

A-Engrossed
House Bill 2358

Ordered by the House June 18
Including House Amendments dated June 18

Sponsored by Representatives SALINAS, HOLVEY, RUIZ, Senator FREDERICK; Representatives ALONSO LEON, CAMPOS, DEXTER, GRAYBER, HUDSON, MEEK, NERON, PHAM, REYNOLDS, SANCHEZ, VALDERRAMA, WITT (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits employers from permitting, [*or*] requiring **or suffering** agricultural workers to work in excess of [40] **certain maximum** hours in one workweek unless workers are compensated for overtime hours worked. **Phases in requirement over three calendar years.**

Authorizes Commissioner of Bureau of Labor and Industries to enforce wage claim regarding overtime pay for agricultural workers. Authorizes commissioner to assess civil penalty for willful violations of overtime pay requirements.

Requires Oregon Business Development Department to develop and implement overtime compensation payment program to assist employers of agricultural workers in paying required overtime to workers. Establishes Agricultural Worker Overtime Account. Appropriates moneys from General Fund to department for deposit into account to carry out purposes of program. Sunsets program on January 2, 2026.

A BILL FOR AN ACT

Relating to overtime; creating new provisions; and amending ORS 653.055 and 653.256.

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

SECTION 1. As used in this section and section 2 of this 2021 Act:

(1) **“Agricultural worker” means an individual who performs services in agriculture for an employer in exchange for an agreed remuneration or rate of pay.**

(2) **“Agriculture” includes:**

(a) **Farming in all its branches, including the cultivation and tillage of the soil;**

(b) **Dairying;**

(c) **The production, cultivation, growing and harvesting of any agricultural or horticultural commodities;**

(d) **The raising of livestock, bees, fur-bearing animals or poultry; and**

(e) **Any other practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.**

(3) **“Workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods.**

SECTION 2. (1) Except as provided in subsection (2) of this section, an employer may not permit, require or suffer an agricultural worker to work a total number of hours in excess of:

(a) **For calendar year 2022, 55 hours in one workweek.**

(b) **For calendar year 2023, 48 hours in one workweek.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) For calendar year 2024 and each year thereafter, 40 hours in one workweek.

2 (2) An employer may permit, require or suffer an agricultural worker to work more than
3 the maximum allowable hours in one workweek provided under subsection (1) of this section
4 if the employer compensates the agricultural worker at one and one-half times the worker's
5 regular rate of pay for each overtime hour or portion of an hour that the worker works in
6 excess of the maximum allowable hours.

7 (3)(a) For purposes of this section, a workweek may begin on any day of the week and
8 at any hour of the day and need not coincide with a calendar week.

9 (b) An employer may change the beginning of an agricultural worker's workweek if the
10 change is intended to be permanent and is not designed to evade overtime requirements.

11 (4) A claim for a violation of this section may be made under ORS 653.055.

12 **SECTION 3.** Section 2 of this 2021 Act is amended to read:

13 **Sec. 2.** (1) Except as provided in subsection (2) of this section, an employer may not permit,
14 require or suffer an agricultural worker to work a total number of hours in excess of[.]

15 [(a) For calendar year 2022, 55 hours in one workweek.]

16 [(b) For calendar year 2023, 48 hours in one workweek.]

17 [(c) For calendar year 2024 and each year thereafter,] 40 hours in one workweek.

18 (2) An employer may permit, require or suffer an agricultural worker to work more than [*the*
19 *maximum allowable*] 40 hours in one workweek [*provided under subsection (1) of this section*] if the
20 employer compensates the agricultural worker at one and one-half times the worker's regular rate
21 of pay for each overtime hour or portion of an hour that the worker works in excess of [*the maxi-*
22 *mum allowable*] 40 hours.

23 (3)(a) For purposes of this section, a workweek may begin on any day of the week and at any
24 hour of the day and need not coincide with a calendar week.

25 (b) An employer may change the beginning of an agricultural worker's workweek if the change
26 is intended to be permanent and is not designed to evade overtime requirements.

27 (4) A claim for a violation of this section may be made under ORS 653.055.

28 **SECTION 4. The amendments to section 2 of this 2021 Act by section 3 of this 2021 Act**
29 **become operative on January 1, 2024.**

30 **SECTION 5.** ORS 653.055 is amended to read:

31 653.055. (1) Any employer who pays an employee less than the wages to which the employee is
32 entitled under ORS 653.010 to 653.261 **or section 2 of this 2021 Act** is liable to the employee af-
33 fected:

34 (a) For the full amount of the wages, less any amount actually paid to the employee by the
35 employer; and

36 (b) For civil penalties provided in ORS 652.150.

37 (2) Any agreement between an employee and an employer to work at less than the wage rate
38 required by ORS 653.010 to 653.261 **or section 2 of this 2021 Act** is no defense to an action under
39 subsection (1) of this section.

40 (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in
41 connection with a wage claim based on ORS 653.010 to 653.261 **and section 2 of this 2021 Act** as
42 the commissioner has under ORS 652.310 to 652.445 and in addition the commissioner may, without
43 the necessity of assignments of wage claims from employees, initiate suits against employers to en-
44 join future failures to pay required minimum wages or overtime pay and to require the payment of
45 minimum wages and overtime pay due employees but not paid as of the time of the filing of suit.

1 The commissioner may join in a single proceeding and in one cause of suit any number of wage
2 claims against the same employer. If the commissioner does not prevail in such action, the commis-
3 sioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

4 (4) The court may award reasonable attorney fees to the prevailing party in any action brought
5 by an employee under this section.

6 **SECTION 6.** ORS 653.256 is amended to read:

7 653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
8 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that
9 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611,
10 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, **or section**
11 **2 of this 2021 Act** or any rule adopted thereunder.

12 (2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty
13 not to exceed \$1,000 against any person that intentionally violates ORS 653.077 or any rule adopted
14 thereunder.

15 (3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS
16 183.745.

17 (4)(a) All sums collected as penalties under this section shall be first applied toward reimburse-
18 ment of costs incurred in determining the violations, conducting hearings under this section and
19 addressing and collecting the penalties.

20 (b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section
21 shall be paid over by the commissioner to the Department of State Lands for the benefit of the
22 Common School Fund of this state. The department shall issue a receipt for the money to the com-
23 missioner.

24 (c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section
25 shall be paid over by the commissioner to the Department of Human Services for the benefit of the
26 Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the
27 moneys to the commissioner.

28 **SECTION 7. (1) The Oregon Business Development Department shall develop and imple-**
29 **ment an overtime compensation payment program under which the department shall make**
30 **payments to employers of agricultural workers, as defined in section 1 of this 2021 Act, to**
31 **assist the employers with paying overtime as required under section 2 of this 2021 Act.**

32 (2)(a) **The department shall prescribe by rule application forms and the process by which**
33 **employers subject to the overtime provisions of section 2 of this 2021 Act may apply for**
34 **overtime compensation payments under the program.**

35 (b) **The department shall establish three application periods, beginning in January 2023,**
36 **2024 and 2025, for overtime compensation payments related to overtime paid by employers**
37 **during calendar years 2022, 2023 and 2024, respectively. Each application period shall remain**
38 **open for at least eight weeks.**

39 (c) **An employer may submit an application under the program only if, with respect to**
40 **the agricultural operations to which the application relates, the employer:**

41 (A) **Has committed not more than five serious or willful violations of the Oregon Safe**
42 **Employment Act in the five-year period immediately preceding the date of the application;**

43 (B) **Has committed not more than five violations of any state law concerning wage and**
44 **hour or civil rights in the five-year period immediately preceding the date of the application;**
45 **and**

1 (C) Has no outstanding uncontested state or federal tax payments as of the date of the
2 application.

3 (d)(A) An employer may not submit more than one application per year.

4 (B) Notwithstanding subparagraph (A) of this paragraph, an employer, with the approval
5 of the department, may resubmit an application during the application period for that year.

6 (e) Applications shall be submitted under penalties for false swearing under ORS 162.075.

7 (3) When evaluating applications submitted under the overtime compensation payment
8 program, the department shall give:

9 (a) Priority to applicants in descending order based on the proportion of the amount the
10 applicant paid in overtime in relation to the applicant's net income was for the calendar year
11 to which the application relates; and

12 (b) Preference to applicants that employed not more than an average of 25 agricultural
13 workers in any quarter during the calendar year to which the application relates.

14 (4)(a) The application forms prescribed by the department shall, at a minimum, require
15 inclusion of the tax returns or reports for the agricultural operations to which an application
16 relates and any other documents the department considers necessary to evaluate an appli-
17 cation.

18 (b) Information and documents included in applications submitted under this section are
19 confidential and exempt from disclosure under ORS 192.311 to 192.478.

20 (5)(a) The department may withhold from the moneys appropriated under section 7 of
21 this 2021 Act the actual costs incurred by the department in developing and implementing
22 the overtime compensation payment program.

23 (b) After withholding for costs under paragraph (a) of this subsection, the department
24 shall reserve the remaining balance in three equal parts for the three annual overtime
25 compensation payment application periods established under subsection (2)(b) of this section.

26 (6) As soon as practicable after the close of each application period established under
27 subsection (2)(b) of this section, the department shall:

28 (a) Consider all timely and complete applications;

29 (b) Determine the eligibility of the applicants for overtime compensation payments under
30 this section;

31 (c) Approve or reject each application; and

32 (d) Notify the applicant of the department's decision.

33 (7)(a) Within 30 days following date on which the department has approved or rejected
34 all applications, the department shall make an overtime compensation payment to each
35 successful applicant in an amount equal to 80 percent of the total amount of overtime the
36 applicant paid in the year to which the application relates.

37 (b) Notwithstanding paragraph (a) of this subsection, if there are insufficient moneys
38 available for overtime compensation payments for that year, all payments shall be reduced
39 proportionately based on the relative dollar amounts of the payments until there are suffi-
40 cient moneys to make the payments.

41 (c) If there are more than sufficient moneys to make all payments under paragraph (a)
42 of this subsection for the application periods in 2023 and 2024, the excess moneys shall be
43 added to the amount available for the immediately following calendar year of the program.

44 (d) Any moneys remaining in the Agricultural Worker Overtime Account established
45 under section 8 of this 2021 Act that are unexpended and unobligated on January 1, 2026,

1 shall revert to the General Fund.

2 (8)(a)(A) An employer that receives an overtime compensation payment knowing that the
3 approved application contained a false statement or misrepresentation of a material fact, or
4 failed to disclose a material fact, is liable for repayment of the payment, with interest, for
5 each day or portion of a day that any amount of the payment is not repaid. The department
6 shall set a rate of interest applicable to all employers subject to this subsection not to exceed
7 16 percent per annum. In addition, the department may impose a monetary penalty in any
8 amount, not to exceed 10 percent of the payment, that the department considers appropriate
9 to the circumstances of each employer subject to this subsection.

10 (B) The department may take any action permitted by law to recover the payment, in-
11 terest and penalty.

12 (C) An employer described in subparagraph (A) of this paragraph may not apply for an
13 overtime compensation payment for any subsequent year.

14 (b) An employer that receives any amount of overpayment of an overtime compensation
15 payment because of an error not due to the employer providing a false statement or mis-
16 representation of a material fact, or failing to disclose a material fact, is liable for repay-
17 ment, without interest, of the amount of the overpayment.

18 (9)(a) State agencies shall comply with reasonable requests for information or cooper-
19 ation from the department in developing and implementing the overtime compensation pay-
20 ment program under this section.

21 (b) Information that may be disclosed pursuant to this subsection shall be limited to in-
22 formation necessary for the department to develop and implement the overtime compen-
23 sation payment program. Information shall be disclosed in a manner that maintains
24 anonymity except to the extent necessary for the department's purposes. The department
25 may not further disclose the information, which shall be treated as confidential and, in the
26 hands of the department, exempt from public disclosure under ORS 192.311 to 192.478.

27 **SECTION 8.** (1) The Agricultural Worker Overtime Account is established in the State
28 Treasury, separate and distinct from the General Fund. Interest earned by the account shall
29 be credited to the account. The account consists of moneys appropriated, allocated, deposited
30 or transferred to the account by the Legislative Assembly. The moneys in the account are
31 continuously appropriated to the Oregon Business Development Department for the purposes
32 specified in section 7 of this 2021 Act.

33 (2)(a) Except in case of a fiscal emergency, moneys in the Agricultural Worker Overtime
34 Account, including any subaccounts thereof, may be used only for the purposes described in
35 subsection (1) of this section, and may not be transferred out of the account.

36 (b) As used in this subsection, "fiscal emergency" means a projected deficit for the
37 biennium, as most recently projected by the Oregon Department of Administrative Services,
38 of at least 12 percent below the revenue estimated to be received for the biennium, as esti-
39 mated pursuant to ORS 291.349 (1) after adjournment sine die of the odd-numbered year
40 regular session of the Legislative Assembly.

41 **SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropri-
42 ated to the Oregon Business Development Department, for the biennium beginning July 1,
43 2021, out of the General Fund, the amount of \$100,000,000 to be deposited in the Agricultural
44 Worker Overtime Account established under section 8 of this 2021 Act, which shall be ex-
45 pended for the purposes set forth in section 7 of this 2021 Act.

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SECTION 10. Sections 7 and 8 of this 2021 Act are repealed on January 2, 2026.

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