

House Bill 3458

Sponsored by COMMITTEE ON RULES (at the request of Representative Jennifer Williamson)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

1
2 Relating to work time limits; creating new provisions; amending ORS 652.010, 652.020, 653.261,
3 653.265, 659A.885 and 652.990.

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

5 **SECTION 1.** ORS 652.020 is amended to read:

6 652.020. (1) **As used in this section, "workweek" means a fixed period of time established**
7 **by an employer that reflects a regularly recurring period of 168 hours or seven consecutive**
8 **24-hour periods. A workweek may begin on any day of the week and any hour of the day and**
9 **need not coincide with a calendar week. The beginning of the workweek may be changed if**
10 **the change is intended to be permanent and is not designed to evade overtime requirements.**

11 [(1)] (2)(a) [No person shall be] **An employer may not require an employee** employed in any
12 mill, factory or manufacturing establishment in this state **to work** more than:

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

15 (B) **55 hours in one workweek; or**

16 (C) **60 hours in one workweek, and only if the employee requests or consents to work**
17 **more than 55 hours in one workweek. In no event may an employer require or permit an**
18 **employee to work more than 60 hours in one workweek.**

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

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

22 (B) 48 hours in one **workweek**. [calendar week, except logging train crews, guards, boiler opera-
23 tors and persons engaged in the transportation to and from work, and employees when engaged in
24 making necessary repairs, or in the case of emergency where life and property are in imminent danger.
25 However, employees may work overtime not to exceed three hours in one day, conditioned that payment
26 be made for said overtime at the rate of time and one-half the regular wage.]

27 (3)(a) **Notwithstanding subsection (2) of this section, an employee may work overtime up**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.
New sections are in **boldfaced** type.

1 to three hours more than the applicable limit for the maximum allowable hours of employ-
 2 ment in one day as described in subsection (2) of this section.

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

6 (c) An employer shall calculate an employee's overtime compensation on a daily basis
 7 under paragraph (b) of this subsection and on a weekly basis under ORS 653.261 (1) and pay
 8 the greater of the two amounts if, during the same workweek, the employee works more
 9 than:

10 (A) The applicable limit for the maximum allowable hours of employment in one day as
 11 described in subsection (2) of this section; and

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

13 (d) An employer that makes an overtime payment to an employee pursuant to paragraph
 14 (c) of this subsection satisfies the overtime compensation requirements under this sub-
 15 section and ORS 653.261 (1).

16 (4) An employer may not:

17 (a) Require any employee employed in a mill, factory or manufacturing establishment in
 18 this state to begin a work shift less than 10 hours after the end of the employee's previous
 19 work shift if the employee's previous work shift totaled eight or more hours, unless the
 20 employer requires the employee to work additional hours due to disruptions in business op-
 21 erations caused by a power outage, major equipment breakdown, severe weather or similar
 22 emergency outside the employer's control;

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

26 (c) [No employer shall permit or suffer] Permit an overseer, superintendent or other agent of the
 27 employer to violate this section.

28 [(3)] (5) This section does not apply to:

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

30 (b) Persons engaged in the transportation of workers to and from work;

31 (c) Persons employed in the care of quarters or livestock, conducting mess halls,
 32 superintendence and direction of work[,] or to the loading and removal of the finished forest
 33 product[.]; or

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

36 [(4)] (6) Subsections [(1) and] (2), (3) and (4) of this section do not apply to employees who are
 37 represented by a labor organization for purposes of collective bargaining with their employer, pro-
 38 vided limits on the required hours of work and overtime payment have been agreed to between the
 39 employer and labor organization, or if no agreement is reached, then, for the purposes of this sub-
 40 section, such limits and payments shall not be deemed to be changed from the previous collective
 41 bargaining agreement between the employer and labor organization unless the employees have been
 42 locked out, are engaged in a strike or the employer has unilaterally implemented new terms and
 43 conditions of employment.

44 (7)(a) In addition to any other remedy provided by law, an employee has a private cause
 45 of action against an employer if the employer violates subsection (2) or (3) of this section

1 **by requiring the employee to work more than:**

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

4 **(B) The applicable limit for the maximum allowable hours of employment in one**
 5 **workweek.**

6 **(b) If the employee prevails in an action under this section, the court shall enter judg-**
 7 **ment against the employer for:**

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

9 **(B) Equitable relief.**

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

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

13 653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules pre-
 14 scribing such minimum conditions of employment, excluding minimum wages, in any occupation as
 15 may be necessary for the preservation of the health of employees. The rules may include, but are
 16 not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less
 17 than eight hours per day or 40 hours per *[week]* **workweek**; however, after 40 hours of work in one
 18 *[week]* **workweek** overtime may be paid, but in no case at a rate higher than one and one-half times
 19 the regular rate of pay of the employees when computed without benefit of commissions, overrides,
 20 spiffs and similar benefits.

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

26 (2) Nothing *[contained]* in ORS 653.010 to 653.261 shall be construed to confer authority upon
 27 the commissioner to regulate the hours of employment of employees engaged in production, har-
 28 vesting, packing, curing, canning, freezing or drying any variety of agricultural crops, livestock,
 29 poultry or fish.

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

35 (4) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal
 36 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-
 37 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning
 38 meal periods and rest periods.

39 (5)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food
 40 or beverages, receive tips and report the tips to the employer.

41 (b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-
 42 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an
 43 employee into waiving a meal period.

44 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
 45 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commis-

1 sioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each
 2 violation is a separate and distinct offense. In the case of a continuing violation, each day's con-
 3 tinuance is a separate and distinct violation.

4 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
 5 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
 6 provided in ORS 653.256 (4).

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

8 653.265. *[When employed in canneries or driers or packing plants, excluding canneries or driers*
 9 *or packing plants located on farms and primarily processing products produced on such farms, em-*
 10 *ployees shall be paid time and a half for time over 10 hours per day and piece workers shall be paid*
 11 *one and a half the regular prices for all work done during the time they are employed over 10 hours*
 12 *per day.]*

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

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

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

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

22 (c) **60 hours in one workweek, and only if the employee requests or consents to work**
 23 **more than 55 hours in one workweek.**

24 (3)(a) **Notwithstanding subsection (2) of this section, an employee may work more than**
 25 **10 hours in any one day if the employer compensates the employee as follows:**

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

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

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

33 (A) **10 hours in one day as described in paragraph (a) of this subsection; and**

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

35 (c) **An employer that makes an overtime payment to an employee pursuant to paragraph**
 36 **(b) of this subsection satisfies the overtime compensation requirements under this sub-**
 37 **section and ORS 653.261 (1).**

38 (4)(a) **In addition to any other remedy provided by law, an employee has a private cause**
 39 **of action against an employer if the employer violates subsection (2)(b) or (c) of this section**
 40 **by requiring the employee to work more than the applicable limit for the maximum allowable**
 41 **hours of employment in one workweek.**

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

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

45 (B) **Equitable relief.**

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

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

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

8 (a) \$500 for the first violation.

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

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

14 (4) Civil penalties authorized by this section shall be imposed in the manner provided in
 15 ORS 183.745.

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

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

22 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-
 23 section (2) of this section may file a civil action in circuit court. In any action under this subsection,
 24 the court may order injunctive relief and any other equitable relief that may be appropriate, in-
 25 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A
 26 court may order back pay in an action under this subsection only for the two-year period imme-
 27 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau
 28 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-
 29 year period immediately preceding the filing of the action. In any action under this subsection, the
 30 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-
 31 cept as provided in subsection (3) of this section:

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

33 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall
 34 review the judgment pursuant to the standard established by ORS 19.415 (3).

35 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS
 36 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, **652.020**, 652.355, 653.060,
 37 **653.265**, 653.601 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069,
 38 659A.082, 659A.088, 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203,
 39 659A.218, 659A.228, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290,
 40 659A.300, 659A.306, 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

41 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,
 42 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to 659A.145, 659A.199,
 43 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318, 659A.421, 653.547 or 653.549:

44 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
 45 compensatory damages or \$200, whichever is greater, and punitive damages;

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

2 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-
3 ment pursuant to the standard established by ORS 19.415 (1); and

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

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

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

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

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

22 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,
23 compensatory and punitive damages;

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

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

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

29 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-
30 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable
31 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;
32 and

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

35 (8) When the commissioner or the Attorney General has reasonable cause to believe that a
36 person or group of persons is engaged in a pattern or practice of resistance to the rights protected
37 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied
38 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner
39 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same
40 manner as a person or group of persons may file a civil action under this section. In a civil action
41 filed under this subsection, the court may assess against the respondent, in addition to the relief
42 authorized under subsections (1) and (3) of this section, a civil penalty:

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

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

45 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or

1 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing
 2 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to
 3 the commissioner if the commissioner prevails in the action. The court may award reasonable at-
 4 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court
 5 determines that the commissioner had no objectively reasonable basis for asserting the claim or for
 6 appealing an adverse decision of the trial court.

7 (10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145
 8 or 659A.421 or discrimination under federal housing law:

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

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

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

13 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of
 14 right in the action. The Attorney General may intervene in the action if the Attorney General cer-
 15 tifies that the case is of general public importance. The court may allow an intervenor prevailing
 16 party costs and reasonable attorney fees at trial and on appeal.

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

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

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

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

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

32 (2) Any person, body corporate, general manager or employer who violates ORS 652.040 or
 33 causes ORS 652.040 to be violated commits a Class C misdemeanor.

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

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

36 (5) In addition to the civil damages recoverable under ORS 652.230, violation of ORS 652.210 to
 37 652.230 is a Class A misdemeanor.

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

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

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

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

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