



## Oregon Bureau of Labor and Industries

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### Memo

**DATE:** June 5, 2017  
**TO:** Interested Parties  
**FROM:** Gerhard Taeubel, Administrator, Wage and Hour Division, Bureau of Labor and Industries  
**RE:** Manufacturing Overtime

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During this legislative session two bills have been introduced to clarify how ORS 652.020 (daily overtime in manufacturing) and ORS 653.261 (overtime after 40 hours) work together. It has become clear to me as we near final resolution of these issues that there is confusion regarding which industries are subject to the provisions of ORS 652.020. This memo seeks to provide insight and clarity to those questions.

### **ORS 652.020 Maximum working hours in certain industries; overtime hours and pay; exemptions.**

(1) No person shall be employed in *any mill, factory or manufacturing establishment* in this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and logging camps more the eight hours, exclusive of one hour, more or less, in one day or more than 48 hours in one calendar week, except logging train crews, guards, boiler operators and persons engaged in the transportation to and from work, and employees when engaged in making necessary repairs, or in the case of emergency where life and property are in imminent danger. However, employees may work overtime not to exceed three hours in one day, conditioned that payment be made for said overtime at the rate of time and one-half the regular wage. (*emphasis added*)

### **OAR 839-001-0100 Definitions**

As used in ORS 652.010 to 652.030 and in OAR 839-001-0100 to 839-001-0200, unless the context requires otherwise:

(9) "Factory" means a building or set of buildings with facilities for manufacturing; the seat of some kind of production. "Factory" in the context used in these rules is a "manufacturing establishment".

(11) "Manufacturing Establishment" means any place where machinery is used for manufacturing purposes:

(a) "Manufacturing" in the context used in these rules means the process of making goods or any material produced by machinery; anything made from raw materials by machinery; the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, by the use of machinery;

(b) As used in this subsection, "machinery" means power driven machinery by electricity, nuclear and fossil fuels, hydroelectric, geothermal, or some power source other than by human hand, foot, breath or otherwise.

(12) "Mill" means a building or collection of buildings with machines for manufacturing. "Mills" in the context used in these rules are "manufacturing establishments".

When read broadly the definitions of "manufacturing" and "manufacturing establishment" can lead one to conclude that many types of work activities not ordinarily perceived as "manufacturing" are covered by the definitions and as such are subject to the overtime regulations applicable to manufacturing industries. The administrative rules give "manufacturing" a broad meaning, insofar as the fabrication of goods – "the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations" (OAR 839-001-0100[11][a]) – by means of power-driven machinery generally occurs in various ways and in many different types of workplaces. However, "manufacturing" is defined in order to clarify what type of establishment is a "manufacturing establishment" for the purposes of ORS 652.020. It is not merely the fact that a person is engaged in manufacturing work that gives rise to the work hour restrictions established by ORS 652.020; the person must be employed in a manufacturing establishment. As such, in the administrative rules, we get no further than a description of a "manufacturing establishment" as a place where the manufacturing of products by mechanical means is carried out.

It is for this reason I think it is necessary to consider the context of ORS 652.020 to better understand its scope. ORS 652.020 applies to persons employed in "any mill, factory or manufacturing establishment...or in sawmills, planing mills, shingle mills and logging camps." For purposes of restricting the work hours of person in "certain industries," the statute places manufacturing establishments in a class with mills, factories, and logging camps. The administrative rules reinforce this association when, in defining the statute's terms, they equate a factory or mill with a manufacturing establishment. In doing so, the regulations seem to have in mind manufacturing of the kind that occurs in a certain type of setting, that is to say, employment within a facility that is commonly understood to be a factory, mill, or some similar type of building. In other words, a manufacturing establishment is an establishment that, like a mill or factory, is operated for the purpose of making or producing articles or goods through the use of machinery.

For example, bakers in a restaurant might be said to "manufacture" bread when using power-driven equipment to transform ingredients into dough, which they bake in ovens. However, they are not manufacturing bread in a factory, mill or manufacturing establishment as these

terms are used by the statute. On the other hand, a person employed in a facility where bread is produced systematically with the use of machinery on a large scale is likely performing such work in a facility that is a factory or manufacturing establishment.

It may also be helpful to look at the definition of manufacturing sector from the North American Industry Classification System:

The Manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products.

Establishments in the Manufacturing sector are often described as plants, factories, or mills and characteristically use power-driven machines and materials-handling equipment.

Bureau of Labor Statistics, <https://www.bls.gov/iag/tgs/iag31-33.htm>, accessed May 30, 2017.

Some of the representatives from the various agricultural industries have asked whether the bundling, cutting, or harvesting of agricultural products could be considered “manufacturing.” Even read broadly, a tree that was once in the ground and is now bundled or trimmed for sale to the public has not become a “new product” in any real sense. Similarly, hay that has been harvested and put into bales remains the same product before and after a power-driven machine harvested the hay. Merely packaging or packing an agricultural product does not constitute manufacturing for the purposes of ORS 652.020.

Finally, there are a number of definitions and exemptions in administrative rules that may be helpful to understand the scope of employees and activities covered by ORS 652.020.

This is how the administrative rules direct BOLI’s determination of what it means to be “employed in” a manufacturing establishment:

(1) As used in ORS 652.020, the term "employed in" refers to employees who are actually employed in the mill, factory or manufacturing establishment. Employees who are employed by the same employer but not employed to perform duties in a mill, factory, or manufacturing establishment are not covered by ORS 652.020 because they are not "employed in" the establishment.

(2) Employees who are employed to perform duties that do not include work in connection with production machinery in a mill, factory, or manufacturing establishment but perform their duties in a location that is physically separated from the actual production process by means of an architectural barrier, are not covered by ORS 652.020 because they are not "employed in" the establishment.

Additionally, there are some of the categories of employees exempt from ORS 652.020:

Any employee who as one of his/her regular duties is engaged in the transportation of other employees to and from work;

Any employee whose primary duty is that of making necessary repairs. This includes employees conducting maintenance on buildings, equipment or machinery;

Any employee whose primary duty is that of feeding, grooming, guarding or otherwise caring for livestock by, among other things, cleaning and repairing the areas in which the livestock is kept;

Any employee whose primary duty is that of supervising and directing work. This includes supervisors, managers, foremen/women and persons who are temporarily acting in these capacities in the absence of the named employees;

Any employee whose primary duty is the loading and removal of finished forest products. This includes employees engaged in shipping or otherwise removing the final finished forest product from the establishment's premises. This applies to finished products only and not to products shipped for further processing at another location.

ORS 652.020's purpose is clear: it is meant to preserve the "health and physical well-being" of persons by restricting their hours of work. That is the reason why the Legislature first established a 13-hour cap on the number of hours a person is permitted to work in a 24-hour period. The protections provided by ORS 652.020 apply to workers employed in certain types of workplaces. In 1913, concerns about worker health and safety were primarily focused on mines, mills, factories, laundries and similar types of workplaces. That said, employers should carefully evaluate whether it is truly necessary to have individuals work more than 13 hours in a single 24-hour period or more than 60 hours in a one-week period.