

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

**128th General Assembly
Regular Session
2009-2010**

S. B. No. 17

Senator Coughlin

**Cosponsors: Senators Buehrer, Cates, Gibbs, Schaffer, Schuler, Seitz,
Wagoner**

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A B I L L

To amend sections 4111.03, 4111.05, 4111.10, 4111.13, 1
and 4111.99 and to enact section 4111.031 of the 2
Revised Code to afford to private sector employers 3
the option to offer and to employees the option to 4
accrue and use compensatory time off. 5
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4111.03, 4111.05, 4111.10, 4111.13, 7
and 4111.99 be amended and section 4111.031 of the Revised Code be 8
enacted to read as follows: 9

Sec. 4111.03. (A) ~~An~~ Except as otherwise provided in section 10
4111.031 of the Revised Code, an employer shall pay an employee 11
for overtime at a wage rate of one and one-half times the 12
employee's wage rate for hours worked in excess of forty hours in 13
one workweek, in the manner and methods provided in and subject to 14
the exemptions of section 7 and section 13 of the "Fair Labor 15
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 16
amended. 17

Any employee employed in agriculture shall not be covered by 18
the overtime provision of this section. 19

(B) If a county employee elects to take compensatory time off 20
in lieu of overtime pay, for any overtime worked, compensatory 21
time may be granted by the employee's administrative superior, on 22
a time and one-half basis, at a time mutually convenient to the 23
employee and the administrative superior within one hundred eighty 24
days after the overtime is worked. 25

(C) A county appointing authority with the exception of the 26
county department of job and family services may, by rule or 27
resolution as is appropriate, indicate the authority's intention 28
not to be bound by division (B) of this section, and to adopt a 29
different policy for the calculation and payment of overtime than 30
that established by that division. Upon adoption, the alternative 31
overtime policy prevails. Prior to the adoption of an alternative 32
overtime policy, a county appointing authority with the exception 33
of the county department of job and family services shall give a 34
written notice of the alternative policy to each employee at least 35
ten days prior to its effective date. 36

(D) As used in this section and section 4111.031 of the 37
Revised Code: 38

(1) "Employ" means to suffer or to permit to work. 39

(2) "Employer" means the state of Ohio, its 40
instrumentalities, and its political subdivisions and their 41
instrumentalities, any individual, partnership, association, 42
corporation, business trust, or any person or group of persons, 43
acting in the interest of an employer in relation to an employee, 44
but does not include an employer whose annual gross volume of 45
sales made for business done is less than one hundred fifty 46
thousand dollars, exclusive of excise taxes at the retail level 47
which are separately stated. 48

(3) "Employee" means any individual employed by an employer	49
but does not include:	50
(a) Any individual employed by the United States;	51
(b) Any individual employed as a baby-sitter in the	52
employer's home, or a live-in companion to a sick, convalescing,	53
or elderly person whose principal duties do not include	54
housekeeping;	55
(c) Any individual engaged in the delivery of newspapers to	56
the consumer;	57
(d) Any individual employed as an outside salesperson	58
compensated by commissions or employed in a bona fide executive,	59
administrative, or professional capacity as such terms are defined	60
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29	61
U.S.C.A. 201, as amended;	62
(e) Any individual who works or provides personal services of	63
a charitable nature in a hospital or health institution for which	64
compensation is not sought or contemplated;	65
(f) A member of a police or fire protection agency or student	66
employed on a part-time or seasonal basis by a political	67
subdivision of this state;	68
(g) Any individual in the employ of a camp or recreational	69
area for children under eighteen years of age and owned and	70
operated by a nonprofit organization or group of organizations	71
described in Section 501 (c)(3) of the "Internal Revenue Code of	72
1954," and exempt from income tax under Section 501 (a) of that	73
code;	74
(h) Any individual employed directly by the house of	75
representatives or directly by the senate.	76
<u>(4) "Monetary overtime compensation" means pay for overtime</u>	77
<u>as required by division (A) of this section.</u>	78

(5) "Compensatory time off" means hours during which an 79
employee is not working that are not counted as hours worked 80
during the applicable work week or other work period for purposes 81
of overtime compensation and for which the employer compensates 82
the employee at the employee's regular rate of pay. 83

(6) "To bargain collectively" means the performance of the 84
mutual obligation of the representative of an employer and the 85
exclusive representative of employees in an appropriate unit to 86
meet at reasonable times and to consult and bargain in a good 87
faith effort to reach agreement with respect to the conditions of 88
employment affecting the employees and to execute, if requested by 89
either party, a written document incorporating any collective 90
bargaining agreement reached, but the obligation does not compel 91
either party to agree to a proposal or to make a concession. 92

(7) "Collective bargaining agreement" means an agreement 93
entered into as a result of employees bargaining collectively with 94
an employer. 95

(8) "Exclusive representative" means any labor or employee 96
organization that is certified as the exclusive representative of 97
employees by means of any one of the following processes: 98

(a) Pursuant to the "National Labor Relations Act," 49 Stat. 99
449 (1935), 29 U.S.C. 151, as amended; 100

(b) Pursuant to Chapter 4117. of the Revised Code; 101

(c) Recognition by an employer, immediately before the 102
effective date of this amendment, as the exclusive representative 103
of employees in an appropriate unit, on the basis of an election 104
or on any other basis, and that continues to be so recognized. 105

(9) "Regular rate" includes all remuneration for employment 106
paid to, or on behalf of, an employee except: 107

(a) Sums paid as gifts, or payments in the nature of gifts 108

made on the occasion of a holiday or other special occasion as a 109
reward for service, the amounts of which are not measured by or 110
dependent on hours worked, production, or efficiency; 111

(b) Payments made for occasional periods when no work is 112
performed due to vacation, holiday, illness, failure of the 113
employer to provide sufficient work, or other similar cause, 114
reasonable payment for traveling expenses or other expenses 115
incurred by an employee in the furtherance of the employer's 116
interests and properly reimbursable by the employer, and other 117
similar payments to an employee that are not made as compensation 118
for hours of employment; 119

(c) Sums paid in recognition of services performed during a 120
given period if any of the following applies: 121

(i) The decision to make payment and determine the amount of 122
the payment is determined at the sole discretion of the employer 123
at or near the end of the period, and not pursuant to any prior 124
contract, agreement, or promise causing the employee to expect the 125
payments regularly. 126

(ii) The payments are made pursuant to a bona fide 127
profit-sharing plan or trust or bona fide thrift or savings plan. 128

(iii) The payments are talent fees paid to performers, 129
including announcers, on radio and television programs. 130

(d) Contributions irrevocably made by an employer to a 131
trustee or third person pursuant to a bona fide plan for providing 132
old-age, retirement, life, accident, or health insurance or 133
similar benefits for employees; 134

(e) Extra compensation provided by a premium rate paid for 135
certain hours worked by the employee in a day or work week because 136
the hours are worked in excess of eight in a day or in excess of 137
the maximum work week applicable to the employee under division 138
(A) of this section or in excess of the employee's normal working 139

hours or regular working hours, as the case may be; 140

(f) Extra compensation provided by a premium rate paid for 141
work by the employee on Saturdays, Sundays, holidays, or regular 142
days of rest, or on the sixth or seventh day of the work week 143
where the premium rate is not less than one and one-half times the 144
rate established in good faith for like work performed during 145
nonovertime hours on other days; 146

(g) Extra compensation provided by a premium rate paid to an 147
employee pursuant to an applicable employment contract or 148
collective bargaining agreement, for work outside of the hours 149
established in good faith by the contract or agreement and outside 150
of the basic, normal, or regular workday that does not exceed 151
eight hours, or of the work week that does not exceed the maximum 152
work week applicable to the employee under division (A) of this 153
section, where the premium rate is not less than one and one-half 154
times the rate established in good faith by the contract or 155
agreement for like work performed during the workday or work week. 156

Sec. 4111.031. (A) An employee other than an employee 157
described in division (J) of this section may receive, in 158
accordance with this section and in lieu of monetary overtime 159
compensation, compensatory time off at a rate of not less than one 160
and one-half hours for each hour of employment for which monetary 161
overtime compensation otherwise is required by division (A) of 162
section 4111.03 of the Revised Code. 163

(B) An employer may provide compensatory time off to 164
employees pursuant to this section only in accordance with the 165
following provisions and conditions: 166

(1) The applicable provisions of a collective bargaining 167
agreement between the employer and the exclusive representative of 168
the employees recognized as provided in section 9(a) of the 169
"National Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C. 170

159(a), as amended; 171

(2) In the case of employees who are not represented by a 172
labor organization as provided in section 9(a) of the "National 173
Labor Relations Act," 49 Stat. 449 (1935), 29 U.S.C. 159(a), as 174
amended, an agreement or understanding arrived at between the 175
employer and employee before the performance of the work involved, 176
if the agreement or understanding is entered into knowingly and 177
voluntarily by and at the initiation and request of the employee, 178
and is not a condition of employment; 179

(3) If the employee has affirmed in a written or otherwise 180
verifiable statement that is made, kept, and preserved in 181
accordance with section 4111.08 and rules adopted under section 182
4111.05 of the Revised Code that the employee has initiated a 183
request to receive compensatory time off in lieu of monetary 184
overtime compensation; 185

(4) If the employee has not accrued compensatory time off in 186
excess of the limit applicable to the employee as prescribed in 187
division (C) of this section. 188

(C) An employee may accrue not more than two hundred forty 189
hours of compensatory time off. 190

(D) Not later than the thirty-first day of January of each 191
calendar year, an employer shall provide monetary overtime 192
compensation at the rate prescribed by division (H) of this 193
section for any unused compensatory time off accrued during the 194
preceding calendar year that was not used prior to the 195
thirty-first day of December of the preceding calendar year. An 196
employer may designate and communicate to its employees an 197
alternative twelve-month period other than the calendar year, in 198
which case the monetary overtime compensation payment required by 199
this division shall be paid not later than thirty-one days after 200
the end of the alternative twelve-month period. An employer may 201

provide monetary overtime compensation at the rate required by 202
division (H) of this section for an employee's unused compensatory 203
time off in excess of eighty hours at any time after giving the 204
employee written notice of that intent at least thirty days before 205
providing that compensation. 206

(E) An employer that has adopted a policy offering 207
compensatory time off to employees may discontinue that policy 208
upon giving the employees written notice of that intent at least 209
thirty days before the discontinuation. 210

(F) An employee may withdraw an agreement or understanding 211
described in division (B)(2) of this section at any time and may 212
request in writing that monetary overtime compensation be 213
provided, at any time, for all compensatory time off accrued that 214
has not yet been used at the time the employee makes the request. 215
Within thirty days after receipt of the written request, the 216
employer shall pay to the employee the monetary overtime 217
compensation due in accordance with division (H) of this section. 218

(G) Any payment owed to an employee under this section for 219
unused compensatory time off shall be considered unpaid monetary 220
overtime compensation. An employer shall pay monetary overtime 221
compensation, in accordance with division (H) of this section, to 222
an employee who has accrued unused compensatory time off pursuant 223
to this section, upon the voluntary or involuntary termination of 224
employment. 225

(H) If an employer pays monetary overtime compensation to an 226
employee for accrued compensatory time off, the employer shall 227
make payment based on a rate of compensation that is the higher 228
of: 229

(1) The regular rate of pay received by the employee when the 230
compensatory time off was earned; 231

(2) The final regular rate of pay received by the employee. 232

(I) An employer shall permit an employee who has accrued compensatory time off authorized under this section and who has requested the use of the compensatory time off, the use of that time within a reasonable period after the employee makes the request, if the use of the compensatory time off does not unduly disrupt the operations of the employer. 233
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(J) This section does not apply to any of the following employees: 239
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(1) An employee of the state, its instrumentalities, or its political subdivisions or their instrumentalities; 241
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(2) An individual employed by a contractor or subcontractor to perform labor or provide services to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of a structure or improvement. 243
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(K) As used in division (J)(2) of this section, "contractor" has the same meaning as in section 4113.61 of the Revised Code and "subcontractor" has the same meaning as in section 1311.01 of the Revised Code. 247
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Sec. 4111.05. The director of commerce shall adopt rules in accordance with Chapter 119. of the Revised Code as the director considers appropriate to carry out the purposes of sections 4111.01 to 4111.17 of the Revised Code. The rules may be amended from time to time and may include, but are not limited to, rules defining and governing apprentices, their number, proportion, and length of service; bonuses and special pay for special or extra work; permitted deductions or charges to employees for board, lodging, apparel, or other facilities or services customarily furnished by employers to employees; inclusion of ascertainable gratuities in wages paid; allowances for unascertainable gratuities or for other special conditions or circumstances which may be usual in particular employer-employee relationships; 251
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compensatory time off for employees pursuant to section 4111.031 264
of the Revised Code; and the method of computation or the period 265
of time over which wages may be averaged to determine whether the 266
minimum wage or overtime rate has been paid. 267

Sec. 4111.10. (A) Any employer who pays any employee less 268
than wages to which the employee is entitled under section 4111.03 269
of the Revised Code, is liable to the employee affected for the 270
full amount of the overtime wage rate, less any amount actually 271
paid to the employee by the employer, and for costs and reasonable 272
attorney's fees as may be allowed by the court. Any agreement 273
between the employee and the employer to work for less than the 274
overtime wage rate is no defense to an action. 275

(B) Any employer who violates division (D) of section 4111.13 276
of the Revised Code is liable to the employee affected in a dollar 277
amount equal to: 278

(1) The product of: 279

(a) The rate of compensation determined in accordance with 280
division (H) of section 4111.031 of the Revised Code; and 281

(b) The number of hours of compensatory time off involved in 282
the violation that was initially accrued by the employee minus the 283
number of compensatory time off hours used by the employee; and 284

(2) As liquidated damages, the product of: 285

(a) The rate of compensation determined in accordance with 286
division (H) of section 4111.031 of the Revised Code; and 287

(b) The number of hours of compensatory time off involved in 288
the violation that was initially accrued by the employee; and 289

(3) Costs and reasonable attorney's fees as may be allowed by 290
the court. 291

The liability imposed under this division is in addition to 292

any other civil or criminal liability imposed pursuant to sections 293
4111.01 to 4111.17 of the Revised Code. 294

(C) At the written request of any employee paid less than the 295
wages to which the employee is entitled under section 4111.03 of 296
the Revised Code, the director of commerce may take an assignment 297
of a wage claim in trust for the assigning employee and may bring 298
any legal action necessary to collect the claim. The employer 299
shall pay the costs and reasonable attorney's fees allowed by the 300
court. 301

(D) As used in this section, "compensatory time off" has the 302
same meaning as in section 4111.03 of the Revised Code. 303

Sec. 4111.13. (A) No employer shall hinder or delay the 304
director of commerce in the performance of the director's duties 305
in the enforcement of sections 4111.01 to 4111.17 of the Revised 306
Code, or refuse to admit the director to any place of employment, 307
or fail to make, keep, and preserve any records as required under 308
those sections, or falsify any of those records, or refuse to make 309
them accessible to the director upon demand, or refuse to furnish 310
them or any other information required for the proper enforcement 311
of those sections to the director upon demand, or fail to post a 312
summary of those sections or a copy of any applicable rules as 313
required by section 4111.09 of the Revised Code. Each day of 314
violation constitutes a separate offense. 315

(B) No employer shall discharge or in any other manner 316
discriminate against any employee because the employee has made 317
any complaint to the employee's employer, or to the director, that 318
the employee has not been paid wages in accordance with sections 319
4111.01 to 4111.17 of the Revised Code, or because the employee 320
has made any complaint or is about to cause to be instituted any 321
proceeding under or related to those sections, or because the 322
employee has testified or is about to testify in any proceeding. 323

(C) No employer shall pay or agree to pay wages at a rate 324
less than the rate applicable under sections 4111.01 to 4111.17 of 325
the Revised Code. Each week or portion thereof for which the 326
employer pays any employee less than the rate applicable under 327
those sections constitutes a separate offense as to each employer. 328

(D) No employer that provides compensatory time off under 329
section 4111.031 of the Revised Code shall, directly or 330
indirectly, intimidate, threaten, or coerce, or attempt to 331
intimidate, threaten, or coerce, or terminate or attempt to 332
terminate the employment of, any employee for the purposes of: 333

(1) Interfering with the rights of the employee to request or 334
not request compensatory time off in lieu of payment of monetary 335
overtime compensation for overtime hours; 336

(2) Requiring an employee to use compensatory time off. 337

(E) No employer shall otherwise violate sections 4111.01 to 338
4111.17 of the Revised Code, or any rule adopted thereunder. Each 339
day of violation constitutes a separate offense. 340

(F) As used in this section: 341

(1) "Intimidate, threaten, or coerce" includes promising to 342
confer or conferring any benefit including appointment, promotion, 343
or compensation, or effecting or threatening to effect any 344
reprisal, including deprivation of appointment, promotion, or 345
compensation; 346

(2) "Compensatory time off" has the same meaning as in 347
section 4111.03 of the Revised Code. 348

Sec. 4111.99. (A) Whoever violates division (A) or ~~(D)~~(E) of 349
section 4111.13 of the Revised Code is guilty of a misdemeanor of 350
the fourth degree. 351

(B) Whoever violates division (B) ~~or~~, (C), or (D) of section 352
4111.13 of the Revised Code is guilty of a misdemeanor of the 353

third degree.	354
(C) Whoever violates section 4111.17 of the Revised Code is guilty of a minor misdemeanor.	355 356
Section 2. That existing sections 4111.03, 4111.05, 4111.10, 4111.13, and 4111.99 of the Revised Code are hereby repealed.	357 358
Section 3. Not later than thirty days after the effective date of this section, the Director of Commerce shall revise the printed materials that the Director makes available to employers and employees for the purpose of explaining the requirements of sections 4111.01 to 4111.17 of the Revised Code to reflect the amendments made to those sections by this act.	359 360 361 362 363 364
Section 4. Section 4111.03 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.	365 366 367 368 369 370 371 372 373