

## HB 2358 STAFF MEASURE SUMMARY

### House Committee On Business and Labor

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**Action Date:** 04/12/21

**Action:** Without recommendation as to passage and be referred to Rules.

**Vote:** 7-4-0-0

**Yeas:** 7 - Bynum, Clem, Evans, Fahey, Grayber, Holvey, Witt

**Nays:** 4 - Bonham, Boshart Davis, Breese-Iverson, Post

**Fiscal:** No fiscal impact

**Revenue:** Has minimal revenue impact

**Prepared By:** Jan Nordlund, LPRO Analyst

**Meeting Dates:** 3/8, 3/29, 4/12

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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:

- Other occupations exempt from overtime pay requirements
- Whether exemption of agricultural workers from Fair Labor Standards Act (FLSA) was rooted in racism
- Impact of related legislation passed in California and pending in Washington
- Whether passage would increase or decrease take-home pay for agricultural workers
- Options available to employers to cut labor costs
- Whether employers can pass higher labor costs to purchasers or absorb them
- Working conditions of agricultural workers
- Call for federal legislation to amend FLSA to eliminate exemption
- Whether payment of overtime wages should be phased in

#### EFFECT OF AMENDMENT:

No amendment.

#### BACKGROUND:

The federal Fair Labor Standards Act exempts agricultural employees from overtime requirements. 29 U.S.C. Section 213(b). Oregon statute 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. Any 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.

Oregon's statutory laws require 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.

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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.

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 exceeding 55 per week; for hours exceeding 48 per week in 2023; and hours exceeding 40 per week in 2024. The legislation has passed the Washington Senate (37-12) and the House (91-7).

House Bill 2358 requires employers pay agricultural workers time and one-half for hours exceeding 40 hour per week.