributions irrevocably made by an employer to a
19 trustee or third person pursuant to a bona fide plan for
20 providing old age, retirement, life, accident, or health
21 insurance or similar benefits for employees.
22 (E) Extra compensation provided by a premium rate paid for
23 certain hours worked by the employee in any day or workweek
24 because those hours are hours worked in excess of eight (8) in
25 a day or in excess of the maximum workweek applicable to the
26 employee under subsection (h) or in excess of the employee's
27 normal working hours or regular working hours, as the case
28 may be.
29 (F) Extra compensation provided by a premium rate paid for
30 work by the employee on Saturdays, Sundays, holidays, or
31 regular days of rest, or on the sixth or seventh day of the
32 workweek, where the premium rate is not less than one and
33 one-half (1.5) times the rate established in good faith for like
34 work performed in nonovertime hours on other days.
35 (G) Extra compensation provided by a premium rate paid to
36 the employee, in pursuance of an applicable employment
37 contract or collective bargaining agreement, for work outside
38 of the hours established in good faith by the contract or
39 agreement as the basic, normal, or regular workday (not
40 exceeding eight hours) or workweek (not exceeding the
41 maximum workweek applicable to the employee under
42 subsection (a)) where the premium rate is not less than one

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1 and one-half (1.5) times the rate established in good faith by
2 the contract or agreement for like work performed during the
3 workday or workweek.

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

8 (1) in pursuance of an agreement, made as a result of collective
9 bargaining by representatives of employees certified as bona fide
10 by the National Labor Relations Board, which provides that no
11 employee shall be employed more than one thousand forty (1,040)
12 hours during any period of twenty-six (26) consecutive weeks; or

13 (2) in pursuance of an agreement, made as a result of collective
14 bargaining by representatives of employees certified as bona fide
15 by the National Labor Relations Board, which provides that
16 during a specified period of fifty-two (52) consecutive weeks the
17 employee shall be employed not more than two thousand two
18 hundred forty (2,240) hours and shall be guaranteed not less than
19 one thousand eight hundred forty (1,840) hours (or not less than
20 forty-six (46) weeks at the normal number of hours worked per
21 week, but not less than thirty (30) hours per week) and not more
22 than two thousand eighty (2,080) hours of employment for which
23 the employee shall receive compensation for all hours guaranteed
24 or worked at rates not less than those applicable under the
25 agreement to the work performed and for all hours in excess of
26 the guaranty which are also in excess of the maximum workweek
27 applicable to the employee under subsection (a) or two thousand
28 eighty (2,080) in that period at rates not less than one and
29 one-half (1.5) times the regular rate at which the employee is
30 employed. ␣

31 (m) No employer shall be considered to have violated subsection (j)
32 by employing any employee for a workweek in excess of the maximum
33 workweek applicable to the employee under subsection (a) if the
34 employee is employed pursuant to a bona fide individual contract, or
35 pursuant to an agreement made as a result of collective bargaining by
36 representatives of employees, if the duties of the employee necessitate
37 irregular hours of work, and the contract or agreement includes the
38 following:

39 (1) Specifies a regular rate of pay of not less than the minimum
40 hourly rate provided in subsections (c), (f), (g), and (i) (whichever
41 is applicable) and compensation at not less than one and one-half
42 (1.5) times that rate for all hours worked in excess of the

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

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1 representative period (not less than one (1) month) represents
2 commissions on goods or services.

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

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

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

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

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

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

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



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

Mr. President: I move that Senate Bill 432 be amended to read as follows:

Page 2, line 6, delete "work".

Page 2, line 7, after "(1)" insert "**work**".

Page 2, line 8, after "(2)" insert "**work**".

Page 2, line 8, delete "or".

Page 2, line 9, after "(3)" insert "**work**".

Page 2, line 9, delete "." and insert "; **or**".

Page 2, between lines 9 and 10, begin a new line block indented and insert:

"**(4) begin a work day before 6:00 a.m. on a school day.**".

(Reference is to SB 432 as printed February 12, 1999.)

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