

House Bill 4002

Sponsored by Representatives SALINAS, HOLVEY, Senators TAYLOR, FREDERICK, JAMA, MANNING JR, WAGNER; Representatives CAMPOS, SANCHEZ, Senators LAWRENCE SPENCE, LIEBER (Pre-session 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 **as introduced**.

Prohibits employers from permitting or requiring agricultural workers to work in excess of maximum allowable hours unless workers are compensated for overtime hours worked.

Creates income or corporate excise tax credit allowed to employer for excess amount of wages paid as overtime pay to agricultural workers.

Applies to tax years beginning on or after January 1, 2023, and before January 1, 2029.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to overtime for agricultural workers; creating new provisions; amending ORS 314.772,
3 318.031, 653.055 and 653.256; and prescribing an effective date.

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

5 **SECTION 1. As used in this section and section 2 of this 2022 Act:**

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

8 (2) **"Agriculture" includes:**

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

10 (b) **Dairying;**

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

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

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

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

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

22 (a) **For calendar years 2023 and 2024, 55 hours in one workweek.**

23 (b) **For calendar years 2025 and 2026, 48 hours in one workweek.**

24 (c) **For calendar year 2027 and each year thereafter, 40 hours in one workweek.**

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

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 **excess of the maximum allowable hours.**

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

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

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

7 **SECTION 3.** Section 2 of this 2022 Act is amended to read:

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

10 [(a) For calendar years 2023 and 2024, 55 hours in one workweek.]

11 [(b) For calendar years 2025 and 2026, 48 hours in one workweek.]

12 [(c) For calendar year 2027 and each year thereafter,] 40 hours in one workweek.

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

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

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

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

23 **SECTION 4. The amendments to section 2 of this 2022 Act by section 3 of this 2022 Act**
24 **become operative on January 1, 2027.**

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

26 653.055. (1) Any employer who pays an employee less than the wages to which the employee is
27 entitled under ORS 653.010 to 653.261 **or section 2 of this 2022 Act** is liable to the employee af-
28 fected:

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

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

32 (2) Any agreement between an employee and an employer to work at less than the wage rate
33 required by ORS 653.010 to 653.261 **or section 2 of this 2022 Act** is no defense to an action under
34 subsection (1) of this section.

35 (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in
36 connection with a wage claim based on ORS 653.010 to 653.261 **and section 2 of this 2022 Act** as
37 the commissioner has under ORS 652.310 to 652.445 and in addition the commissioner may, without
38 the necessity of assignments of wage claims from employees, initiate suits against employers to en-
39 join future failures to pay required minimum wages or overtime pay and to require the payment of
40 minimum wages and overtime pay due employees but not paid as of the time of the filing of suit.
41 The commissioner may join in a single proceeding and in one cause of suit any number of wage
42 claims against the same employer. If the commissioner does not prevail in such action, the commis-
43 sioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

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

SECTION 6. ORS 653.256 is amended to read:

653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611, 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, **or section 2 of this 2022 Act** or any rule adopted thereunder.

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

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

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

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

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

SECTION 7. Sections 8 to 11 of this 2022 Act are added to and made a part of ORS chapter 315.

SECTION 8. (1) As used in this section and sections 9 and 10 of this 2022 Act:

(a) **“Agricultural worker” has the meaning given that term in section 1 of this 2022 Act.**

(b) **“Eligible employer” means an employer doing business in 2017 North American Industry Classification System Code 111, crop production, or Code 112, animal production.**

(2)(a) **A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed for overtime compensation paid by an eligible employer to agricultural workers, on an hourly or piece-rate basis. The amount of the credit shall equal a percentage of the actual excess paid to agricultural workers during the tax year as determined under section 9 of this 2022 Act.**

(b) **A labor contractor licensed under ORS 658.410 may not claim a credit under this section. An eligible employer may claim a credit under this section for wages paid to workers recruited, solicited, supplied or employed by a labor contractor on behalf of the eligible employer.**

(3) **Prior to claiming the credit allowed under this section, a taxpayer is required to receive written certification from the Employment Department stating that the taxpayer is an eligible employer and indicating the maximum amount of credit for which the taxpayer is eligible for the tax year, as provided in section 10 of this 2022 Act.**

(4) **Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer’s tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit**

1 not used in that second succeeding tax year may be carried forward and used in the third
 2 succeeding tax year, but may not be carried forward for any tax year thereafter.

3 (5) A nonresident shall be allowed the credit under this section. The credit shall be
 4 computed in the same manner and be subject to the same limitations as the credit granted
 5 to a resident. However, the credit shall be prorated using the proportion provided in ORS
 6 316.117.

7 (6) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,
 8 or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440,
 9 the credit allowed under this section shall be prorated or computed in a manner consistent
 10 with ORS 314.085.

11 (7) If a change in the status of a taxpayer from resident to nonresident or from nonres-
 12 ident to resident occurs, the credit allowed under this section shall be determined in a
 13 manner consistent with ORS 316.117.

14 (8) The Employment Department, after consultation with the Department of Revenue,
 15 shall adopt rules for the purposes of sections 8 to 11 of this 2022 Act, including policies and
 16 procedures for certifying taxpayers as eligible for the credit allowed under this section as
 17 required in section 10 of this 2022 Act.

18 **SECTION 9.** The amount of credit allowed under section 8 of this 2022 Act shall be equal
 19 to a percentage of the additional wages paid as overtime pay to agricultural workers by an
 20 eligible employer, in excess of regular pay. The following percentages shall apply:

21 (1) 50 percent of excess wages paid in tax years beginning on or after January 1, 2023,
 22 and before January 1, 2025.

23 (2) 35 percent of excess wages paid in tax years beginning on or after January 1, 2025,
 24 and before January 1, 2027.

25 (3) 20 percent of excess wages paid in tax years beginning on or after January 1, 2027,
 26 and before January 1, 2029.

27 **SECTION 10.** (1) In order to obtain certification from the Employment Department for
 28 a tax credit allowed under section 8 of this 2022 Act, a taxpayer shall submit to the Em-
 29 ployment Department an application for certification under this section. The application
 30 shall be made in the form and manner prescribed by the Employment Department and must
 31 be submitted by the taxpayer before the close of the final month of the tax year of the tax-
 32 payer.

33 (2) The taxpayer must include with the application required under this section the fol-
 34 lowing:

35 (a) The address and tax identification number of the taxpayer.

36 (b) A statement by the taxpayer of the overtime hours worked and overtime wages paid,
 37 on an hourly or piece-rate basis, to each agricultural worker employed by the taxpayer and
 38 the amount of overtime wages paid on or behalf of the taxpayer as compensation to agri-
 39 cultural workers during the tax year.

40 (c) The number of the license issued under ORS 658.410 to any labor contractor used to
 41 recruit, solicit, supply or employ workers on behalf of the taxpayer, or other permit or reg-
 42 istration numbers issued to the labor contractor.

43 (3) The Employment Department shall timely provide written certification to taxpayers
 44 that are eligible to claim the credit under section 8 of this 2022 Act. The certification shall
 45 state the maximum amount of credit for which the taxpayer is eligible for the tax year. The

1 credit claimed may not exceed the actual amount of excess paid as overtime to agricultural
2 workers during the tax year by the taxpayer.

3 (4) The Employment Department shall provide information to the Department of Revenue
4 about all certifications issued under this section, as provided in ORS 315.058.

5 **SECTION 11.** The total amount certified by the Employment Department for tax credits
6 for overtime wages under section 8 of this 2022 Act may not exceed \$20 million for all tax-
7 payers for any calendar year. If the department receives applications for the credit sufficient
8 to exceed this amount, the department shall by rule proportionately reduce the amount of
9 certified credits among all taxpayers applying for the credit.

10 **SECTION 12.** Section 8 of this 2022 Act applies to tax years beginning on or after January
11 1, 2023, and before January 1, 2029.

12 **SECTION 13.** ORS 314.772 is amended to read:

13 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
14 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
15 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
16 allowable to the shareholders of the S corporation.

17 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on
18 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
19 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
20 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
21 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
22 manner prescribed under section 1377(a) of the Internal Revenue Code.

23 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
24 of this section shall be determined as if such item were realized directly from the source from which
25 realized by the corporation, or incurred in the same manner as incurred by the corporation.

26 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
27 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
28 316.117, then that provision shall apply to the nonresident shareholder.

29 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
30 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
31 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
32 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
33 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
34 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
35 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
36 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
37 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
38 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
39 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
40 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS
41 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643
42 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account
43 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone
44 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research
45 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,

1 Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 8 of this 2022 Act (agri-**
2 **cultural overtime pay).**

3 **SECTION 14.** ORS 318.031 is amended to read:

4 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
5 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
6 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
7 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
8 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
9 315.643 **and section 8 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS
10 chapter 317.

11 **SECTION 15.** **This 2022 Act takes effect on the 91st day after the date on which the 2022**
12 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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