

Georgia Bill Introduced to Not Tax Overtime Compensation: 4 Employer Considerations

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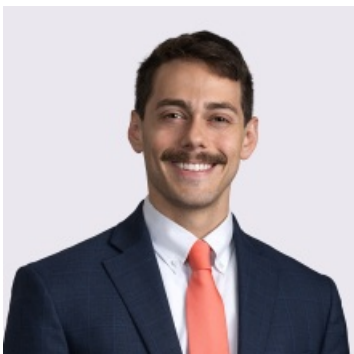
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Takeaways

- The new bill is broader than the FLSA and, if passed, would apply to all businesses.
- The bill proposes a reporting requirement for all Georgia businesses.
- If the Georgia bill is passed, there may be greater incentive for employees to bring overtime claims under the FLSA.
- If the bill becomes law, there may be a tax incentive to switch some salaried employees to an hourly rate.

Related link

- [House Bill 375](#) (text)

Article

A bill introduced in the Georgia state legislature, if passed, would exclude overtime compensation from Georgia state income taxes starting in 2026.

[House Bill 375](#) (H.B. 375), introduced on Feb. 11, 2025, would exclude from taxation any income received by a “full-time employee paid by an hourly wage as compensation for work performed in excess of 40 hours a week, and any amount paid as overtime compensation in accordance with the federal Fair Labor Standards Act” (FLSA). There have been promises of similar laws at the federal level, but no similar federal exclusion yet.

The proposal raises implications for Georgia businesses to consider:

1. H.B. 375 is broader than the FLSA and applies to all businesses.

The bill would impact a larger number of both employers and employees than the FLSA. Not all employers are covered by the FLSA and not all employees who are paid an hourly wage are covered by the FLSA. All employers and hourly wage employees, however, would be covered by H.B. 375.

By example, the FLSA does not apply to small businesses with an annual gross volume of sales less than \$500,000 whose employees do not engage in interstate commerce. H.B. 375 would apply to all businesses. Similarly, the FLSA does not apply to exempt employees. Some exempt employees may still be paid by the hour such as outside and inside salespeople under 29 U.S.C. § 207(i), employees covered by the seasonal or recreational amusement establishment exemption, or lawyers, doctors, and other “professionals” who are not required to earn a salary. H.B. 375 would reduce the taxes of any full-time employee, however, if they are paid an hourly wage instead of a salary.

2. H.B. 375 proposes a reporting requirement for all Georgia businesses.

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Wage and Hour

H.B. 375 would require employers to report all overtime pay information monthly or quarterly to the State of Georgia, Department of Revenue. The bill instructs employers to keep track of and report:

- The total amount paid for work performed in excess of 40 hours a week; and
- The total number of employees to which such compensation was paid.

Further, under the proposal, the Department of Revenue may require employers to provide additional information at its discretion.

The FLSA already requires covered employers to keep track of this information for non-exempt employees. H.B. 375 would expand this requirement to all Georgia businesses and add an affirmative reporting requirement. Because H.B. 375 would cover a larger number of employees, Georgia employers may not be able to rely on existing data or reports to comply with their reporting requirements under H.B. 375.

3. If the proposal is passed, there may be a greater incentive for employees to bring overtime claims under the FLSA.

The FLSA requires covered employers to pay non-exempt employees the federal minimum wage and “time and a half” for time worked in excess of 40 hours in any given week. There is no shortage of FLSA lawsuits based on actual, or perceived, overtime violations. Judgments and settlements paid because of alleged FLSA violations are subject to income taxation.

If H.B. 375 is passed, employees may have greater incentive to file FLSA lawsuits based on overtime violations because the intrinsic value of these claims will increase. If it is passed, H.B. 375 also could incentivize plaintiffs to attempt to allocate more damages to overtime claims than to regular pay claims during settlement discussions to avoid state taxation.

It would be even more important for Georgia employers to proactively ensure they are complying with the FLSA to avoid these lawsuits and to make sure that when negotiating FLSA settlements, they are appropriately apportioning damages.

4. If H.B. 375 is passed, there may be a tax incentive to switch some salaried employees to an hourly rate.

Under H.B. 375, switching some employees from a salary basis to an hourly basis could allow employers to put more money in their employees’ pockets without increasing wages.

The employee and employer would have to agree on an effective hourly rate that would not result in the employer paying more than the annual salary but still high enough that the employee would likely have more take-home pay after the H.B. 375 exclusion was applied.

This potential benefit could result in significant tax savings for almost any employee who works overtime if used properly even if they are exempt from the FLSA. If H.B. 375 is passed, Georgia businesses should evaluate their pay structure for a creative way to retain employees with higher take-home pay even when there is no room in the budget for additional pay.

The newly introduced bill highlights the importance of implementing good employment practices consistent with the requirements of the FLSA, making this a good time for employers to review their employment practices and consult counsel to ensure compliance.

If you have questions regarding the FLSA, H.B. 375, or any other employment issues, please contact a Jackson Lewis attorney.

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