

D R A F T

SUMMARY

Prohibits employer from taking adverse employment action against employee employed in certain manufacturing establishments who refuses to work mandatory overtime shift unless employer has provided employee with at least two weeks' advance notice of overtime shift.

A BILL FOR AN ACT

Relating to mandatory overtime shifts; amending ORS 652.020 and 652.990.

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

SECTION 1. ORS 652.020 is amended to read:

652.020. (1) As used in this section:

(a) "Machinery" means material-handling equipment and power-driven machines powered by electricity, nuclear or fossil fuels, hydroelectric power, geothermal power or another power source other than by human hand, foot or breath.

(b) "Manufacturing" means the process of using machinery to transform materials, substances or components into new products.

(c) "Manufacturing establishment" means an establishment engaged in manufacturing.

(d) "Perishable product" means any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced. "Perishable product" includes agricultural crops, meat and fish.

(e) "Undue hardship period" means the period of time during which perishable product must be processed after harvesting, slaughter or catch.

(f) "Workweek" means a fixed period of time established by an employer

1 that reflects a regularly recurring period of 168 hours or seven consecutive
2 24-hour periods. A workweek may begin on any day of the week and any hour
3 of the day and need not coincide with a calendar week. The beginning of the
4 workweek may be changed if the change is intended to be permanent and is
5 not designed to evade overtime requirements.

6 (2)(a) Except as provided in paragraphs (b) and (c) of this subsection and
7 subsection (3) of this section, an employer may not require or permit an
8 employee employed in any mill, factory or other manufacturing establishment
9 in this state to work more than:

10 (A) 10 hours in any one day; or

11 (B) 55 hours in any one workweek.

12 (b) An employer may permit an employee described in paragraph (a) of
13 this subsection to work up to 60 hours in one workweek if the employee re-
14 quests or consents in writing to work more than 55 hours in the workweek.

15 (c) Notwithstanding paragraph (b) of this subsection, during the period
16 of time that an employer is eligible for an undue hardship period exemption
17 under subsection (4) of this section, an employer may permit an employee
18 described in paragraph (a) of this subsection to work:

19 (A) Up to 84 hours per workweek for four workweeks; and

20 (B) Up to 80 hours per workweek for the remainder of the undue hardship
21 period.

22 (d) Except as provided in subsection (3) of this section, an employer may
23 not require or permit an employee employed in a sawmill, planing mill,
24 shingle mill or logging camp to work more than:

25 (A) Eight hours, exclusive of one hour, more or less, in one day; or

26 (B) 48 hours in one workweek.

27 (3)(a) An employee may work overtime up to three hours more than the
28 applicable limit for the maximum allowable hours of employment in one day
29 as described in subsection (2) of this section.

30 (b) An employer shall compensate an employee who works overtime hours
31 described in paragraph (a) of this subsection at one and one-half times the

1 employee's regular rate of pay for each overtime hour or portion of an hour
2 the employee works.

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

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

9 (B) Forty hours in one workweek as described in ORS 653.261 (1).

10 (d) An employer that makes an overtime payment to an employee pursuant
11 to paragraph (c) of this subsection satisfies the overtime compensation re-
12 quirements under this subsection and ORS 653.261 (1).

13 (4)(a) An employer is eligible for an undue hardship period exemption
14 from the restrictions on maximum workweek hours under subsection (2)(a)
15 of this section if the employer, in the ordinary course of the employer's
16 business, processes perishable products. The undue hardship period ex-
17 emption shall be effective only during an undue hardship period. An em-
18 ployer may be eligible for more than one undue hardship period exemption
19 in a calendar year. However, the combined total duration of the employer's
20 undue hardship period exemptions may not exceed 21 workweeks in a calen-
21 dar year.

22 (b) To claim an undue hardship period exemption, an employer must pro-
23 vide notice of the undue hardship period to the Commissioner of the Bureau
24 of Labor and Industries and obtain written consent from each employee
25 whom the employer will request to work more than 55 hours in any
26 workweek during the undue hardship period.

27 (c)(A) The notice the employer sends to the commissioner under para-
28 graph (b) of this subsection must be in a form prescribed by the commissioner
29 by rule and include a description of the reasons for the undue hardship pe-
30 riod, the start and expected end dates of the undue hardship period and any
31 other information required by the commissioner.

1 (B) The employee's written consent shall be in a form prescribed by the
2 commissioner by rule and include:

3 (i) A description of the employer's reasons for the undue hardship period;

4 (ii) The start and expected end dates of the undue hardship period;

5 (iii) A statement that the employer may require the employee to work up
6 to 84 hours per workweek for up to four workweeks during the undue hard-
7 ship period;

8 (iv) A statement that the employer may require the employee to work up
9 to 80 hours per workweek for the remainder of the undue hardship period;

10 (v) A statement that the employee consents to working up to 84 hours per
11 workweek for up to four workweeks during the undue hardship period and
12 up to 80 hours per workweek for the remainder of the undue hardship period;

13 (vi) Contact information for the Bureau of Labor and Industries; and

14 (vii) Any other information required by the commissioner.

15 (5) An employer may not:

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

23 (b) Require or permit any employee to work in any place described in this
24 section for more hours than the hours provided for in this section during any
25 day of 24 hours;

26 **(c) Take an adverse employment action against any employee who**
27 **is employed in a manufacturing establishment that is classified within**
28 **the North American Industry Classification System under code 3118**
29 **and who refuses to work a mandatory overtime shift unless the em-**
30 **ployer has provided the employee with at least two weeks' advance**
31 **notice of the overtime shift.**

1 ~~[(c)]~~ **(d)** Permit an overseer, superintendent or other agent of the employer
2 to violate this section; or

3 ~~[(d)]~~ **(e)** Coerce an employee into consenting to work more than 55 hours
4 in a given workweek.

5 **(6)** This section does not apply to:

6 **(a)** An employee performing work as a member of a logging train crew,
7 as a guard or as a boiler operator;

8 **(b)** An employee engaged in the transportation of workers to and from
9 work;

10 **(c)** An employee engaged in the care of quarters or livestock, the con-
11 ducting of mess halls, the superintendence and direction of work or the
12 loading and removal of finished forest product;

13 **(d)** An employee when engaged in making necessary repairs or in the case
14 of emergency where life or property is in imminent danger; or

15 **(e)** An employee employed in a mill, factory or other manufacturing es-
16 tablishment whose principal duties are administrative in nature or who is
17 not otherwise engaged in the direct processing of goods in the usual course
18 of the employee's duties.

19 **(7)** Subsections (2) to (5) of this section do not apply to employees who
20 are represented by a labor organization for purposes of collective bargaining
21 with their employer, provided limits on the required hours of work and
22 overtime payment have been agreed to between the employer and labor or-
23 ganization, or if no agreement is reached, then, for the purposes of this
24 subsection, such limits and payments shall not be deemed to be changed from
25 the previous collective bargaining agreement between the employer and labor
26 organization unless the employees have been locked out or are engaged in
27 a strike or the employer has unilaterally implemented new terms and condi-
28 tions of employment.

29 **(8)(a)** In addition to any other remedy provided by law, an employee has
30 a private cause of action against an employer if the employer violates sub-
31 section (2) or (3) of this section by requiring the employee to work more

1 than:

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

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

6 (b) If the employee prevails in an action under this section, the court may
7 enter judgment against the employer for:

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

9 (B) Equitable relief; and

10 (C) Liquidated damages in an amount equal to twice the employee's
11 overtime wages earned during the period not allowed under subsection (2)
12 or (3) of this section.

13 (c) In an action brought under this section, the court may award to the
14 prevailing plaintiff costs, disbursements and reasonable attorney fees. Any
15 attorney fee agreement is subject to approval by the court.

16 (9)(a) Notwithstanding ORS 652.900, in addition to any other penalty
17 provided by law, the commissioner may assess the following civil penalties
18 against an employer that the commissioner determines has coerced an em-
19 ployee into consenting to work more than 55 hours in one workweek:

20 (A) \$2,000 per violation if the employer coerced an employee into con-
21 senting under subsection (2)(b) of this section to work more than 55 hours
22 in any given workweek; or

23 (B) \$3,000 per violation if the employer coerced an employee into con-
24 senting under subsection (4) of this section to work more than 55 hours per
25 workweek in any given workweek during an undue hardship period.

26 (b) Each violation described in paragraph (a) of this subsection is a sep-
27 arate and distinct offense. In the case of a continuing violation, each
28 workweek's continuance is a separate and distinct violation.

29 (c) Civil penalties authorized by this subsection shall be imposed in the
30 manner provided in ORS 183.745. All sums collected as penalties under this
31 subsection shall be applied and paid over as provided in ORS 652.900.

1 **SECTION 2.** ORS 652.990 is amended to read:

2 652.990. (1) Violation of ORS 652.020 (5)(b) or [(c)] **(d)** is a Class A vio-
3 lation. Every day's violation is deemed a separate offense.

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

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

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

9 (5) In addition to the civil damages recoverable under ORS 652.230, vio-
10 lation of ORS 652.210 to 652.235 is a Class A misdemeanor.

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

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

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

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

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

18