

A-Engrossed
Senate Bill 984

Ordered by the Senate April 21
Including Senate Amendments dated April 21

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

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.

[Requires employer in industry with requirement to pay overtime after certain number of hours worked by employee in one day to calculate applicable overtime pay for employee on daily and weekly basis and pay greater of two amounts.]

Directs employer in specified industries to pay greater of daily or weekly overtime when employee is eligible for both in same week. Defines "week" for purposes of calculating weekly overtime. Declares employer satisfies certain overtime laws by paying greater of applicable daily or weekly overtime.

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 calculation of overtime for employee who exceeds maximum allowable hours during
3 workweek; amending ORS 652.020, 653.261 and 653.265.

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)(a) No person shall be employed in any mill, factory or manufacturing establishment
7 in this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and
8 logging camps more than eight hours, exclusive of one hour, more or less, in one day or more than
9 48 hours in one [*calendar*] week, except logging train crews, guards, boiler operators and persons
10 engaged in the transportation to and from work, and employees when engaged in making necessary
11 repairs, or in the case of emergency where life and property are in imminent danger. However,
12 employees may work overtime not to exceed three hours in one day, conditioned that payment be
13 made for said overtime at the rate of time and one-half the regular wage.

14 **(b) As used in this section, "week" means any consecutive 168-hour period.**

15 **(c) An employer shall calculate an employee's overtime on a daily basis and on a weekly**
16 **basis and pay the greater of the two amounts if, during the same week, the employee exceeds**
17 **the applicable limit for the maximum allowable hours of employment:**

18 **(A) In one day as described in paragraph (a) of this subsection; and**

19 **(B) In one week as described in paragraph (a) of this subsection or ORS 653.261 (1).**

20 **(d) An employer that makes an overtime payment to an employee pursuant to paragraph**
21 **(c) of this subsection satisfies the requirements under paragraph (a) of this subsection and**
22 **ORS 653.261 (1).**

23 (2) No employer shall require or permit any person to work in any place mentioned in this

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 section more than the hours provided for in this section during any day of 24 hours. No employer
2 shall permit or suffer an overseer, superintendent or other agent of the employer to violate this
3 section.

4 (3) This section does not apply to persons employed in the care of quarters or livestock, con-
5 ducting messhalls, superintendence and direction of work, or to the loading and removal of the fin-
6 ished forest product.

7 (4) Subsections (1) and (2) of this section do not apply to employees who are represented by a
8 labor organization for purposes of collective bargaining with their employer, provided limits on the
9 required hours of work and overtime payment have been agreed to between the employer and labor
10 organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and
11 payments shall not be deemed to be changed from the previous collective bargaining agreement be-
12 tween the employer and labor organization unless the employees have been locked out, are engaged
13 in a strike or the employer has unilaterally implemented new terms and conditions of employment.

14 **(5)(a) In addition to any other remedy provided by law, there is hereby created a private**
15 **cause of action for a violation of subsection (1) of this section for:**

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

17 **(B) Equitable relief.**

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

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

21 653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules pre-
22 scribing such minimum conditions of employment, excluding minimum wages, in any occupation as
23 may be necessary for the preservation of the health of employees. The rules may include, but are
24 not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less
25 than eight hours per day or 40 hours per week; however, after 40 hours of work in one week over-
26 time may be paid, but in no case at a rate higher than one and one-half times the regular rate of
27 pay of the employees when computed without benefit of commissions, overrides, spiffs and similar
28 benefits.

29 **(b) As used in this section, “week” means any consecutive 168-hour period.**

30 (2) Nothing contained in ORS 653.010 to 653.261 shall be construed to confer authority upon the
31 commissioner to regulate the hours of employment of employees engaged in production, harvesting,
32 packing, curing, canning, freezing or drying any variety of agricultural crops, livestock, poultry or
33 fish.

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

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

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

45 (b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-

1 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an
2 employee into waiving a meal period.

3 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
4 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commis-
5 sioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each
6 violation is a separate and distinct offense. In the case of a continuing violation, each day's con-
7 tinuance is a separate and distinct violation.

8 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
9 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
10 provided in ORS 653.256 (4).

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

12 653.265. (1) When employed in canneries or driers or packing plants, excluding canneries or
13 driers or packing plants located on farms and primarily processing products produced on such farms,
14 employees shall be paid time and a half for time over 10 hours per day and piece workers shall be
15 paid one and a half the regular prices for all work done during the time they are employed over 10
16 hours per day.

17 **(2)(a) An employer shall calculate an employee's overtime on a daily basis and on a**
18 **weekly basis and pay the greater of the two amounts if, during the same week, the employee:**

19 **(A) Works more than 10 hours in one day as described in subsection (1) of this section;**
20 **and**

21 **(B) Exceeds the applicable limit for the maximum allowable hours of employment in one**
22 **week under ORS 653.261 (1).**

23 **(b) As used in this section, "week" means any consecutive 168-hour period.**

24 **(c) An employer that makes an overtime payment to an employee pursuant to paragraph**
25 **(a) of this subsection satisfies the requirements under subsection (1) of this section and ORS**
26 **653.261 (1).**

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