



VAL HOYLE  
Labor Commissioner

## **Oregon's Manufacturing Industry and Overtime Provisions**

Workers employed in mills, factories and manufacturing are subject to maximum work hour provisions and a different calculation of overtime than the majority of nonexempt workers in other occupations and industries.

- Any hours worked over 10 hours in a day or 40 hours a week are counted as overtime hours
- Manufacturing workers may not work more than 13 hours a day or more than 55 hours in a workweek

However, all manufacturing workers may request or consent in writing to work up to 60 hours in a workweek. An employer is not required to notify BOLI of these requests, but may be asked to provide proof of the employee's request or consent to work more than the 55 hours. The 13 hour limitation per day remains regardless of this request.

In addition, there are three ways that manufacturing employers can impact the overtime rules: undue hardship exemption for perishable goods manufacturers only; a waiver to provide overtime pay relief for two hours of the 13 hour per day maximum; emergency situation defined as threats to life or property.

### **Undue Hardship Exemption for Perishable Goods Manufacturing**

An employer may be eligible for an “undue hardship” exemption to these maximum hour restrictions if the employer, in the ordinary course of business, processes perishable products.

Under these circumstances, the employer may permit an employee to work up to 84 hours per workweek for four workweeks; and up to 80 hours per workweek for the remainder of the undue hardship period.

Perishable products are defined as any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced and includes (but is not limited to) agricultural crops, meat and fish.

Employers may be eligible for more than one undue hardship period in a calendar year, however, 21 workweeks in a calendar year is the maximum number of workweeks that an employer may invoke this provision.

### **How to assert your claim to this exemption — it is not “granted” by BOLI:**

In order to claim an undue hardship, the employer must provide notice to BOLI and obtain written consent from each employee that the employer intends to schedule to work in excess of 55 hours (or 60 hours if employee previously consented) in the workweek. The form is held by BOLI and the written consent is held by the employer.



### **Waiver for Manufacturing Overtime Pay Rate Relief**

Please note that this section applies across all manufacturing settings, including perishable goods.

Under existing law manufacturing employers must be paid time and one half of the employee's regular rate of pay for hours worked over 10 hours in one day or any hours over 40 hours per week, whichever is greater.

The law remains that no worker may work more than 13 hours on any day. This waiver does not impact that requirement.

Upon application and approval, BOLI may issue an Overtime Waiver which allows qualifying employers to be waived from the time and a half pay provision for the 11th and 12th hour. This reduces the pay owed to the worker and does not waive the 13th hour maximum work hour cut off.

In considering a waiver, BOLI assigns a compliance specialist to be on point for the case. The compliance specialist will:

Review documents

Speak with the employer

Speak with workers

Review relevant health and safety information

Continuously monitor compliance with terms and remain in frequent contact with employer and workers.

BOLI aims for the key process steps in this consideration to be completed within 24-48 hours in order to provide a clear answer as quickly as possible.

### **Emergency Situations**

Existing law (ORS 652.020(6)) allows for individual removal of overtime limitations in the instance of an emergency where life or property is in imminent danger.

BOLI's rules define this type of emergency as workers engaged in manufacturing activities under emergency situations when the emergency puts life or property in imminent danger.

Hence, in order to be exempt, workers must be employed in an emergency which clearly threatens life and property and this is not applicable to normal routine operational occurrences (i.e. breakdown of machinery or unexpected absences).

Until this moment in time, this provision has been complaint driven only; that is, the employer would take the action, BOLI would regulate after the fact.

Given the unprecedented situation in which we find ourselves, BOLI will develop rules to mirror existing processes above in order to provide a timely, orderly, and consistent framework to keep vital manufacturing moving while maintaining worker protections.