

HB 3458 A STAFF MEASURE SUMMARY**Carrier:** Rep. Holvey**House Committee On Rules****Action Date:** 06/22/17**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 5-4-0-0**Yeas:** 5 - Holvey, Nosse, Rayfield, Smith Warner, Williamson**Nays:** 4 - Barreto, Hack, Kennemer, McLane**Fiscal:** No fiscal impact**Revenue:** No revenue impact**Prepared By:** Erin Seiler, LPRO Analyst**WHAT THE MEASURE DOES:**

Directs employer in manufacturing and food processing sectors to pay greater of daily or weekly overtime when employee is eligible for both in same workweek, as defined, and declares employers compliant with certain overtime laws by doing so. Prohibits employer from requiring certain employees to work more than 55 hours in one workweek. Requires 10-hour rest period between certain shifts. Allows employee engaged in manufacturing and food processing sectors to work up to 80 hours per workweek no more than 120 calendar days per year if employer is eligible for undue hardship period exemption which requires: work processing perishable products after harvest, catch or slaughter; notice to BOLI; and employee's written consent. Creates private cause of action to enforce certain overtime laws: authorizes court to award costs, disbursements and reasonable attorney fees to prevailing plaintiff for certain violations; clarifies that court shall enter judgment of actual damages or \$3,000 per claim, whichever is greater, if employee prevails and adds award of liquidated damages equal to twice overtime wages earned. Permits BOLI to assess civil penalty of \$1,000 for violation of overtime provisions. Establishes civil penalty of \$2,000 for coercing employee to work up to 60 hours and \$3,000 for coercing consent to work up to 80 hours in workweek. Clarifies that overtime exemption in manufacturing, mills and factories exists in cases of emergency where life or property is in imminent danger.

ISSUES DISCUSSED:

- Clarifying interaction between two overtime statutes
- Application of overtime statutes to manufacturing sector
- Bureau of Labor and Industries guidance to employers concerning calculation of overtime pay
- March 2017 court ruling concerning calculation of overtime pay
- Undue hardship period exemption available to employers
- Worker protections
- Utilization of voluntary overtime
- Work conditions of manufacturing jobs
- Hardship period exemption for time- or season-sensitive processing of goods
- Legislative history of overtime issue
- Process for seeking undue hardship period exemption

EFFECT OF AMENDMENT:

Allows employee engaged in manufacturing to work up to 80 hours per workweek for no more than 120 calendar days per year if employer is eligible for undue hardship period exemption: work must involve processing perishable products after harvest, catch or slaughter; BOLI must be notified; and employee must consent in writing. Clarifies private actions as follows: court shall enter judgment of actual damages or \$3,000 per claim, whichever is greater, if employee prevails; award of liquidated damages equal to twice overtime wages earned may be added; and attorney fees may only be awarded to prevailing plaintiff. Clarifies that BOLI may assess civil penalty of \$1,000 for violation of overtime provisions. Establishes civil penalty of \$2,000 for coercing employee to work up to 60 hours and \$3,000 for

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coercing consent to work up to 80 hours in workweek. Clarifies that overtime exemption in manufacturing, mills and factories exists in cases of emergency where life or property is in imminent danger.

BACKGROUND:

The payment of overtime is required by both federal and state laws. The Bureau of Labor and Industries (BOLI) administers Oregon's wage and hour statutes, including provisions concerning overtime payments, and provides guidance to employers. Oregon law requires most employers to pay overtime to eligible employees at one-and-a-half times the employee's regular pay rate for all hours worked beyond 40 in the workweek. Special rules provide for payment of overtime on a daily basis at government agencies, hospitals, canneries and manufacturing establishments.

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's guidance changed after situations arose where employees exceeded both maximums for hours worked on one or more days and in the workweek. BOLI currently advises employers to calculate overtime wages earned for hours worked on both a daily and a weekly basis, and then pay both amounts. In March 2017, the Multnomah County Circuit Court decided a case inconsistent with BOLI's guidance, denying a claim in *Mazahua Reyes, et al. v. Portland Specialty Baking, LLC*, that would have required an employer to pay both daily and weekly amounts for overtime.

House Bill 3458-A modifies daily overtime payment by employers in the manufacturing and food processing sectors to require calculation on both daily and weekly basis and payment of the larger of the two amounts. In addition, the measure prohibits employers from requiring employees to work more than 55 hours in a workweek, but an "undue hardship exemption" enables an employee to consent to work up to 80 hours in a workweek for no more than 120 calendar days.