

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 360

Representatives Foley, Hagan, R.

Cosponsors: Representatives Ashford, Patterson, Antonio

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A B I L L

To amend sections 4111.03 and 4111.10 and to enact 1
section 4113.75 of the Revised Code to require 2
treble wages for retail employees who work during 3
the Thanksgiving holiday and to prohibit a retail 4
employer from adversely affecting the employment 5
status, wages, hours, or employment conditions of 6
a retail employee because the retail employee 7
refuses to work on Thanksgiving day. 8

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

Section 1. That sections 4111.03 and 4111.10 be amended and 9
section 4113.75 of the Revised Code be enacted to read as follows: 10

Sec. 4111.03. (A) An employer shall pay an employee for 11
overtime at a wage rate of one and one-half times the employee's 12
wage rate for hours worked in excess of forty hours in one 13
workweek, in the manner and methods provided in and subject to the 14
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)(1) Except as provided in divisions (D)(2) and (3) of this 37
section, a retail employer shall pay each of the retail employer's 38
retail employees for time worked on Thanksgiving day and time 39
worked on the day after Thanksgiving at a wage rate of three times 40
the employee's wage rate. 41

(2) A retail employer shall not be required to pay treble 42
wages for time worked by a retail employee on the day after 43
Thanksgiving, as otherwise required under division (D)(1) of this 44
section, if the retail establishment where the retail employee is 45
employed is not open for business on that day any earlier than the 46
establishment normally would be open for business on a Friday. 47

(3) A retail employer shall not be required to pay treble 48
wages to an employee who works on Thanksgiving day or on the day 49
after Thanksgiving, if that employee is covered by a collective 50
bargaining agreement that does not require the employee to be paid 51

<u>at that wage rate.</u>	52
<u>(E)</u> As used in this section:	53
(1) "Employ" means to suffer or to permit to work.	54
(2) "Employer" means the state of Ohio, its	55
instrumentalities, and its political subdivisions and their	56
instrumentalities, any individual, partnership, association,	57
corporation, business trust, or any person or group of persons,	58
acting in the interest of an employer in relation to an employee,	59
but does not include an employer whose annual gross volume of	60
sales made for business done is less than one hundred fifty	61
thousand dollars, exclusive of excise taxes at the retail level	62
which are separately stated.	63
(3) "Employee" means any individual employed by an employer	64
but does not include:	65
(a) Any individual employed by the United States;	66
(b) Any individual employed as a baby-sitter in the	67
employer's home, or a live-in companion to a sick, convalescing,	68
or elderly person whose principal duties do not include	69
housekeeping;	70
(c) Any individual engaged in the delivery of newspapers to	71
the consumer;	72
(d) Any individual employed as an outside salesperson	73
compensated by commissions or employed in a bona fide executive,	74
administrative, or professional capacity as such terms are defined	75
by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29	76
U.S.C.A. 201, as amended;	77
(e) Any individual who works or provides personal services of	78
a charitable nature in a hospital or health institution for which	79
compensation is not sought or contemplated;	80
(f) A member of a police or fire protection agency or student	81

employed on a part-time or seasonal basis by a political 82
subdivision of this state; 83

(g) Any individual in the employ of a camp or recreational 84
area for children under eighteen years of age and owned and 85
operated by a nonprofit organization or group of organizations 86
described in Section 501(c)(3) of the "Internal Revenue Code of 87
1954," and exempt from income tax under Section 501(a) of that 88
code; 89

(h) Any individual employed directly by the house of 90
representatives or directly by the senate. 91

(4) "Retail employee" means an individual employed at a 92
retail establishment. 93

(5) "Retail employer" means an employer who employs at least 94
one individual at a retail establishment. 95

(6) "Retail establishment" means a place of business open to 96
the general public for the sale of goods or services. 97

Sec. 4111.10. (A) Any employer who pays any employee less 98
than wages to which the employee is entitled under section 4111.03 99
of the Revised Code, is liable to the employee affected for the 100
full amount of the ~~overtime wage rate~~ wages to which the employee 101
is entitled under section 4111.03 of the Revised Code, less any 102
amount actually paid to the employee by the employer, and for 103
costs and reasonable attorney's fees as may be allowed by the 104
court. Any agreement between the employee and the employer to work 105
for less than the ~~overtime wage rate~~ wages to which an employee is 106
entitled under section 4111.03 of the Revised Code is no defense 107
to an action. 108

(B) At the written request of any employee paid less than the 109
wages to which the employee is entitled under section 4111.03 of 110
the Revised Code, the director of commerce may take an assignment 111

of a wage claim in trust for the assigning employee and may bring 112
any legal action necessary to collect the claim. The employer 113
shall pay the costs and reasonable attorney's fees allowed by the 114
court. 115

Sec. 4113.75. (A) As used in this section, "retail employee" 116
and "retail employer" have the same meanings as in section 4111.03 117
of the Revised Code. 118

(B) Except as provided in division (C) of this section, no 119
retail employer shall adversely affect the employment status, 120
wages, hours, or employment conditions of a retail employee 121
because the retail employee refuses to work on Thanksgiving day. 122

(C) This section does not apply to a retail employee covered 123
by a collective bargaining agreement. 124

Section 2. That existing sections 4111.03 and 4111.10 of the 125
Revised Code are hereby repealed. 126

Section 3. Section 4111.03 of the Revised Code is presented 127
in this act as a composite of the section as amended by both Sub. 128
H.B. 187 and Am. Sub. H.B. 690 of the 126th General Assembly. The 129
General Assembly, applying the principle stated in division (B) of 130
section 1.52 of the Revised Code that amendments are to be 131
harmonized if reasonably capable of simultaneous operation, finds 132
that the composite is the resulting version of the section in 133
effect prior to the effective date of the section as presented in 134
this act. 135