

## HB 4002 (-2) Agricultural Worker Overtime

The federal Fair Labor Standards Act that was enacted in 1938 providing overtime pay for workers who work over 8 hours a day or 40 hours a week, but it exempted two groups – domestic and agricultural workers.

California passed (AB 1066) in 2016 providing agricultural workers overtime protections that phased in over a four-year period; (with a separate schedule for employers with 25 or fewer employees). By January 1, 2025, all agricultural workers will receive one and one-half of their regular pay for overtime hours. In 2020 the Washington State Supreme Court ruled workers in the dairy industry must be paid overtime for over 40 hours week. This compelled legislation that enacted overtime in Washington phasing in overtime protections from 55 hours in 2022, down to and 40 hours in 2024. New York passed legislation 2 years ago lowering overtime to 60 hours and created a farm labor wage board. That board voted last week to recommend the state phase in overtime to 40 hours.

In the 2021 legislative session HB 2358 was introduced to phase in overtime to 40 hours by 2024. It included \$100 million for OBDD to compensate employers who paid overtime. During the interim there has been a workgroup seeking a compromise that has had little movement from labor or industry. In December the Oregon Law Center filed a suit to compel BOLI to establish overtime for agricultural workers who preform over 40 hours of work a week.

Oregon Bureau of Labor and Industry (BOLI) has indicated they may begin rulemaking in February to establish overtime for agricultural workers according to statute.

Recognizing this decision may result in greater uncertain and risk for the agricultural industry we are proposing House Bill 4002(-2). With the intent to help the industry with this potential transition.

**HB 4002 with the -2 amendment: Prohibits employers from permitting or requiring agricultural workers to work in excess of maximum allowable hours unless workers are compensated for overtime hours worked.**

- Beginning in 2023 a 5-year phase in of overtime to 40 hours:

Year	Maximum Hours	>25 FTE Tax Credit	≤25 FTE Tax Credit
2023	55	60%	75%
2024	55	60%	75%
2025	48	45%	60%
2026	48	30%	45%
2027	40	15%	30%
2028	40	15%	15%
2029+	40	N/A	N/A

**Payment amounts:** One and one-half of regular wages must be paid for all hours worked per week in excess of the weekly maximum, which is phased in over several years.

**Eligible businesses:** Eligible businesses are generally those operating in NAIC sectors 111 (crop production) and 112 (animal production) and employ agricultural workers. Labor contractors who recruit, solicit, supply, or employ ag workers on behalf of an eligible business are not entitled to receive

the tax credit, but their business clients who employ ag workers are. The labor contractor must be licensed by BOLI and submit the required data with an application containing a signed statement from the applicant certifying that the information is true and accurate.

### **Refundable Tax Credit**

The refundable tax credit is designed to help offset the additional cost to Oregon crop and animal production businesses for 6 years during the overtime phase in period. The credit is larger for farm businesses that employ 25 or less full-time equivalent (FTE) workers. Every 2,080 hours of work performed in a calendar year by a worker is an FTE.

### **Administration**

The refundable tax credit will have an annual cap designed to align with likely demand, estimated at \$27 million in 2023.<sup>1</sup> If eligibility exceeds the amount available, all tax credits will be reduced proportionately. Applications Application information will be established will be made to the Oregon Department of Revenue.

### **The (-2) Amendment also adds existing exemptions under ORS 653.020 (1) and (3)**

(1) An individual employed in agriculture if:

(a) Such individual is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment and is employed by an employer who did not, during any calendar quarter during the preceding year, use more than 500 piece-rate-work-days of agricultural labor;

(b) Such individual is the parent, spouse, child or other member of the employer's immediate family

(c) Such individual:

(A) Is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(B) Commutes daily from a permanent residence to the farm on which the individual is so employed; and

(C) Has been employed in agricultural labor less than 13 weeks during the preceding calendar year;

(d) Such individual, other than an individual described in paragraph (c) of this subsection:

(A) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; and

(B) Is paid at the same piece-rate as employees over 16 years of age on the same farm; or

(e) Such employee is principally engaged in the range production of livestock and earns a salary and is paid on a salary basis.

(3) An individual engaged in administrative, executive or professional work who:

(a) Performs predominantly intellectual, managerial or creative tasks;

(b) Exercises discretion and independent judgment; and

(c) Earns a salary and is paid on a salary basis.

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<sup>1</sup> Data from the USDA Farm Survey, Oregon Employment Department, and the Washington Employment Security Department suggest Oregon agricultural workers currently work between 3 and 4 million hours of overtime per year were they not exempt from Oregon's maximum hour requirement, resulting in an estimated total credit of approximately \$27 million in 2023.