

As Introduced

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H. B. No. 138

**REPRESENTATIVES Husted, Cates, Buehrer, Raga, DeWine, Callender,
Schuring, Williams, Goodman, Evans, Willamowski, Faber, Setzer, Oلمان,
Flowers, Webster, Allen, Core, Calvert, Schaffer, Seitz, Collier, Flannery,
Redfern, Distel, Britton, Jerse, S. Smith, Key, Fessler**

A B I L L

To amend sections 4111.01, 4111.03, 4111.05, 4111.10, 1
4111.13, and 4111.99 of the Revised Code to afford 2
to private sector employers the option to offer and 3
to employees the option to accrue and use 4
compensatory time off and to afford to both public 5
and private employees and employers the option to 6
institute biweekly work schedule programs. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4111.01, 4111.03, 4111.05, 4111.10, 8
4111.13, and 4111.99 of the Revised Code be amended to read as 9
follows: 10

Sec. 4111.01. As used in sections 4111.01 to 4111.17 of the 11
Revised Code: 12

(A) "Wage" means compensation due to an employee by reason of 13
employment, payable in legal tender of the United States or checks 14
on banks convertible into cash on demand at full face value, 15
subject to the deductions, charges, or allowances permitted by 16
rules of the director of commerce under section 4111.05 of the 17

Revised Code. "Wage" includes an employee's commissions of which 18
the employee's employer keeps a record, but does not include 19
gratuities, except as provided by rules issued under section 20
4111.05 of the Revised Code. 21

"Wage" also includes the reasonable cost to the employer of 22
furnishing to an employee board, lodging, or other facilities, if 23
the board, lodging, or other facilities are customarily furnished 24
by the employer to the employer's employees. The cost of board, 25
lodging, or other facilities shall not be included as part of wage 26
to the extent excluded therefrom under the terms of a bona fide 27
collective bargaining agreement applicable to the employee. 28

(B) "Employ" means to suffer or to permit to work. 29

(C) "Employer" means the state of Ohio, its 30
instrumentalities, and its political subdivisions and their 31
instrumentalities, any individual, partnership, association, 32
corporation, business trust, or any person or group of persons, 33
acting in the interest of an employer in relation to an employee, 34
but does not include an employer whose annual gross volume of 35
sales made for business done is less than one hundred fifty 36
thousand dollars, exclusive of excise taxes at the retail level 37
which are separately stated. 38

(D) "Employee" means any individual employed by an employer 39
but does not include: 40

(1) Any individual employed by the United States; 41

(2) Any individual employed as a baby-sitter in the 42
employer's home, or a live-in companion to a sick, convalescing, 43
or elderly person whose principal duties do not include 44
housekeeping; 45

(3) Any individual engaged in the delivery of newspapers to 46
the consumer; 47

(4) Any individual employed as an outside salesperson 48
compensated by commissions or in a bona fide executive, 49
administrative, or professional capacity as such terms are defined 50
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 51
U.S.C.A. 201, as amended; 52

(5) Any employee employed in agriculture if the employee is 53
employed by an employer who did not, during any calendar quarter 54
during the preceding calendar year, use more than five hundred 55
worker-days of agricultural labor, or if the employee is the 56
parent, spouse, child, or other member of the employer's immediate 57
family; 58

(6) Any individual who works or provides personal services of 59
a charitable nature in a hospital or health institution for which 60
compensation is not sought or contemplated; 61

(7) A member of a police or fire protection agency or student 62
employed on a part-time or seasonal basis by a political 63
subdivision of this state; 64

(8) Any individual in the employ of a camp or recreational 65
area for children under eighteen years of age and owned and 66
operated by a nonprofit organization or group of organizations 67
described in Section 501 (c)(3) of the "Internal Revenue Code of 68
1954," and exempt from income tax under Section 501 (a) of that 69
code; 70

(9) Any individual employed directly by the house of 71
representatives or directly by the senate. 72

(E) "Occupation" means any occupation, service, trade, 73
business, industry, or branch or group of industries or employment 74
or class of employment in which individuals are employed. 75

(F) "Monetary overtime compensation" means pay for overtime 76
as required by division (A) of section 4111.03 of the Revised 77
Code. 78

(G) "Compensatory time off" means hours during which an employee is not working that are not counted as hours worked during the applicable work week or other work period for purposes of overtime compensation and for which the employer compensates the employee at the employee's regular rate of pay. 79
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(H) "To bargain collectively" means the performance of the mutual obligation of the representative of an employer and the exclusive representative of employees in an appropriate unit to meet at reasonable times and to consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting the employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation does not compel either party to agree to a proposal or to make a concession. 84
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(I) "Collective bargaining agreement" means an agreement entered into as a result of employees bargaining collectively with an employer. 93
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(J) "Basic work requirement" means the number of hours, excluding overtime hours, that an employee is required to work or for which the employee is required to account by leave or otherwise. 96
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(K) "Exclusive representative" means any labor or employee organization that is certified as the exclusive representative of employees by means of any one of the following processes: 100
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(1) Pursuant to the "National Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C.A. 151, as amended; 103
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(2) Pursuant to Chapter 4117. of the Revised Code; 105

(3) Recognition by an employer, immediately before the effective date of this amendment to this section, as the exclusive representative of employees in an appropriate unit, on the basis of an election or on any other basis, and that continues to be so 106
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recognized. 110

(L) "Regular rate" includes all remuneration for employment 111
paid to, or on behalf of, an employee except: 112

(1) Sums paid as gifts, or payments in the nature of gifts 113
made on the occasion of a holiday or other special occasion as a 114
reward for service, the amounts of which are not measured by or 115
dependent on hours worked, production, or efficiency; 116

(2) Payments made for occasional periods when no work is 117
performed due to vacation, holiday, illness, failure of the 118
employer to provide sufficient work, or other similar cause, 119
reasonable payment for traveling expenses or other expenses 120
incurred by an employee in the furtherance of the employer's 121
interests and properly reimbursable by the employer, and other 122
similar payments to an employee that are not made as compensation 123
for hours of employment; 124

(3) Sums paid in recognition of services performed during a 125
given period if any of the following applies: 126

(a) The decision to make payment and determine the amount of 127
the payment is determined at the sole discretion of the employer 128
at or near the end of the period, and not pursuant to any prior 129
contract, agreement, or promise causing the employee to expect the 130
payments regularly; 131

(b) The payments are made pursuant to a bona fide 132
profit-sharing plan or trust or bona fide thrift or savings plan; 133

(c) The payments are talent fees paid to performers, 134
including announcers, on radio and television programs. 135

(4) Contributions irrevocably made by an employer to a 136
trustee or third person pursuant to a bona fide plan for providing 137
old-age, retirement, life, accident, or health insurance or 138
similar benefits for employees; 139

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in a day or work week because the hours are worked in excess of eight in a day or in excess of the maximum work week applicable to the employee under division (A) of section 4111.03 of the Revised Code or in excess of the employee's normal working hours or regular working hours, as the case may be; 140 141 142 143 144 145 146

(6) 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 work week where the premium rate is not less than one and one-half times the rate established in good faith for like work performed during nonovertime hours on other days; 147 148 149 150 151 152

(7) Extra compensation provided by a premium rate paid to an employee pursuant to an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement and outside of the basic, normal, or regular workday that does not exceed eight hours, or of the work week that does not exceed the maximum work week applicable to the employee under division (A) of section 4111.03 of the Revised Code, where the premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during the workday or work week. 153 154 155 156 157 158 159 160 161 162 163

Sec. 4111.03. (A) An except as otherwise provided in this section, an employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one ~~workweek~~ work week, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended. 164 165 166 167 168 169 170

Any employee employed in agriculture shall not be covered by 171
the overtime provision of this section. 172

(B) For the purposes of this section, the number of hours 173
worked by a county employee in any one ~~workweek~~ work week shall be 174
deemed to include, in addition to hours actually worked, all 175
periods in an active pay status. 176

(C) If a county employee elects to take compensatory time off 177
in lieu of overtime pay, for any overtime worked, such 178
compensatory time may be granted by the employee's administrative 179
superior, on a time and one-half basis, at a time mutually 180
convenient to the employee and the administrative superior within 181
one hundred eighty days after the overtime is worked. 182

(D) A county appointing authority with the exception of the 183
county department of job and family services may, by rule or 184
resolution as is appropriate, indicate the authority's intention 185
not to be bound by division (B) or (C) of this section, and to 186
adopt a different policy for the calculation and payment of 187
overtime that is embodied in those divisions. Upon adoption, the 188
alternative policy prevails. Prior to the adoption of an 189
alternative overtime policy, the county appointing authority with 190
the exception of the county department of job and family services 191
shall give a written notice of the alternative policy to each 192
employee at least ten days prior to the effective date of the 193
policy. 194

(E)(1) An employee other than an employee of the state, its 195
instrumentalities, or its political subdivisions or their 196
instrumentalities, may receive, in accordance with this division 197
and in lieu of monetary overtime compensation, compensatory time 198
off at a rate of not less than one and one-half hours for each 199
hour of employment for which monetary overtime compensation 200
otherwise is required by division (A) of this section. 201

(2) An employer may provide compensatory time off to employees pursuant to this division only in accordance with the following provisions and conditions: 202
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(a) The applicable provisions of a collective bargaining agreement between the employer and the representative of the employees recognized as provided in section 9(a) of the "National Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C.A. 159(a), as amended; 205
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(b) In the case of employees who are not represented by a labor organization as provided in section 9(a) of the "National Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C.A. 159(a), as amended, an agreement or understanding arrived at between the employer and employee before the performance of the work involved, if the agreement or understanding is entered into knowingly and voluntarily by and at the initiation and request of the employee, and is not a condition of employment; 210
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(c) If the employee has affirmed in a written or otherwise verifiable statement that is made, kept, and preserved in accordance with section 4111.08 and rules adopted under section 4111.05 of the Revised Code that the employee has initiated a request to receive compensatory time off in lieu of monetary overtime compensation; 218
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(d) If the employee has not accrued compensatory time off in excess of the limit applicable to the employee as prescribed in division (E)(3) of this section. 224
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(3)(a) An employee may accrue not more than two hundred forty hours of compensatory time off. 227
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(b) Not later than the thirty-first day of January of each calendar year, an employer shall provide monetary overtime compensation at the rate prescribed by division (E)(7) of this section for any unused compensatory time off accrued during the 229
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preceding calendar year that was not used prior to the 233
thirty-first day of December of the preceding calendar year. An 234
employer may designate and communicate to its employees an 235
alternative twelve-month period other than the calendar year, in 236
which case the monetary overtime compensation payment required by 237
division (E)(3)(b) of this section shall be paid not later than 238
thirty-one days after the end of the alternative twelve-month 239
period. 240

(c) An employer may provide monetary overtime compensation at 241
the rate required by division (E)(7) of this section for an 242
employee's unused compensatory time off in excess of eighty hours 243
at any time after giving the employee at least thirty days' 244
written notice. 245

(4) An employer that has adopted a policy offering 246
compensatory time off to employees may discontinue that policy 247
upon giving the employees thirty days' written notice. 248

(5) An employee may withdraw an agreement or understanding 249
described in division (E)(2)(b) of this section at any time. An 250
employee also may request in writing that monetary overtime 251
compensation be provided, at any time, for all compensatory time 252
off accrued that has not yet been used at the time the employee 253
makes the request. Within thirty days after receipt of the written 254
request, the employer shall pay to the employee the monetary 255
overtime compensation due in accordance with division (E)(7) of 256
this section. 257

(6) An employer shall pay monetary overtime compensation, in 258
accordance with division (E)(7) of this section, to an employee 259
who has accrued unused compensatory time off pursuant to this 260
division, upon the voluntary or involuntary termination of 261
employment. 262

(7)(a) If an employer pays monetary overtime compensation to 263
an employee for accrued compensatory time off, the employer shall 264

make payment based on a rate of compensation that is the higher 265
of: 266

(i) The regular rate of pay received by the employee when the 267
compensatory time off was earned; 268

(ii) The final regular rate of pay received by the employee. 269

(b) Any payment owed to an employee under division (E) of 270
this section for unused compensatory time off shall be considered 271
unpaid monetary overtime compensation. 272

(8) An employer shall permit an employee who has accrued 273
compensatory time off authorized under this division and who has 274
requested the use of the compensatory time off, the use of that 275
time within a reasonable period after the employee makes the 276
request, if the use of the compensatory time off does not unduly 277
disrupt the operations of the employer. 278

(F)(1) Notwithstanding any other provision in sections 279
4111.01 to 4111.17 of the Revised Code, an employer may establish 280
biweekly work schedule programs that permit an employee to elect 281
to work a biweekly work schedule consisting of a basic work 282
requirement of not more than eighty hours over a period of two 283
consecutive work weeks and in which more than forty hours of the 284
basic work requirement may occur in a single week of the biweekly 285
period. Employees retain the right to elect whether or not to 286
agree to work a biweekly work schedule established by the 287
employee's employer. 288

(2) In the case of an employee participating in a biweekly 289
work schedule program, all hours worked in excess of the basic 290
work requirement of the biweekly work schedule, or in excess of 291
eighty hours in the biweekly period that are requested in advance 292
by an employer, shall be considered overtime hours. 293

(3) An employer shall compensate an employee participating in 294
a biweekly work schedule program for overtime hours either: 295

(a) At a rate that is not less than one and one-half times 296
the regular rate at which the employee is employed, in accordance 297
with division (A) of this section; or 298

(b) By awarding compensatory time off in accordance with 299
division (A) of this section in the case of employees of the 300
state, its instrumentalities, or its political subdivisions or 301
their instrumentalities, or in accordance with division (E) of 302
this section in the case of employees of all other employers. 303

(4) An employer shall compensate an employee for each hour 304
worked in a biweekly work schedule program, at a rate that is not 305
less than the regular rate at which the employee is employed. 306

(5)(a) In the case of employees in a unit represented by an 307
exclusive representative, any biweekly work schedule program 308
described in this division and the establishment and termination 309
of such a program is subject to the terms of a collective 310
bargaining agreement between the employer and the exclusive 311
representative. Employees within a unit represented by an 312
exclusive representative shall not be included within a biweekly 313
work schedule program except to the extent expressly required or 314
permitted under a collective bargaining agreement between the 315
employer and the exclusive representative. 316

(b) Nothing in this section shall be construed to diminish 317
the obligation of an employer to comply with any collective 318
bargaining agreement or any employment benefits program or plan 319
that provides lesser or greater rights to employees than the 320
benefits established under this section. 321

Sec. 4111.05. The director of commerce shall adopt rules in 322
accordance with Chapter 119. of the Revised Code as the director 323
considers appropriate to carry out the purposes of sections 324
4111.01 to 4111.17 of the Revised Code. The rules may be amended 325
from time to time and may include, but are not limited to, rules 326

defining and governing apprentices, their number, proportion, and 327
length of service; bonuses and special pay for special or extra 328
work; permitted deductions or charges to employees for board, 329
lodging, apparel, or other facilities or services customarily 330
furnished by employers to employees; inclusion of ascertainable 331
gratuities in wages paid; allowances for unascertainable 332
gratuities or for other special conditions or circumstances which 333
may be usual in particular employer-employee relationships; 334
compensatory time off and biweekly work schedule programs for 335
employees pursuant to divisions (E) and (F) of section 4111.03 of 336
the Revised Code; and the method of computation or the period of 337
time over which wages may be averaged to determine whether the 338
minimum wage or overtime rate has been paid. 339

Sec. 4111.10. (A) Any employer who pays any employee less 340
than wages to which the employee is entitled under sections 341
4111.01 to 4111.17 of the Revised Code, is liable to the employee 342
affected for the full amount of the wage rate, less any amount 343
actually paid to the employee by the employer, and for costs and 344
reasonable attorney's fees as may be allowed by the court. Any 345
agreement between the employee and the employer to work for less 346
than the wage rate is no defense to an action. 347

(B) Any employer who violates division (D) of section 4111.13 348
of the Revised Code is liable to the employee affected in a dollar 349
amount equal to: 350

(1) The product of: 351

(a) The rate of compensation determined in accordance with 352
division (E)(7) of section 4111.03 of the Revised Code; and 353

(b) The number of hours of compensatory time off involved in 354
the violation that was initially accrued by the employee minus the 355
number of compensatory time off hours used by the employee; and 356

(2) As liquidated damages, the product of: 357

(a) The rate of compensation determined in accordance with 358
division (E)(7) of section 4111.03 of the Revised Code; and 359

(b) The number of hours of compensatory time off involved in 360
the violation that was initially accrued by the employee; and 361

(3) Costs and reasonable attorney's fees as may be allowed by 362
the court. 363

The liability imposed under this division is in addition to 364
any other civil or criminal liability imposed pursuant to sections 365
4111.01 to 4111.17 of the Revised Code. 366

(C) At the written request of any employee paid less than the 367
wages to which the employee is entitled under sections 4111.01 to 368
4111.17 of the Revised Code, the director of commerce may take an 369
assignment of a wage claim in trust for the assigning employee and 370
may bring any legal action necessary to collect the claim. The 371
employer shall pay the costs and reasonable attorney's fees 372
allowed by the court. 373

Sec. 4111.13. (A) No employer shall hinder or delay the 374
director of commerce in the performance of the director's duties 375
in the enforcement of sections 4111.01 to 4111.17 of the Revised 376
Code, or refuse to admit the director to any place of employment, 377
or fail to make, keep, and preserve any records as required under 378
those sections, or falsify any of those records, or refuse to make 379
them accessible to the director upon demand, or refuse to furnish 380
them or any other information required for the proper enforcement 381
of those sections to the director upon demand, or fail to post a 382
summary of those sections or a copy of any applicable rules as 383
required by section 4111.09 of the Revised Code. Each day of 384
violation constitutes a separate offense. 385

(B) No employer shall discharge or in any other manner 386
discriminate against any employee because the employee has made 387

any complaint to the employee's employer, or to the director, that
the employee has not been paid wages in accordance with sections
4111.01 to 4111.17 of the Revised Code, or because the employee
has made any complaint or is about to cause to be instituted any
proceeding under or related to those sections, or because the
employee has testified or is about to testify in any proceeding.

(C) No employer shall pay or agree to pay wages at a rate
less than the rate applicable under sections 4111.01 to 4111.17 of
the Revised Code. Each week or portion thereof for which the
employer pays any employee less than the rate applicable under
those sections constitutes a separate offense as to each employer.

(D)(1) No employer that provides compensatory time off under
division (E) of section 4111.03 of the Revised Code or a biweekly
work schedule program under division (F) of section 4111.03 of the
Revised Code shall, directly or indirectly, intimidate, threaten,
or coerce, or attempt to intimidate, threaten, or coerce any
employee for the purposes of:

(a) Interfering with the rights of the employee to request or
not request compensatory time off in lieu of payment of monetary
overtime compensation for overtime hours or to elect to work or
elect not to work a biweekly work schedule;

(b) Requiring an employee to use compensatory time off.

(2) As used in this division, the term "intimidate, threaten,
or coerce" includes promising to confer or conferring any benefit
including appointment, promotion, or compensation, or effecting or
threatening to effect any reprisal, including deprivation of
appointment, promotion, or compensation.

(E) No employer shall otherwise violate sections 4111.01 to
4111.17 of the Revised Code, or any rule adopted thereunder. Each
day of violation constitutes a separate offense.

Sec. 4111.99. (A) Whoever violates division (A) or ~~(D)~~(E) of 418
section 4111.13 of the Revised Code is guilty of a misdemeanor of 419
the fourth degree. 420

(B) Whoever violates division (B) ~~or~~, (C), or (D) of section 421
4111.13 of the Revised Code is guilty of a misdemeanor of the 422
third degree. 423

(C) Whoever violates section 4111.17 of the Revised Code is 424
guilty of a minor misdemeanor. 425

Section 2. That existing sections 4111.01, 4111.03, 4111.05, 426
4111.10, 4111.13, and 4111.99 of the Revised Code are hereby 427
repealed. 428

Section 3. Not later than 30 days after the effective date of 429
this section, the Director of Commerce shall revise the printed 430
materials that the Director makes available to employers and 431
employees for the purpose of explaining the requirements of 432
sections 4111.01 to 4111.17 of the Revised Code to reflect the 433
amendments made to those sections by this act. 434