

Requested by Representative SALINAS

**PROPOSED AMENDMENTS TO
HOUSE BILL 2358**

1 In line 2 of the printed bill, after “overtime” insert “; creating new pro-
2 visions; and amending ORS 653.055 and 653.256”.

3 Delete lines 4 through 29 and insert:

4 **“SECTION 1. As used in sections 1 and 2 of this 2021 Act:**

5 **“(1) ‘Agricultural worker’ means an individual who performs ser-**
6 **vices in agriculture for an employer in exchange for an agreed**
7 **remuneration or rate of pay.**

8 **“(2) ‘Agriculture’ includes:**

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

11 **“(b) Dairying;**

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

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

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

20 **“(3) ‘Workweek’ means a fixed period of time established by an**
21 **employer that reflects a regularly recurring period of 168 hours or**

1 seven consecutive 24-hour periods.

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

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

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

7 **“(c) For calendar year 2024 and each year thereafter, 40 hours in**
8 **one workweek.**

9 **“(2) An employer may permit, require or suffer an agricultural**
10 **worker to work more than the maximum allowable hours in one**
11 **workweek provided under subsection (1) of this section if the employer**
12 **compensates the agricultural worker at one and one-half times the**
13 **worker’s regular rate of pay for each overtime hour or portion of an**
14 **hour that the worker works in excess of the maximum allowable**
15 **hours.**

16 **“(3)(a) For purposes of this section, a workweek may begin on any**
17 **day of the week and at any hour of the day and need not coincide with**
18 **a calendar week.**

19 **“(b) An employer may change the beginning of an agricultural**
20 **worker’s workweek if the change is intended to be permanent and is**
21 **not designed to evade overtime requirements.**

22 **“(4) A claim for a violation of this section may be made under ORS**
23 **653.055.**

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

25 **“Sec. 2. (1) Except as provided in subsection (2) of this section, an em-**
26 **ployer may not permit, require or suffer an agricultural worker to work a**
27 **total number of hours in excess of[:]**

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

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

30 **“[(c) For calendar year 2024 and each year thereafter,] 40 hours in one**

1 workweek.

2 “(2) An employer may permit, require or suffer an agricultural worker to
3 work more than [*the maximum allowable*] **40** hours in one workweek [*pro-*
4 *vided under subsection (1) of this section*] if the employer compensates the
5 agricultural worker at one and one-half times the worker’s regular rate of
6 pay for each overtime hour or portion of an hour that the worker works in
7 excess of [*the maximum allowable*] **40** hours.

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

11 “(b) An employer may change the beginning of an agricultural worker’s
12 workweek if the change is intended to be permanent and is not designed to
13 evade overtime requirements.

14 “(4) A claim for a violation of this section may be made under ORS
15 653.055.

16 **“SECTION 4. The amendments to section 2 of this 2021 Act by sec-**
17 **tion 3 of this 2021 Act become operative on January 1, 2024.**

18 **“SECTION 5.** ORS 653.055 is amended to read:

19 “653.055. (1) Any employer who pays an employee less than the wages to
20 which the employee is entitled under ORS 653.010 to 653.261 **or section 2**
21 **of this 2021 Act** is liable to the employee affected:

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

24 “(b) For civil penalties provided in ORS 652.150.

25 “(2) Any agreement between an employee and an employer to work at less
26 than the wage rate required by ORS 653.010 to 653.261 **or section 2 of this**
27 **2021 Act** is no defense to an action under subsection (1) of this section.

28 “(3) The Commissioner of the Bureau of Labor and Industries has the
29 same powers and duties in connection with a wage claim based on ORS
30 653.010 to 653.261 **and section 2 of this 2021 Act** as the commissioner has

1 under ORS 652.310 to 652.445 and in addition the commissioner may, without
2 the necessity of assignments of wage claims from employees, initiate suits
3 against employers to enjoin future failures to pay required minimum wages
4 or overtime pay and to require the payment of minimum wages and overtime
5 pay due employees but not paid as of the time of the filing of suit. The
6 commissioner may join in a single proceeding and in one cause of suit any
7 number of wage claims against the same employer. If the commissioner does
8 not prevail in such action, the commissioner shall pay all costs and dis-
9 bursements from the Bureau of Labor and Industries Account.

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

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

13 “653.256. (1) In addition to any other penalty provided by law, the Com-
14 missioner of the Bureau of Labor and Industries may assess a civil penalty
15 not to exceed \$1,000 against any person that willfully violates ORS 653.025,
16 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611, 653.616,
17 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws
18 2015, **or section 2 of this 2021 Act** or any rule adopted thereunder.

19 “(2) In addition to any other penalty provided by law, the commissioner
20 may assess a civil penalty not to exceed \$1,000 against any person that in-
21 tentionally violates ORS 653.077 or any rule adopted thereunder.

22 “(3) Civil penalties authorized by this section shall be imposed in the
23 manner provided in ORS 183.745.

24 “(4)(a) All sums collected as penalties under this section shall be first
25 applied toward reimbursement of costs incurred in determining the vio-
26 lations, conducting hearings under this section and addressing and collecting
27 the penalties.

28 “(b) The remainder, if any, of the sums collected as penalties under sub-
29 section (1) of this section shall be paid over by the commissioner to the De-
30 partment of State Lands for the benefit of the Common School Fund of this

1 state. The department shall issue a receipt for the money to the commis-
2 sioner.

3 “(c) The remainder, if any, of the sums collected as penalties under sub-
4 section (2) of this section shall be paid over by the commissioner to the De-
5 partment of Human Services for the benefit of the Breastfeeding Mother
6 Friendly Employer Project. The department shall issue a receipt for the
7 moneys to the commissioner.

8 **“SECTION 7. (1) The Oregon Business Development Department**
9 **shall develop and implement an overtime compensation payment pro-**
10 **gram under which the department shall make payments to employers**
11 **of agricultural workers, as defined in section 1 of this 2021 Act, to as-**
12 **sist the employers with paying overtime as required under section 2**
13 **of this 2021 Act.**

14 **“(2)(a) The department shall prescribe by rule application forms and**
15 **the process by which employers subject to the overtime provisions of**
16 **section 2 of this 2021 Act may apply for overtime compensation pay-**
17 **ments under the program.**

18 **“(b) The department shall establish three application periods, be-**
19 **ginning in January 2023, 2024 and 2025, for overtime compensation**
20 **payments related to overtime paid by employers during calendar years**
21 **2022, 2023 and 2024, respectively. Each application period shall remain**
22 **open for at least eight weeks.**

23 **“(c) An employer may submit an application under the program**
24 **only if, with respect to the agricultural operations to which the ap-**
25 **plication relates, the employer:**

26 **“(A) Has committed not more than five serious or willful violations**
27 **of the Oregon Safe Employment Act in the five-year period imme-**
28 **diately preceding the date of the application;**

29 **“(B) Has committed not more than five violations of any state law**
30 **concerning wage and hour or civil rights in the five-year period im-**

1 **mediately preceding the date of the application; and**

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

4 **“(d)(A) An employer may not submit more than one application per**
5 **year.**

6 **“(B) Notwithstanding subparagraph (A) of this paragraph, an em-**
7 **ployer, with the approval of the department, may resubmit an appli-**
8 **cation during the application period for that year.**

9 **“(e) Applications shall be submitted under penalties for false**
10 **swearing under ORS 162.075.**

11 **“(3) When evaluating applications submitted under the overtime**
12 **compensation payment program, the department shall give:**

13 **“(a) Priority to applicants in descending order based on the pro-**
14 **portion of the amount the applicant paid in overtime in relation to the**
15 **applicant’s net income was for the calendar year to which the appli-**
16 **cation relates; and**

17 **“(b) Preference to applicants that employed not more than an av-**
18 **erage of 25 agricultural workers in any quarter during the calendar**
19 **year to which the application relates.**

20 **“(4)(a) The application forms prescribed by the department shall,**
21 **at a minimum, require inclusion of the tax returns or reports for the**
22 **agricultural operations to which an application relates and any other**
23 **documents the department considers necessary to evaluate an appli-**
24 **cation.**

25 **“(b) Information and documents included in applications submitted**
26 **under this section are confidential and exempt from disclosure under**
27 **ORS 192.311 to 192.478.**

28 **“(5)(a) The department may withhold from the moneys appropriated**
29 **under section 7 of this 2021 Act the actual costs incurred by the de-**
30 **partment in developing and implementing the overtime compensation**

1 payment program.

2 “(b) After withholding for costs under paragraph (a) of this sub-
3 section, the department shall reserve the remaining balance in three
4 equal parts for the three annual overtime compensation payment ap-
5 plication periods established under subsection (2)(b) of this section.

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

9 “(a) Consider all timely and complete applications;

10 “(b) Determine the eligibility of the applicants for overtime com-
11 pensation payments under this section;

12 “(c) Approve or reject each application; and

13 “(d) Notify the applicant of the department’s decision.

14 “(7)(a) Within 30 days following date on which the department has
15 approved or rejected all applications, the department shall make an
16 overtime compensation payment to each successful applicant in an
17 amount equal to 80 percent of the total amount of overtime the ap-
18 plicant paid in the year to which the application relates.

19 “(b) Notwithstanding paragraph (a) of this subsection, if there are
20 insufficient moneys available for overtime compensation payments for
21 that year, all payments shall be reduced proportionately based on the
22 relative dollar amounts of the payments until there are sufficient
23 moneys to make the payments.

24 “(c) If there are more than sufficient moneys to make all payments
25 under paragraph (a) of this subsection for the application periods in
26 2023 and 2024, the excess moneys shall be added to the amount avail-
27 able for the immediately following calendar year of the program.

28 “(d) Any moneys remaining in the Agricultural Worker Overtime
29 Account established under section 8 of this 2021 Act that are unex-
30 pended and unobligated on January 1, 2026, shall revert to the General

1 **Fund.**

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

13 **“(B) The department may take any action permitted by law to re-**
14 **cover the payment, interest and penalty.**

15 **“(C) An employer described in subparagraph (A) of this paragraph**
16 **may not apply for an overtime compensation payment for any subse-**
17 **quent year.**

18 **“(b) An employer that receives any amount of overpayment of an**
19 **overtime compensation payment because of an error not due to the**
20 **employer providing a false statement or misrepresentation of a mate-**
21 **rial fact, or failing to disclose a material fact, is liable for repayment,**
22 **without interest, of the amount of the overpayment.**

23 **“(9)(a) State agencies shall comply with reasonable requests for in-**
24 **formation or cooperation from the department in developing and im-**
25 **plementing the overtime compensation payment program under this**
26 **section.**

27 **“(b) Information that may be disclosed pursuant to this subsection**
28 **shall be limited to information necessary for the department to de-**
29 **velop and implement the overtime compensation payment program.**
30 **Information shall be disclosed in a manner that maintains anonymity**

1 except to the extent necessary for the department's purposes. The de-
2 partment may not further disclose the information, which shall be
3 treated as confidential and, in the hands of the department, exempt
4 from public disclosure under ORS 192.311 to 192.478.

5 **SECTION 8.** (1) The Agricultural Worker Overtime Account is es-
6 tablished in the State Treasury, separate and distinct from the General
7 Fund. Interest earned by the account shall be credited to the account.
8 The account consists of moneys appropriated, allocated, deposited or
9 transferred to the account by the Legislative Assembly. The moneys
10 in the account are continuously appropriated to the Oregon Business
11 Development Department for the purposes specified in section 7 of this
12 2021 Act.

13 **“(2)(a)** Except in case of a fiscal emergency, moneys in the Agri-
14 cultural Worker Overtime Account, including any subaccounts
15 thereof, may be used only for the purposes described in subsection (1)
16 of this section, and may not be transferred out of the account.

17 **“(b)** As used in this subsection, ‘fiscal emergency’ means a
18 projected deficit for the biennium, as most recently projected by the
19 Oregon Department of Administrative Services, of at least 12 percent
20 below the revenue estimated to be received for the biennium, as esti-
21 mated pursuant to ORS 291.349 (1) after adjournment sine die of the
22 odd-numbered year regular session of the Legislative Assembly.

23 **SECTION 9.** In addition to and not in lieu of any other appropri-
24 ation, there is appropriated to the Oregon Business Development De-
25 partment, for the biennium beginning July 1, 2021, out of the General
26 Fund, the amount of \$100 million to be deposited in the Agricultural
27 Worker Overtime Account established under section 8 of this 2021 Act,
28 which shall be expended for the purposes set forth in section 7 of this
29 2021 Act.

30 **SECTION 10.** Sections 7 and 8 of this 2021 Act are repealed on

1 **January 2, 2026.”.**

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