

Corrected

HB 3458 B STAFF MEASURE SUMMARY

Carrier: Sen. Taylor, Sen. Knopp

Senate Committee On Rules**Action Date:** 07/01/17**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 4-0-1-0**Yeas:** 4 - Boquist, Burdick, Ferrioli, Roblan**Exc:** 1 - Beyer**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Cherie Stone, 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 and declares employers compliant with certain overtime laws by doing so. Prohibits employer from requiring manufacturing and food processing employees to work more than 55 hours in workweek. Permits employee to work up to 60 hours in workweek if consented to in writing. Allows employee engaged in manufacturing and food processing sectors to work up to 84 hours per workweek for no more than 4 workweeks, and up to 80 hours for 17 workweeks per year, if employer is eligible for undue hardship exemption. Establishes undue hardship exemption requires the following: work processing perishable products after harvest, catch, or slaughter; notice to Bureau of Labor and Industries (BOLI); and employee's written consent. Directs seafood processing employer to pay both daily and weekly overtime when employee is eligible for both in same workweek. Exempts seafood processing employees from weekly cap on hours worked. Authorizes BOLI to establish rules for employee consent and undue hardship period notification forms. 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 must 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. Establishes civil penalty of \$2,000 for coercing employee to work 55 hours in a workweek and \$3,000 for coercing employee to work up to 55 hours in workweek during undue hardship period. Establishes operative date of January 1, 2018. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Clarifying interaction between two overtime statutes
- Undue hardship period exemption available to employers
- BOLI rulemaking authority
- Safety of Workers

EFFECT OF AMENDMENT:

Directs employer in seafood processing sector to pay greater of daily or weekly overtime when employee is eligible for both in same workweek. Modifies undue hardship period requirements to permit specified employees to work up to 84 hours per workweek for 4 weeks, and up to 80 hours per workweek for remaining 17 weeks of an undue hardship period. Establishes operative date. Declares an emergency, effective on passage.

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

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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-B modifies 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. The measure also specifies that seafood processing employees are eligible for both daily and weekly overtime and are not subject to the weekly cap on hours worked. In addition, the measure prohibits employers from requiring manufacturing and food processing employees to work more than 55 hours in a workweek, but an "undue hardship exemption" enables an employee to consent to work up to 84 hours for four workweeks, and up to 80 hours for 17 workweeks, in a calendar year when processing perishable products.