

Requested by Representative MCLANE

**PROPOSED MINORITY REPORT AMENDMENTS TO  
HOUSE BILL 3458**

1 On page 1 of the printed bill, line 2, after “limits;” delete the rest of the  
2 line and delete line 3 and insert “amending ORS 652.020, 653.261 and  
3 653.265.”.

4 Delete lines 5 through 27 and delete pages 2 through 7 and insert:

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 man-  
7 ufacturing establishment in this state more than 10 hours in any one day,  
8 or in sawmills, planing mills, shingle mills and logging camps more than  
9 eight hours, exclusive of one hour, more or less, in one day or more than 48  
10 hours in one [*calendar*] week, except logging train crews, guards, boiler op-  
11 erators and persons engaged in the transportation to and from work, and  
12 employees when engaged in making necessary repairs, or in the case of  
13 emergency where life and property are in imminent danger. However, em-  
14 ployees may work overtime not to exceed three hours in one day, conditioned  
15 that payment be made for said overtime at the rate of time and one-half the  
16 regular wage.

17 **“(b) As used in this section, ‘week’ means any consecutive 168-hour**  
18 **period.**

19 **“(c) An employer shall calculate an employee’s overtime on a daily**  
20 **basis and on a weekly basis and pay the greater of the two amounts**  
21 **if, during the same week, the employee exceeds the applicable limit for**

1 **the maximum allowable hours of employment:**

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

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

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

8 “(2) No employer shall require or permit any person to work in any place  
9 mentioned in this section more than the hours provided for in this section  
10 during any day of 24 hours. No employer shall permit or suffer an overseer,  
11 superintendent or other agent of the employer to violate this section.

12 “(3) This section does not apply to persons employed in the care of quar-  
13 ters or livestock, conducting mess halls, superintendence and direction of  
14 work, or to the loading and removal of the finished forest product.

15 “(4) Subsections (1) and (2) of this section do not apply to employees who  
16 are represented by a labor organization for purposes of collective bargaining  
17 with their employer, provided limits on the required hours of work and  
18 overtime payment have been agreed to between the employer and labor or-  
19 ganization, or if no agreement is reached, then, for the purposes of this  
20 subsection, such limits and payments shall not be deemed to be changed from  
21 the previous collective bargaining agreement between the employer and labor  
22 organization unless the employees have been locked out, are engaged in a  
23 strike or the employer has unilaterally implemented new terms and condi-  
24 tions of employment.

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

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

29 **“(B) Equitable relief.**

30 **“(b) In an action brought under this section the court may award**

1 **to the prevailing party costs, disbursements and reasonable attorney**  
2 **fees.**

3 **“SECTION 2.** ORS 653.261 is amended to read:

4 “653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries  
5 may adopt rules prescribing such minimum conditions of employment, ex-  
6 cluding minimum wages, in any occupation as may be necessary for the  
7 preservation of the health of employees. The rules may include, but are not  
8 limited to, minimum meal periods and rest periods, and maximum hours of  
9 work, but not less than eight hours per day or 40 hours per week; however,  
10 after 40 hours of work in one week overtime may be paid, but in no case at  
11 a rate higher than one and one-half times the regular rate of pay of the  
12 employees when computed without benefit of commissions, overrides, spiffs  
13 and similar benefits.

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

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

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

27 “(4) Rules adopted by the commissioner pursuant to subsection (1) of this  
28 section regarding meal periods and rest periods do not apply to nurses who  
29 provide acute care in hospital settings if provisions of collective bargaining  
30 agreements entered into by the nurses prescribe rules concerning meal peri-

1 ods and rest periods.

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

5 “(b) In rules adopted by the commissioner under paragraph (a) of this  
6 subsection, the commissioner shall permit an employee to waive a meal pe-  
7 riod. However, an employer may not coerce an employee into waiving a meal  
8 period.

9 “(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty  
10 provided by law, the commissioner may assess a civil penalty not to exceed  
11 \$2,000 against an employer that the commissioner finds has coerced an em-  
12 ployee into waiving a meal period in violation of this subsection. Each vio-  
13 lation is a separate and distinct offense. In the case of a continuing  
14 violation, each day’s continuance is a separate and distinct violation.

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

18 **“SECTION 3.** ORS 653.265 is amended to read:

19 “653.265. (1) When employed in canneries or driers or packing plants, ex-  
20 cluding canneries or driers or packing plants located on farms and primarily  
21 processing products produced on such farms, employees shall be paid time  
22 and a half for time over 10 hours per day and piece workers shall be paid  
23 one and a half the regular prices for all work done during the time they are  
24 employed over 10 hours per day.

25 **“(2)(a) An employer shall calculate an employee’s overtime on a**  
26 **daily basis and on a weekly basis and pay the greater of the two**  
27 **amounts if, during the same week, the employee:**

28 **“(A) Works more than 10 hours in one day as described in sub-**  
29 **section (1) of this section; and**

30 **“(B) Exceeds the applicable limit for the maximum allowable hours**

1 **of employment in one week under ORS 653.261 (1).**

2 **“(b) As used in this section, ‘week’ means any consecutive 168-hour**  
3 **period.**

4 **“(c) An employer that makes an overtime payment to an employee**  
5 **pursuant to paragraph (a) of this subsection satisfies the requirements**  
6 **under subsection (1) of this section and ORS 653.261 (1).”.**

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