

NWJJP

NORTHWEST WORKERS' JUSTICE PROJECT

Standing for dignity in the workplace

March 29, 2021

Chair Holvey, Vice-Chairs Bonham and Grayber, Members of the House Business and Labor Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project. We provide legal representation to low-wage workers throughout the economy including agricultural workers. Many of our clients are farmworkers who lack the basic protections that almost all other workers enjoy.

The bill you are considering will take an existing right- the right to overtime after 40 hours of work in a week- and its corresponding enforcement structure, and open it up to more people. It will not create a new right nor a new enforcement structure. BOLI currently enforces overtime violations for workers who choose to pursue an administrative remedy. Courts already hear cases involving overtime violations for workers who choose a legal remedy. While there may be more cases of violations if agricultural employers violate a new overtime requirement in that industry, there will not be new substantive law or new remedies created. The Oregon overtime provision and robust penalty wage structure have been in place for over half a century.

The -4 amendment to HB 2358 involves a phase-in of the overtime requirement for agricultural employers. On the effective date of the bill, likely January 1, 2022, farmworkers will be entitled to overtime after 50 hours of work in a workweek. On January 1, 2023, farmworkers will be entitled to overtime after 45 hours of work in a workweek. On January 1, 2024, farmworkers will be entitled to overtime after 40 hours of work in a workweek, as most other workers are today entitled.

What we often refer to as the overtime law is actually called the “maximum hours” law under the Fair Labor Standards Act, our federal law governing many wage and hour issues. The 1938 FLSA set a maximum number of hours for a few specific reasons, including making it expensive to overwork people and to compensate overtime workers for the increased risk of workplace accidents they face from exhaustion or overexertion.¹ Working overtime is associated with poorer perceived general health, increased injury

¹ Mechmet v. Four Seasons Hotels, Ltd., 825 F.2d 1173, 1175-76 (7th Cir. 1987).

rates, more illnesses, and increased mortality, according to the CDC.² Further, agriculture work is one of the most dangerous professions.³ To give one example of this significantly increased danger, farmworkers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.⁴ Long hours in hot temperatures contribute to this gross disparity. This is one of many examples of increased health and safety risks that farmworker face. Pesticides, equipment accidents including vehicular ones, and long, arduous shifts all contribute to the serious, negative health effects of being a farmworker.

Oregon should lead the way in valuing farmworkers at least as well as we value other workers. Time and time again, farmworkers are treated differently, and worse. For those of us working to fight for farmworkers' rights, the legal landscape feels separate and unequal. Though we are not discussing other distinctions today, it is important to note that many farmworkers do not make minimum wage. Farmworkers do not have the right to organize under the National Labor Relations Act. Requiring employers to pay farmworkers overtime after 40 hours is a step we can take right now to prove that farmworkers are indeed essential, valued workers in Oregon.

The message we send to farmworkers is the opposite: though farmwork is one of the most hazardous jobs as described above, it also has some of the lowest compensation of any industry.⁵ In 2019, a farmworker made 65% of the median income for full-time work.⁶ There is no reason that one of the most challenging and dangerous jobs in the country should receive significantly less pay than other jobs including salespeople, telemarketers, hairdressers and many others.⁷

Please vote yes on HB 2358 to help begin to build a fair, equal system for farmworkers in Oregon.

Thank you.

Kate Suisman
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NW Workers' Justice Project

² <https://www.cdc.gov/niosh/docs/2004-143/pdfs/2004-143.pdf>

³ <https://www.cdc.gov/niosh/topics/aginjury/default.html>

⁴ CDC, Heat Related Deaths Among Farmworkers, United States — 1996-2006, <https://bit.ly/3i9XgMw>

⁵ https://www.bls.gov/oes/current/oes_nat.htm. Arrange columns by annual mean wage.

⁶ The national median income for a full-time farmworker in 2019 was \$25,840, compared to the median annual wage for all workers in 2019 of \$39,810. <https://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm>

⁷ https://www.bls.gov/oes/current/oes_nat.htm