

SB 984 A STAFF MEASURE SUMMARY

Carrier: Sen. Knopp

Senate Committee On Workforce

Action Date: 04/17/17

Action: Do pass with amendments. (Printed A-Eng.)

Vote: 5-0-0-0

Yeas: 5 - Gelser, Hansell, Knopp, Monnes Anderson, Taylor

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

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WHAT THE MEASURE DOES:

Requires employers in industry subject to statutes requiring overtime pay for work exceeding maximum statutory hours in any one day to calculate employee's overtime on daily and weekly basis, and to pay greater of two amounts if, during same week, employee exceeds applicable limit for maximum allowable employment hours in one day and one week. Defines "week" as any consecutive 168-hour period. Establishes that employer satisfies overtime laws in ORS 652.020(1)(a) and 653.261(1) by making overtime payments pursuant to that calculation. Creates private right of action and authorizes court to award costs, disbursements, and reasonable attorney fees to prevailing party for violations of overtime requirements in ORS 652.020.

ISSUES DISCUSSED:

- Calculation of overtime pay under the measure
- Bureau of Labor and Industries guidance to employers concerning calculation of overtime pay
- March 2017 court ruling concerning calculation of overtime pay
- Legislative history of overtime pay laws
- Maximum work hours laws
- Potential impact of measure on employers
- Calculation of overtime pay in other states
- Work conditions of manufacturing jobs

EFFECT OF AMENDMENT:

Adds provisions defining "week" as any consecutive 168-hour period to daily and weekly overtime laws. Clarifies requirement that employer in mill, factory or manufacturing establishment, and in certain canneries, driers, or packing plants, calculates employee's overtime on daily and weekly basis and pays greater of two amounts if, during same week, employee exceeds applicable limit for maximum allowable employment hours in one day and one week. Establishes that employer satisfies overtime laws in ORS 652.020(1)(a) and 653.261(1) by making overtime payments pursuant to that calculation. Creates private right of action and authorizes court to award costs, disbursements, and reasonable attorney fees to prevailing party for violations of overtime requirements in ORS 652.020.

BACKGROUND:

The payment of overtime is required by both federal and state laws. The Bureau of Labor and Industries (BOLI) has authority to administer Oregon's wage and hour statutes, including the provisions concerning overtime payments.

Oregon law requires most employers to pay overtime to eligible employees at the rate of one and one-half times the employee's regular rate for all hours worked beyond 40 in the work week. (ORS 653.261) Special overtime rules apply to government agencies, hospitals, canneries and manufacturing establishments, providing for payment of overtime on a daily basis. (ORS 652.020; ORS 653.265)

This Summary has not been adopted or officially endorsed by action of the committee.

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The BOLI Wage and Hour Division provides guidance to employers regarding state overtime laws in its Technical Assistance for Employers and Field Operations Manuals. In December 2016, BOLI revised its guidance concerning situations where an employee who is entitled to daily overtime has worked more than 40 hours in the workweek and has also exceeded the maximum number of hours on one or more days, thereby earning daily overtime. Prior to December 2016, BOLI's Wage and Hour Laws Handbook for Oregon Employers advised that employers should calculate overtime wages for hours worked on both a daily basis and a weekly basis, and then *pay the greater amount of the two*. BOLI currently advises that employers should calculate overtime wages earned for hours worked on both a daily basis and a weekly basis, and then *pay both amounts*. See http://www.oregon.gov/boli/TA/pages/t_faq_tamanufacturing.aspx.

In March 2017, the Multnomah County Circuit Court denied a claim in *Mazahua Reyes, et al. v. Portland Specialty Baking, LLC* that would have required an employer to pay both amounts for overtime in such a situation based on the current statutory structure.

Senate Bill 984-A amends statutes concerning requirements for employers in certain industries to pay overtime on a daily basis by requiring the employer to calculate the overtime payment on both a daily and weekly basis and to pay the employee the greater of the two amounts. The measure also creates a private right of action and authorizes the court to award costs, disbursements, and reasonable attorney fees to a prevailing party for violations of overtime requirements in ORS 652.020.