

DRAFT

SUMMARY

Directs employer in specified industries to pay greater of daily or weekly overtime when employee is eligible for both in same workweek. Defines “workweek” for purposes of calculating weekly hours worked. Declares that employer satisfies certain overtime laws by paying greater of applicable daily or weekly overtime.

Prohibits employer from requiring certain employees to work more than 60 hours in one workweek.

Requires 10-hour rest period between certain work shifts.

Creates private cause of action to enforce certain overtime laws. Authorizes court to award costs, disbursements and reasonable attorney fees to prevailing party for violations of certain overtime laws.

A BILL FOR AN ACT

Relating to work time limits; creating new provisions; amending ORS 652.010, 652.020, 653.261, 653.265, 659A.885 and 652.990.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 652.020 is amended to read:

652.020. (1) **As used in this section, “workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.**

[(1)] **(2)(a)** *[No person shall be]* **An employer may not require an employee employed in any mill, factory or manufacturing establishment in this state to work more than:**

1 (A) 10 hours in any one day[, *or in sawmills, planing mills, shingle mills*
2 *and logging camps more than*];

3 (B) 55 hours in one workweek; or

4 (C) 60 hours in one workweek, and only if the employee requests
5 or consents to work more than 55 hours in one workweek. In no event
6 may an employer require or permit an employee to work more than
7 60 hours in one workweek.

8 (b) An employer may not require an employee employed in a
9 sawmill, planing mill, shingle mill or logging camps to work more
10 than:

11 (A) Eight hours, exclusive of one hour, more or less, in one day; or [*more*
12 *than*]

13 (B) 48 hours in one **workweek**. [*calendar week, except logging train crews,*
14 *guards, boiler operators and persons engaged in the transportation to and from*
15 *work, and employees when engaged in making necessary repairs, or in the case*
16 *of emergency where life and property are in imminent danger. However, em-*
17 *ployees may work overtime not to exceed three hours in one day, conditioned*
18 *that payment be made for said overtime at the rate of time and one-half the*
19 *regular wage.*]

20 (3)(a) Notwithstanding subsection (2) of this section, an employee
21 may work overtime up to three hours more than the applicable limit
22 for the maximum allowable hours of employment in one day as de-
23 scribed in subsection (2) of this section.

24 (b) An employer shall compensate an employee who works overtime
25 hours described in paragraph (a) of this subsection at one and one-half
26 times the employee's regular rate of pay for each overtime hour the
27 employee works.

28 (c) An employer shall calculate an employee's overtime compen-
29 sation on a daily basis under paragraph (b) of this subsection and on
30 a weekly basis under ORS 653.261 (1) and pay the greater of the two
31 amounts if, during the same workweek, the employee works more

1 **than:**

2 **(A) The applicable limit for the maximum allowable hours of em-**
3 **ployment in one day as described in subsection (2) of this section; and**

4 **(B) 40 hours in one workweek as described in ORS 653.261 (1).**

5 **(d) An employer that makes an overtime payment to an employee**
6 **pursuant to paragraph (c) of this subsection satisfies the overtime**
7 **compensation requirements under this subsection and ORS 653.261 (1).**

8 **(4) An employer may not:**

9 **(a) Require any employee employed in a mill, factory or manufac-**
10 **turing establishment in this state to begin a work shift less than 10**
11 **hours after the end of the employee's previous work shift if the**
12 **employee's previous work shift totaled eight or more hours, unless the**
13 **employer requires the employee to work additional hours due to dis-**
14 **ruptions in business operations caused by a power outage, major**
15 **equipment breakdown, severe weather or similar emergency outside**
16 **the employer's control;**

17 **[(2)] (b) [No employer shall] Require or permit any [person] employee to**
18 **work in any place [mentioned] described in this section more hours than the**
19 **hours provided for in this section during any day of 24 hours[.]; or**

20 **(c) [No employer shall permit or suffer] Permit an overseer, superinten-**
21 **dent or other agent of the employer to violate this section.**

22 **[(3)] (5) This section does not apply to:**

23 **(a) Logging train crews, guards or boiler operators;**

24 **(b) Persons engaged in the transportation of workers to and from**
25 **work;**

26 **(c) Persons employed in the care of quarters or livestock, conducting**
27 **messhalls, superintendence and direction of work[,] or to the loading and**
28 **removal of the finished forest product[.]; or**

29 **(d) An employee when engaged in making necessary repairs or in**
30 **the case of emergency where life and property are in imminent danger.**

31 **[(4)] (6) Subsections [(1) and] (2), (3) and (4) of this section do not apply**

1 to employees who are represented by a labor organization for purposes of
2 collective bargaining with their employer, provided limits on the required
3 hours of work and overtime payment have been agreed to between the em-
4 ployer and labor organization, or if no agreement is reached, then, for the
5 purposes of this subsection, such limits and payments shall not be deemed
6 to be changed from the previous collective bargaining agreement between the
7 employer and labor organization unless the employees have been locked out,
8 are engaged in a strike or the employer has unilaterally implemented new
9 terms and conditions of employment.

10 **(7)(a) In addition to any other remedy provided by law, an employee**
11 **has a private cause of action against an employer if the employer vi-**
12 **olates subsection (2) or (3) of this section by requiring the employee**
13 **to work more than:**

14 **(A) Three hours more than the applicable limit for the maximum**
15 **allowable hours of employment in one day; or**

16 **(B) The applicable limit for the maximum allowable hours of em-**
17 **ployment in one workweek.**

18 **(b) If the employee prevails in an action under this section, the**
19 **court shall enter judgment against the employer for:**

20 **(A) Actual damages or \$3,000, whichever is greater; and**

21 **(B) Equitable relief.**

22 **(c) In an action brought under this section, the court may award**
23 **to the prevailing party costs, disbursements and reasonable attorney**
24 **fees.**

25 **SECTION 2.** ORS 653.261 is amended to read:

26 653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries
27 may adopt rules prescribing such minimum conditions of employment, ex-
28 cluding minimum wages, in any occupation as may be necessary for the
29 preservation of the health of employees. The rules may include, but are not
30 limited to, minimum meal periods and rest periods, and maximum hours of
31 work, but not less than eight hours per day or 40 hours per [week]

1 **workweek**; however, after 40 hours of work in one [*week*] **workweek** over-
2 time may be paid, but in no case at a rate higher than one and one-half times
3 the regular rate of pay of the employees when computed without benefit of
4 commissions, overrides, spiffs and similar benefits.

5 **(b) As used in this subsection, “workweek” means a fixed period of**
6 **time established by an employer that reflects a regularly recurring**
7 **period of 168 hours or seven consecutive 24-hour periods. A workweek**
8 **may begin on any day of the week and any hour of the day and need**
9 **not coincide with a calendar week. The beginning of the workweek**
10 **may be changed if the change is intended to be permanent and is not**
11 **designed to evade overtime requirements.**

12 (2) Nothing [*contained*] in ORS 653.010 to 653.261 shall be construed to
13 confer authority upon the commissioner to regulate the hours of employment
14 of employees engaged in production, harvesting, packing, curing, canning,
15 freezing or drying any variety of agricultural crops, livestock, poultry or
16 fish.

17 (3) Rules adopted by the commissioner pursuant to subsection (1) of this
18 section do not apply to individuals employed by this state or a political
19 subdivision or quasi-municipal corporation thereof if other provisions of law
20 or collective bargaining agreements prescribe rules pertaining to conditions
21 of employment referred to in subsection (1) of this section, including meal
22 periods, rest periods, maximum hours of work and overtime.

23 (4) Rules adopted by the commissioner pursuant to subsection (1) of this
24 section regarding meal periods and rest periods do not apply to nurses who
25 provide acute care in hospital settings if provisions of collective bargaining
26 agreements entered into by the nurses prescribe rules concerning meal peri-
27 ods and rest periods.

28 (5)(a) The commissioner shall adopt rules regarding meal periods for em-
29 ployees who serve food or beverages, receive tips and report the tips to the
30 employer.

31 (b) In rules adopted by the commissioner under paragraph (a) of this

1 subsection, the commissioner shall permit an employee to waive a meal pe-
2 riod. However, an employer may not coerce an employee into waiving a meal
3 period.

4 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty
5 provided by law, the commissioner may assess a civil penalty not to exceed
6 \$2,000 against an employer that the commissioner finds has coerced an em-
7 ployee into waiving a meal period in violation of this subsection. Each vio-
8 lation is a separate and distinct offense. In the case of a continuing
9 violation, each day's continuance is a separate and distinct violation.

10 (d) Civil penalties authorized by this subsection shall be imposed in the
11 manner provided in ORS 183.745. All sums collected as penalties under this
12 subsection shall be applied and paid over as provided in ORS 653.256 (4).

13 **SECTION 3.** ORS 653.265 is amended to read:

14 653.265. [*When employed in canneries or driers or packing plants, excluding*
15 *canneries or driers or packing plants located on farms and primarily process-*
16 *ing products produced on such farms, employees shall be paid time and a half*
17 *for time over 10 hours per day and piece workers shall be paid one and a half*
18 *the regular prices for all work done during the time they are employed over*
19 *10 hours per day.*]

20 **(1) As used in this section, "workweek" means a fixed period of time**
21 **established by an employer that reflects a regularly recurring period**
22 **of 168 hours or seven consecutive 24-hour periods. A workweek may**
23 **begin on any day of the week and any hour of the day and need not**
24 **coincide with a calendar week. The beginning of the workweek may**
25 **be changed if the change is intended to be permanent and is not de-**
26 **signed to evade overtime requirements.**

27 **(2) An employer may not require an employee employed in any**
28 **cannery, drier or packing plant in this state to work more than:**

29 **(a) 10 hours in any one day;**

30 **(b) 55 hours in one workweek; or**

31 **(c) 60 hours in one workweek, and only if the employee requests or**

1 **consents to work more than 55 hours in one workweek.**

2 **(3)(a) Notwithstanding subsection (2) of this section, an employee**
3 **may work more than 10 hours in any one day if the employer com-**
4 **pensates the employee as follows:**

5 **(A) One and one-half times the employee's regular rate of pay for**
6 **each hour the employee works over 10 hours in any one day if the**
7 **employee is an hourly employee; or**

8 **(B) One and one-half times the regular price for all work done**
9 **during the time the employee is employed over 10 hours per day if the**
10 **employee is a piece worker.**

11 **(b) An employer shall calculate an employee's overtime on a daily**
12 **basis under paragraph (a) of this subsection and on a weekly basis**
13 **under ORS 653.261 (1) and pay the greater of the two amounts if, dur-**
14 **ing the same workweek, the employee works more than:**

15 **(A) 10 hours in one day as described in paragraph (a) of this sub-**
16 **section; and**

17 **(B) 40 hours in one workweek as described in ORS 653.261 (1).**

18 **(c) An employer that makes an overtime payment to an employee**
19 **pursuant to paragraph (b) of this subsection satisfies the overtime**
20 **compensation requirements under this subsection and ORS 653.261 (1).**

21 **(4)(a) In addition to any other remedy provided by law, an employee**
22 **has a private cause of action against an employer if the employer vi-**
23 **olates subsection (2)(b) or (c) of this section by requiring the employee**
24 **to work more than the applicable limit for the maximum allowable**
25 **hours of employment in one workweek.**

26 **(b) If the employee prevails in an action brought under this section,**
27 **the court shall enter judgment against the employer for:**

28 **(A) Actual damages or \$3,000, whichever is greater; and**

29 **(B) Equitable relief.**

30 **(c) In an action brought under this section, the court may award**
31 **to the prevailing party costs, disbursements and reasonable attorney**

1 fees.

2 **SECTION 4. (1) Any employee asserting a violation of ORS 652.020**
3 **or 653.265 may file a complaint with the Commissioner of the Bureau**
4 **of Labor and Industries under ORS 659A.820 or a civil action as pro-**
5 **vided in ORS 659A.885.**

6 **(2) In addition to any other damages provided by law, the commis-**
7 **sioner may assess a civil penalty against the employer in the amount**
8 **of:**

9 **(a) \$500 for the first violation.**

10 **(b) \$1,000 for any subsequent violation that occurs within 10 years**
11 **of the first violation.**

12 **(3) The commissioner shall waive 50 percent of the amount of any**
13 **civil penalty imposed by order under this section if the commissioner**
14 **determines that the employer paid the full remedy due to an aggrieved**
15 **party, not including any civil penalty, within 14 days after the order**
16 **imposing the remedy becomes final by operation of law or on appeal.**

17 **(4) Civil penalties authorized by this section shall be imposed in the**
18 **manner provided in ORS 183.745.**

19 **(5) An employer may not retaliate or in any way discriminate**
20 **against an individual with respect to hire or tenure or any other term**
21 **or condition of employment because the individual has inquired about**
22 **the provisions of this section or ORS 652.020, 653.261 or 653.265 or has**
23 **reported a violation to, or filed a complaint with, the Bureau of Labor**
24 **and Industries.**

25 **SECTION 5. ORS 659A.885, as amended by section 5, chapter 73, Oregon**
26 **Laws 2016, is amended to read:**

27 **659A.885. (1) Any person claiming to be aggrieved by an unlawful practice**
28 **specified in subsection (2) of this section may file a civil action in circuit**
29 **court. In any action under this subsection, the court may order injunctive**
30 **relief and any other equitable relief that may be appropriate, including but**
31 **not limited to reinstatement or the hiring of employees with or without back**

1 pay. A court may order back pay in an action under this subsection only for
2 the two-year period immediately preceding the filing of a complaint under
3 ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries,
4 or if a complaint was not filed before the action was commenced, the two-
5 year period immediately preceding the filing of the action. In any action
6 under this subsection, the court may allow the prevailing party costs and
7 reasonable attorney fees at trial and on appeal. Except as provided in sub-
8 section (3) of this section:

9 (a) The judge shall determine the facts in an action under this subsection;
10 and

11 (b) Upon any appeal of a judgment in an action under this subsection, the
12 appellate court shall review the judgment pursuant to the standard estab-
13 lished by ORS 19.415 (3).

14 (2) An action may be brought under subsection (1) of this section alleging
15 a violation of ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2),
16 475B.233, 476.574, **652.020**, 652.355, 653.060, **653.265**, 653.601 to 653.661, 659.852,
17 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082,
18 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199,
19 659A.203, 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to
20 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,
21 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

22 (3) In any action under subsection (1) of this section alleging a violation
23 of ORS 25.337, 25.424, 659.852, 659A.030, 659A.040, 659A.043, 659A.046,
24 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228,
25 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or
26 653.549:

27 (a) The court may award, in addition to the relief authorized under sub-
28 section (1) of this section, compensatory damages or \$200, whichever is
29 greater, and punitive damages;

30 (b) At the request of any party, the action shall be tried to a jury;

31 (c) Upon appeal of any judgment finding a violation, the appellate court

1 shall review the judgment pursuant to the standard established by ORS
2 19.415 (1); and

3 (d) Any attorney fee agreement shall be subject to approval by the court.

4 (4) In any action under subsection (1) of this section alleging a violation
5 of ORS 652.355 or 653.060, the court may award, in addition to the relief
6 authorized under subsection (1) of this section, compensatory damages or
7 \$200, whichever is greater.

8 (5) In any action under subsection (1) of this section alleging a violation
9 of ORS 171.120, 476.574 or 659A.218, the court may award, in addition to the
10 relief authorized under subsection (1) of this section, compensatory damages
11 or \$250, whichever is greater.

12 (6) In any action under subsection (1) of this section alleging a violation
13 of ORS 10.090 or 10.092, the court may award, in addition to the relief au-
14 thorized under subsection (1) of this section, a civil penalty in the amount
15 of \$720.

16 (7) Any individual against whom any distinction, discrimination or re-
17 striction on account of race, color, religion, sex, sexual orientation, national
18 origin, marital status or age, if the individual is 18 years of age or older,
19 has been made by any place of public accommodation, as defined in ORS
20 659A.400, by any employee or person acting on behalf of the place or by any
21 person aiding or abetting the place or person in violation of ORS 659A.406
22 may bring an action against the operator or manager of the place, the em-
23 ployee or person acting on behalf of the place or the aider or abettor of the
24 place or person. Notwithstanding subsection (1) of this section, in an action
25 under this subsection:

26 (a) The court may award, in addition to the relief authorized under sub-
27 section (1) of this section, compensatory and punitive damages;

28 (b) The operator or manager of the place of public accommodation, the
29 employee or person acting on behalf of the place, and any aider or abettor
30 shall be jointly and severally liable for all damages awarded in the action;

31 (c) At the request of any party, the action shall be tried to a jury;

1 (d) The court shall award reasonable attorney fees to a prevailing
2 plaintiff;

3 (e) The court may award reasonable attorney fees and expert witness fees
4 incurred by a defendant who prevails only if the court determines that the
5 plaintiff had no objectively reasonable basis for asserting a claim or no
6 reasonable basis for appealing an adverse decision of a trial court; and

7 (f) Upon any appeal of a judgment under this subsection, the appellate
8 court shall review the judgment pursuant to the standard established by ORS
9 19.415 (1).

10 (8) When the commissioner or the Attorney General has reasonable cause
11 to believe that a person or group of persons is engaged in a pattern or
12 practice of resistance to the rights protected by ORS 659A.145 or 659A.421
13 or federal housing law, or that a group of persons has been denied any of the
14 rights protected by ORS 659A.145 or 659A.421 or federal housing law, the
15 commissioner or the Attorney General may file a civil action on behalf of
16 the aggrieved persons in the same manner as a person or group of persons
17 may file a civil action under this section. In a civil action filed under this
18 subsection, the court may assess against the respondent, in addition to the
19 relief authorized under subsections (1) and (3) of this section, a civil penalty:

20 (a) In an amount not exceeding \$50,000 for a first violation; and

21 (b) In an amount not exceeding \$100,000 for any subsequent violation.

22 (9) In any action under subsection (1) of this section alleging a violation
23 of ORS 659A.145 or 659A.421 or alleging discrimination under federal housing
24 law, when the commissioner is pursuing the action on behalf of an aggrieved
25 complainant, the court shall award reasonable attorney fees to the commis-
26 sioner if the commissioner prevails in the action. The court may award rea-
27 sonable attorney fees and expert witness fees incurred by a defendant that
28 prevails in the action if the court determines that the commissioner had no
29 objectively reasonable basis for asserting the claim or for appealing an ad-
30 verse decision of the trial court.

31 (10) In an action under subsection (1) or (8) of this section alleging a vi-

1 violation of ORS 659A.145 or 659A.421 or discrimination under federal housing
2 law:

3 (a) "Aggrieved person" includes a person who believes that the person:

4 (A) Has been injured by an unlawful practice or discriminatory housing
5 practice; or

6 (B) Will be injured by an unlawful practice or discriminatory housing
7 practice that is about to occur.

8 (b) An aggrieved person in regard to issues to be determined in an action
9 may intervene as of right in the action. The Attorney General may intervene
10 in the action if the Attorney General certifies that the case is of general
11 public importance. The court may allow an intervenor prevailing party costs
12 and reasonable attorney fees at trial and on appeal.

13 **SECTION 6.** ORS 652.010 is amended to read:

14 652.010. (1) It is the public policy of this state that no person shall be
15 hired, nor permitted to work for wages, under any conditions or terms, for
16 longer hours or days of service than is consistent with the person's health
17 and physical well-being and ability to promote the general welfare by the
18 person's increasing usefulness as a healthy and intelligent citizen.

19 (2) It hereby is declared that the working of any person more than 10
20 hours in one day in any mill, factory or manufacturing establishment or the
21 working of any person more than eight hours, exclusive of one hour, more
22 or less, in one day, or more than 48 hours in one [*calendar week*] **workweek,**
23 **as defined in ORS 652.020,** in sawmills, planing mills, shingle mills and
24 logging camps is injurious to the physical health and well-being of such
25 person, and tends to prevent the person from acquiring that degree of intel-
26 ligence that is necessary to make the person a useful and desirable citizen
27 of the state.

28 **SECTION 7.** ORS 652.990 is amended to read:

29 652.990. (1) Violation of ORS 652.020 [(2)] **(4)(b) or (c)** is a Class A vio-
30 lation. Every day's violation is deemed a separate offense.

31 (2) Any person, body corporate, general manager or employer who violates

1 ORS 652.040 or causes ORS 652.040 to be violated commits a Class C
2 misdemeanor.

3 (3) Violation of ORS 652.110 or 652.120 is a Class A violation.

4 (4) Violation of ORS 652.130 by any employer is a Class C misdemeanor.

5 (5) In addition to the civil damages recoverable under ORS 652.230, vio-
6 lation of ORS 652.210 to 652.230 is a Class A misdemeanor.

7 (6) The violation of ORS 652.240 is a Class A misdemeanor.

8 (7) Violation of ORS 652.355 is a Class C misdemeanor.

9 (8) Violation of ORS 652.610 or 652.620 is a Class D violation.

10 (9) Willful violation of ORS 652.635 or 652.640 by a producer or agent of
11 the producer is a Class A misdemeanor.

12 (10) Violation of any of the provisions of ORS 652.710 or 652.720 by any
13 employer is a Class A violation.

14
