



ASSOCIATED OREGON INDUSTRIES
OREGON BUSINESS ASSOCIATION
TESTIMONY ON SB 984
BEFORE THE SENATE WORKFORCE COMMITTEE



March 29, 2017

Senate Bill 984 addresses a recent change in the interpretation of how an employer should calculate pay for a manufacturing employee when that employee has worked enough daily overtime hours in one week that they end up also being owed weekly overtime. This situation arises frequently in many sectors of the manufacturing industry; for example, we have many high tech manufacturers whose employees routinely alternate working four 12 hour days in one work week, with three 12 hour days in the next week.

Because Oregon has specific daily overtime provisions for manufacturing employees AS WELL AS weekly overtime provisions for all employees, manufacturers have long relied on BOLI technical assistance manuals advising that “When employees who are entitled to * * * daily overtime have also worked more than 40 hours in the workweek, the employer should calculate overtime wages for hours worked on both a daily basis and weekly basis *and then pay the greater amount of the two.*”

Last fall, however, a lawsuit was filed alleging that the daily and weekly overtime statutes were separate laws and should therefore be enforced and paid separately. The result of this interpretation, if followed to its logical conclusion, would be that employees could end up being paid double overtime for any daily overtime hours that resulted in them working more than 40 hours per week.

Before that lawsuit could be decided, BOLI revised its technical assistance advice to state that instead of paying the greater of daily or weekly overtime, the employer should calculate wages earned for daily and weekly overtime and then “*pay both amounts.*”

By way of illustration, this interpretation means that if an employee works four 11-hour workdays in one week, totaling 44 hours, they would be entitled to eight hours of overtime pay instead of four.

Although the circuit court ultimately decided against the plaintiff’s interpretation, the law still needs to be clarified, which brings us to SB 984. SB 984, as amended, basically puts BOLI’s former interpretation back in place by saying that **“If an employee works more than 10 hours in one day as described in paragraph (a) of this subsection, and also works more than 40 hours in one week as referenced in ORS 653.261(1), the employer shall calculate overtime on a daily and weekly basis and pay the greater amount of the two. The employer satisfies both overtime requirements by doing so.”**

By placing this language in the law, the daily and weekly overtime statutes are coordinated in such a way as to give effect to both—daily and weekly overtime are each paid at a rate of 1 ½ times the regular rate of pay, without violating the weekly overtime statute’s prohibition on paying more than 1 ½ times the regular rate of pay for hours over 40.