

Overtime for Agricultural Workers Policy Outline for 2022 Legislative Concept

Submitted by Representative Paul Holvey, Chair Business and Labor Committee

Goal

Establish overtime wage requirement for workers in Agriculture industry and assist employers meet requirement during a transition period.

1. Phase-in maximum hour and overtime pay requirements for agricultural workers.
2. Use a tax credit to offset a percentage of the additional cost of overtime pay for Oregon crop and animal production businesses during the transition period.

Maximum Hours and Overtime

One and one-half of regular wages must be paid for all hours worked per week in excess of the weekly maximum, which is phased in over several years. Key policy decisions are the phase-in period and maximum hours.

Table 1: Proposed Maximum Hours Phase-In Schedule

Calendar Year	Weekly Maximum Hours
2023	55
2024	55
2025	48
2026	48
2027+	40

Tax Credit

Tax credits are designed to help offset the additional cost to certain agricultural businesses during the transition period as overtime pay is phased in. Eligible businesses are those operating in NAIC sectors 111 (crop production) and 112 (animal production). Labor contractors who recruit, solicit, supply, or employ agricultural workers on behalf of an eligible business are not eligible to receive the tax credit, but their business clients are as long as the labor contractor is licensed by the Bureau of Labor and Industries and the required data is submitted with the application. Key policy decisions are the calculation and duration of the tax credit.

Table 2: Proposed Tax Credit for OT Paid to Agricultural Workers

Tax Year	Credit as % of Additional Cost of OT
2023	50%
2024	50%
2025	35%
2026	35%
2027	20%

Example

A crop production business pays 200 hours of overtime (hours in excess of 55) to agricultural workers in 2023. Assuming the hourly rate for those workers is the current wage for H-2A visa workers of \$17.41, the company would pay an additional \$8.71 for each hour of overtime worked for a total of \$1,742 in increased hourly wages in 2023.

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The crop production business would be eligible for a tax credit of 50% of that increased cost, or \$1,742 for the 2023 tax year.

$\$17.41 \text{ hourly wage} \times 0.5 =$	$\$8.71 \text{ additional OT cost per hour}$
$200 \text{ hours of OT} \times \$8.71 =$	$\$1,742 \text{ total increased cost of OT to business}$
$\$1,742 \times 50\% =$	\$871 tax credit for tax year 2023

Administration

The tax credit will have an annual cap; if eligibility exceeds the amount available, all tax credits will be reduced proportionately. Applications will be made to the Oregon Employment Department (OED) and must include:

- applicant identification information and tax filing period;
- the overtime hours and wages paid to each worker and the total number and amount of overtime hours paid by or on behalf of employer;
- the BOLI license number or other permit or registration numbers of any labor contractors used to recruit, solicit, supply, or employ workers on behalf of the applicant; and
- a signed statement from the applicant (and labor contractor if applicable) certifying that the information is true and accurate.

Based on the information provided by the applicant, OED will certify to the Department of Revenue (DOR) the amount of credit for which the applicant is eligible. DOR will administer the tax credit based on certifications from OED. The tax credit will have an annual cap of approximately \$20 million.¹ If demand from eligible filers exceeds the cap, then DOR will reduce all credits proportionately. The credit will include a three-year carryover, meaning that any unused portion of the credit may be claimed in the subsequent tax year for up to three years. Key policy considerations are the cap and carryover.

¹ Data from the USDA Farm Survey, Oregon Employment Department, and the Washington Employment Security Department suggest Oregon agricultural workers currently work between 3 and 4 million hours of overtime per year, resulting in an estimated total credit of approximately \$20 million per year assuming the \$17.41/hr regular wage. **This data has not yet been reviewed by Legislative Revenue Office or Legislative Fiscal Office