

HB 2358 A STAFF MEASURE SUMMARY

House Committee On Rules

Action Date: 06/16/21

Action: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

Vote: 4-3-0-0

Yeas: 4 - Fahey, Holvey, Salinas, Smith Warner

Nays: 3 - Bonham, Drazan, Zika

Fiscal: Fiscal impact issued

Revenue: Has minimal revenue impact

Prepared By: Jan Nordlund

Meeting Dates: 6/16

WHAT THE MEASURE DOES:

Requires employers to pay agricultural workers overtime wages of one and one-half time regular rate of pay for hours worked in excess of 55 per week during 2022, in excess of 48 per week during 2023, and in excess of 40 per week during 2024 and thereafter. Provides that employer is liable to the employee for penalty wages for unpaid overtime as provided in ORS 652.150. Authorizes Commissioner of Bureau of Labor and Industries (BOLI) to enforce a wage claim regarding overtime pay for agricultural workers. Authorizes Commissioner to assess civil penalty not exceeding \$1,000 for willful violations of agricultural overtime pay requirements. Appropriates \$100 million out of General Fund to Oregon Business Development Department (Department) to be deposited into Agricultural Worker Overtime Account. Directs Department to implement an overtime compensation payment program to make payments to employers of agricultural workers for overtime paid in the years 2022, 2023, and 2024. Establishes eligibility criteria for employers applying for payment. Establishes priorities and preferences Department must apply when evaluating applications.

ISSUES DISCUSSED:

- Overtime pay requirements in Washington and California
- Use of funds from American Rescue Plan Act to support employers during phase-in of overtime pay requirements
- Proposal to establish task force to study economic impacts to labor and industry
- Degree to which industry can adjust prices based on labor costs
- History of exemption dating back to Fair Labor Standards Act of 1938
- Low pay and physically demanding nature of agricultural work

EFFECT OF AMENDMENT:

Replaces the measure.

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 BOLI 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.

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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.

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 enacted this year in Washington State (Senate Bill 5172) phases 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.

House Bill 2358 A requires employers to pay agricultural workers time and one-half for hours exceeding 55 per week in 2022, 48 per week in 2023, and 40 per week in 2024 and thereafter. It also appropriates \$100 million from General Fund to the Oregon Business Development Department for a program to provide payments to employers who pay overtime wages to agricultural workers.