

Shelly Boshart Davis

Move to refer to the Joint Committee on Farm Worker Overtime for Consideration of the -A10 Amendments

Colleagues,

Last week, I offered an amendment to HB 4002 that meets all the goals of this legislation, and that was not given full consideration by the Committee. The -A10 Amendments to HB 4002 meet the goals of the proponents for overtime pay after 40 hours and the goals of the agricultural industry for higher thresholds to ensure that family scale agriculture remains viable in Oregon. The -A10 Amendments do two things:

1. Provide workable overtime thresholds for farmers. Specifically, the bill provides for:
  - a. A 48-hour year-round overtime threshold for agricultural workers;
  - b. 15 weeks of a 55-hour overtime threshold for peak harvest weeks; and
  - c. A 55-hour threshold for workers who are making at least \$36,000 in an annual salary in rural areas (this number higher in urban areas);
2. Provide overtime pay to farm workers at 40 hours through a state grant fund:
  - a. The amendment allows the state to contact with a third-party organization to provide direct payments to farmworkers to bridge the gap between 40-hours and the higher thresholds I described above.

This amendment meets the farmer's need for more workable thresholds and the worker's need for overtime pay at 40 hours. It is the only solution offered that will protect farmworker jobs, result in more money in farm worker pockets, and help keep our family farms intact.

All available data suggests that farmworkers will see less money, not more with a strict 40-hour threshold. As we've seen in California, farmers cap hours to contain costs, and workers end up losing. While the tax credit is designed to help farmers bridge the gap, the reality is that the tax credit won't work for most farmers, and the transition away from labor or to capped hours will begin immediately.

The -A10 amendment prevents these negative outcomes from HB 4002B by taking the money that was allocated to the unworkable tax credits and creating the Agricultural Worker Overtime Relief Payment Program to provide direct payments to farmworkers based on the "half time" wage between 40 hours and the applicable overtime threshold. The farmer will still pay their regular rate of pay until the applicable threshold, at which point the farmer must pay overtime. And the state will provide direct relief to the worker based on hours worked between 40 and the applicable threshold.

To demonstrate how the outcome under the -A10 amendments is superior to the outcomes under HB 4002B, I want to provide an example. Worker A makes \$18/hour and typically works 60 hours a week for Employer B over 10 peak weeks and works 45 hours/week for the rest of the year. Under HB 4002B, their employer cannot afford to pay overtime for 5 hours a week year-round and 60 hours during peak season and can't

afford to wait for a tax credit, so Worker A operates under a 40 hour a week hour cap. Prior to HB 4002B, Worker A made \$44,820/year. Post HB 4002B, Worker A will make \$37,440/year, a \$7,380 loss. However, under the -A10 amendments, even if his peak hours get capped at 55 hours/week, Worker A will make \$47,160, \$43,920 from his employer and \$3,240 in payments from the relief program, a net gain of \$2,340 from their pre-A10 income, and a whopping \$9,720 more than they would make under HB 4002B.

Worker A is truly better off than they would have been under the status quo, and much better off than they would be under HB 4002B. Plus, they worked fewer hours during their peak season. The -A10 amendments are truly the win-win solution we've been looking for, and I do not understand why they were not moved forward.

I have heard concerns that this arrangement somehow creates an employment obligation on the state or a tax obligation on the state. I sought the advice of legislative counsel on those questions, who confirmed that this program creates neither an employment nor a tax obligation on the state (attached). Indeed, this makes infinite sense considering this is the same mechanism the state has used to disperse all manner of relief payments over the years, none of which created any new obligation on the state. I imagine every person in this room has voted to create a similar relief payment in the many special sessions last year to provide for COVID relief. I urge you to once again vote for this well known mechanism.

The -A10 Amendment is a true win-win solution that would result in more money in workers' pockets and protect the viability of Oregon's farms, and this bill should be referred back to committee to adopt the -A10 amendment. Colleagues, there is still time to find a more workable solution. I urge you to join me.

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**Sent:** Sunday, February 27, 2022 12:06 PM  
**To:** Rep BoshartDavis <[Rep.ShellyBoshartDavis@oregonlegislature.gov](mailto:Rep.ShellyBoshartDavis@oregonlegislature.gov)>  
**Subject:** RE: Questions for -A10 in HB4002

Good Afternoon Representative,

Below are the questions you posed, along with our responses, in regards to the -A10 amendments to HB 4002.

1. Does the Agricultural Worker Overtime Relief Payment Program risk creating an employment relationship between the worker receiving the funds and the state?

Under the -A10 amendments, employers are required to pay overtime compensation to agricultural workers for hours worked in excess of either 48 hours or 55 hours, depending on whether the workers is paid an agricultural salary and whether the hours worked occurred during a peak labor period. The -A10 amendments propose the establishment of an Agricultural Worker Overtime Relief Payment Program in the Employment Department to provide payments to agricultural workers who apply and meet certain eligibility criteria. The payments are essentially a way of providing financial assistance to workers for hours worked in excess of 40 hours but for which overtime compensation is not required.

We do not believe that awarding a payment under the program to an eligible agricultural worker establishes an employment relationship between the state and the agricultural worker. Under state wage and hour laws, "employ" means "to suffer or permit to work." (ORS 653.010) Here, the state is not suffering or permitting an agricultural worker to work and the agricultural worker is not performing any labor for the benefit of the state in return for remuneration. The payments for which an agricultural worker applies to receive under the program do not replace the wages that the employer is required to pay to the workers in exchange for the services performed by the agricultural worker. Instead, the wages due to the agricultural worker remain the responsibility of the farm or farmer for which the agricultural worker performs services. As the employer, the farm or farmer would be required to pay straight time pay for all hours worked in excess of 40 hours until the overtime compensation requirements are triggered. Once the hours worked exceed 48 or 55 hours, the employer would then be required to pay overtime pay to the workers. The payments Agricultural Worker Overtime Relief Payment Program are an additional benefit made available through the program for which an eligible agricultural worker may apply.

2. Does the Agricultural Worker Overtime Relief Payment Program have any tax implications for the state (UI, PFMLI, withholding taxes)?

Because we do not believe that an employment relationship exists between the state and the agricultural worker, we do not believe that the state's disbursement of a payment award to an agricultural worker who qualifies for a payment award under the Agricultural Worker Overtime Relief Payment Program triggers any tax implications for the state with respect to Unemployment Insurance, Paid Family and Medical Leave Program or the withholding of taxes, generally. That said, any payments received by an agricultural worker would still be considered income that is subject to taxation.

Employers are required to withhold or pay state and federal taxes on behalf of its employees and are required to withhold state and federal income taxes and social security and Medicare taxes from employees' wages. Most employers are also required to pay state and federal unemployment tax, which are used to pay benefits for certain qualifying Oregon workers who become unemployed. Additionally, under the Paid Family and Medical Leave requirements, employers that employ 25 or more employees are required to withhold a certain percentage from employee wages as contributions used to fund the benefits made available under the PFL program.

3. If yes, could these issues be resolved with a language change to the amendment?

See answers to Questions 1 and 2.

I hope this information is helpful.

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