

## HB 2358 -3, -4 STAFF MEASURE SUMMARY

### House Committee On Business and Labor

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**Meeting Dates:** 3/8, 3/29, 4/7

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#### **WHAT THE MEASURE DOES:**

Requires employers to pay agricultural workers overtime wages of one and one-half time regular pay for hours worked in excess of 40 in a workweek. For those paid on a piece-rate basis, hours in excess of 40 in a workweek must be compensated at one and one-half times the regular price for all work done on a piece-rate basis during each overtime hour worked.

#### **ISSUES DISCUSSED:**

##### **EFFECT OF AMENDMENT:**

-3 Authorizes Commissioner of the Bureau of Labor and Industries (BOLI) to enforce a wage claim regarding overtime pay for agricultural workers in same manner as claims regarding minimum wage, meal and rest period, and other overtime pay requirements. Provides that employer is liable for penalty wages for agricultural overtime pay due when employment ceases. Authorizes BOLI Commissioner to assess civil penalty not exceeding \$1,000 for violating requirement to compensate agricultural worker for overtime hours.

-4 Phases in agricultural overtime requirements: overtime pay is required for hours exceeding 50 per week in 2022, 45 per week in 2023, and 40 per week in 2024.

##### **BACKGROUND:**

The federal Fair Labor Standards Act exempts agricultural employees from overtime requirements. 29 U.S. Code Section 213(b). Oregon's statutory law provides the Commissioner of the Bureau of Labor and Industries (BOLI) the authority to adopt rules prescribing minimum working conditions of employment, excluding minimum wages, in an occupation as may be necessary for the preservation of the health of employees. ORS 653.261. An administrative rules may include the maximum hours of work; however, after 40 hours of work in a workweek overtime may be paid at no more than one and one-half times the regular rate of pay. Oregon Administrative Rule 839.020.0135, as adopted by the Commissioner of BOLI, exempts individuals employed in agricultural employment from the overtime provisions in 839.020.0030. Prior to 2017, statutory law prohibited the Commissioner from regulating the hours of employment of workers engaged in the production, harvesting, packing, curing, canning, freezing, or drying of agricultural crops, livestock, poultry, or fish. House Bill 3458 (2017) removed the limit on the Commissioner's authority to set overtime requirements for agricultural workers.

Oregon's statutory laws provide limits on the number of hours in a workweek and prescribes overtime pay for workers employed in canneries, driers, and packing plants. For such workers, ORS 653.265 requires overtime pay of one and one-half if the worker works more than 10 hours in a day or 40 hours in a week. Overtime is to be calculated on a daily basis and a weekly basis, and the worker is to be paid the higher of the two amounts.

California passed legislation in 2016 (Assembly Bill 1066) to provide agricultural workers the same overtime and working hours protections in the Labor Code from which they were previously excluded. The overtime changes are being phased in over a four-year period; there is a separate schedule for employers with 25 or fewer employees. By January 1, 2025, all agricultural workers in California are to be paid one and one-half of their regular pay for hours that exceed eight per day or 40 per week. When fully phased in, agricultural workers will also be due double the rate of pay for hours worked in excess of 12 per day.

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Washington State's Supreme Court ruled in November 2020 that workers in the dairy industry must be paid overtime wages for hours exceeding 40 per week. Legislation in Washington State (Senate Bill 5172), if enacted, will phase in overtime pay for certain agricultural workers. Beginning in 2022, overtime must be paid for hours in excess of 55 per week; by 2024, overtime must be paid for all hours exceeding 40 per week. The Washington State Senate passed the legislation on a vote of 37-12; it is now under consideration in a House committee.