

HOUSE BILL 1438

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By: **Delegate Behler**

Introduced and read first time: February 7, 2025

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Exemptions From Overtime Pay – Administrative,**
3 **Executive, or Professional Capacity**

4 FOR the purpose of altering the exemption from overtime pay for individuals who are
5 employed to work in an administrative, executive, or professional capacity;
6 increasing, except under certain circumstances, the exempted compensation rate in
7 effect for certain periods of time based on the annual growth, if any, in the Consumer
8 Price Index; requiring the Commissioner of Labor and Industry, beginning on a
9 certain date and continuing each subsequent year, to determine and announce the
10 growth in the Consumer Price Index, if any, and the new exempted compensation
11 rate; and generally relating to exemptions from overtime pay.

12 BY repealing and reenacting, with amendments,
13 Article – Labor and Employment
14 Section 3–403
15 Annotated Code of Maryland
16 (2016 Replacement Volume and 2024 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That the Laws of Maryland read as follows:

19 **Article – Labor and Employment**

20 3–403.

21 **(A)** This subtitle does not apply to an individual [who]:

22 [(1) is employed in a capacity that the Commissioner defines, by regulation,
23 to be administrative, executive, or professional;]

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(1) (I) WHO IS COMPENSATED ON A SALARY BASIS, AS DEFINED IN 29 C.F.R. § 541.602, OR A FEE BASIS, AS DEFINED IN 29 C.F.R. § 541.605, AT NOT LESS THAN:

1. A. FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2025, \$1,128 PER WEEK; AND

B. FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2026, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE COMPENSATION RATE DETERMINED AND ANNOUNCED BY THE COMMISSIONER UNDER SUBSECTION (B)(3)(I) OF THIS SECTION; OR

2. IF HIGHER, THE AMOUNT ESTABLISHED IN 29 C.F.R. § 541.600; AND

(II) 1. WHOSE PRIMARY DUTY:

A. IS THE PERFORMANCE OF OFFICE OR NONMANUAL WORK DIRECTLY RELATED TO THE MANAGEMENT OR GENERAL BUSINESS OPERATIONS OF THE EMPLOYER OR THE EMPLOYER'S CUSTOMERS; AND

B. INCLUDES THE EXERCISE OF DISCRETION AND INDEPENDENT JUDGMENT WITH RESPECT TO MATTERS OF SIGNIFICANCE;

2. A. WHOSE PRIMARY DUTY IS MANAGEMENT OF THE ENTERPRISE IN WHICH THE EMPLOYEE IS EMPLOYED OR OF A CUSTOMARILY RECOGNIZED DEPARTMENT OR SUBDIVISION OF THE ENTERPRISE;

B. WHO CUSTOMARILY AND REGULARLY DIRECTS THE WORK OF TWO OR MORE OTHER EMPLOYEES; AND

C. WHO HAS THE AUTHORITY TO HIRE OR FIRE OTHER EMPLOYEES OR WHOSE SUGGESTIONS AND RECOMMENDATIONS AS TO THE HIRING, FIRING, ADVANCEMENT, PROMOTION, OR ANY OTHER CHANGE OF STATUS OF OTHER EMPLOYEES ARE GIVEN PARTICULAR WEIGHT; OR

3. WHOSE PRIMARY DUTY IS THE PERFORMANCE OF WORK REQUIRING:

A. KNOWLEDGE OF AN ADVANCED TYPE IN A FIELD OF SCIENCE OR LEARNING CUSTOMARILY ACQUIRED BY A PROLONGED COURSE OF SPECIALIZED INTELLECTUAL INSTRUCTION; OR

**B. INVENTION, IMAGINATION, ORIGINALITY, OR TALENT
IN A RECOGNIZED FIELD OF ARTISTIC OR CREATIVE ENDEAVOR;**

(2) **WHO** is employed in a nonadministrative capacity at an organized camp, including a resident or day camp;

(3) **WHO** is under the age of 16 years and is employed no more than 20 hours in a week;

(4) **WHO** is employed as an outside salesman;

(5) **WHO** is compensated on a commission basis;

(6) **WHO** is a child, parent, spouse, or other member of the immediate family of the employer;

(7) **WHO** is employed in a drive-in theater;

(8) **WHO** is employed as part of the training in a special education program for emotionally, mentally, or physically handicapped students under a public school system;

(9) **WHO** is employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood;

(10) **WHO** engages in the activities of a charitable, educational, nonprofit, or religious organization if:

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer-employee relationship;

(11) **WHO** is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other similar establishment that:

(i) sells food and drink for consumption on the premises; and

(ii) has an annual gross income of \$400,000 or less;

(12) **WHO** is employed in agriculture if, during each quarter of the preceding calendar year, the employer used no more than 500 agricultural-worker days;

(13) **WHO** is engaged principally in the range production of livestock;

(14) **WHO** is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that, in the region of employment, has been and customarily and generally is recognized as having been paid on that basis, if:

(i) the individual:

1. commutes daily from the permanent residence of the individual to the farm where the individual is employed; and

2. during the preceding calendar year, was employed in agriculture less than 13 weeks; or

(ii) the individual:

1. is under the age of 17;

2. is employed on the same farm as a parent of the individual or a person standing in the place of the parent; and

3. is paid at the same rate that an employee who is at least 17 years old is paid on the same farm;

(15) **WHO** is a covered employee under the Secure Maryland Wage Act; or

(16) (i) **WHO** has entered into a contract to play baseball at the minor league level; and

(ii) **WHO** is compensated in accordance with the terms of a collective bargaining agreement that expressly states the wages and working conditions of employees.

(B) (1) IN THIS SECTION, "CONSUMER PRICE INDEX" MEANS THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA OR A SUCCESSOR INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR STATISTICS.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2026, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE COMPENSATION RATE SHALL BE INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST CENT, THAT EQUALS THE PRODUCT OF:

(I) THE COMPENSATION RATE IN EFFECT FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD; AND

1 **(II) THE ANNUAL PERCENTAGE GROWTH IN THE CONSUMER**
2 **PRICE INDEX, AS DETERMINED BY THE COMMISSIONER UNDER PARAGRAPH (3)(I)**
3 **OF THIS SUBSECTION.**

4 **(3) BEGINNING MARCH 1, 2026, AND EACH SUBSEQUENT MARCH 1,**
5 **THE COMMISSIONER SHALL DETERMINE AND ANNOUNCE:**

6 **(I) THE ANNUAL PERCENTAGE GROWTH, IF ANY, IN THE**
7 **CONSUMER PRICE INDEX BASED ON THE MOST RECENT 12-MONTH PERIOD FOR**
8 **WHICH DATA IS AVAILABLE ON MARCH 1; AND**

9 **(II) THE COMPENSATION RATE EFFECTIVE FOR THE 12-MONTH**
10 **PERIOD BEGINNING ON THE FOLLOWING JULY 1.**

11 **(4) IF THERE IS A DECLINE OR NO GROWTH IN THE CONSUMER PRICE**
12 **INDEX, THE COMPENSATION RATE SHALL REMAIN THE SAME AS THE RATE THAT WAS**
13 **IN EFFECT FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
15 1, 2025.