

Enrolled House Bill 4002

Sponsored by Representatives SALINAS, HOLVEY, Senator TAYLOR, Representative VALDERRAMA, Senators FREDERICK, JAMA, MANNING JR, WAGNER; Representatives ALONSO LEON, BYNUM, CAMPOS, HUDSON, NELSON, REYNOLDS, RUIZ, SANCHEZ, Senators DEMBROW, GELSER BLOUIN, LAWRENCE SPENCE, LIEBER (Presession filed.)

CHAPTER

AN ACT

Relating to overtime for agricultural workers; creating new provisions; amending ORS 314.772, 316.502, 317.850, 318.031, 653.055 and 653.256; and prescribing an effective date.

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

SECTION 1. As used in this section and sections 2 and 4a of this 2022 Act:

(1) “Agricultural worker” means an individual who performs services in agriculture for an employer in exchange for an agreed remuneration or rate of pay.

(2) “Agriculture” includes:

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

(b) Dairying;

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

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

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

(3) “Salary” has the meaning given that term in ORS 653.010.

(4) “Workweek” means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4a. The provisions of section 2 of this 2022 Act relating to overtime compensation requirements for agricultural workers do not apply to:

(1) An individual described in ORS 653.020 (1).

(2) An individual employed in agriculture whose principal duties are administrative, executive or professional work and 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.

SECTION 5. ORS 653.055 is amended to read:

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

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

(b) For civil penalties provided in ORS 652.150.

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

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

(4) The court may award reasonable attorney fees to the prevailing party in any action brought 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 6a. (1) **No later than November 30, 2026, and every six years thereafter, the Employment Department, in consultation with the Bureau of Labor and Industries, the Department of Revenue and the State Department of Agriculture, shall submit a report, in the manner provided in ORS 192.245, to the interim committees of the Legislative Assembly related to agriculture, on the identified economic impacts of the overtime compensation requirements under section 2 of this 2022 Act.**

(2) **The report must consider all available relevant data related to the overtime compensation requirements under section 2 of this 2022 Act for calendar years 2023, 2024, 2025 and 2026 and must include, but need not be limited to, an examination of the following:**

(a) **Employment, wages and hours worked by agricultural workers whose employment is subject to ORS chapter 657.**

(b) **The total amount of wages paid to agricultural workers whose employment is subject to ORS chapter 657.**

(c) **Employment, wages and hours worked in the agricultural sector by quarter, including job vacancies available in natural resources, by quarter.**

(d) **Employment, wages and hours worked, separated by size of employer and agricultural sector.**

(e) **Recent national and regional trends related to the agricultural workforce, including wages, employment and labor costs.**

SECTION 6b. **The division of the Oregon Department of Administrative Services that serves as the office of economic analysis shall include in the economic forecast for a biennium any available relevant economic and wage data that relates to the agricultural economy in this state as impacted by the operation of sections 2 and 8 of this 2022 Act.**

SECTION 6c. **No later than September 30, 2022, the State Department of Agriculture and the Oregon Business Development Department shall make recommendations for legislation to a regular or interim committee of the Legislative Assembly related to agriculture regarding available options for establishing a grant program, loan program or lending program to which \$10 million will be allocated for the purpose of providing financial assistance to employers to mitigate the costs associated with compliance with the overtime compensation requirements under section 2 of this 2022 Act.**

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 and aquaculture.

(c) “Full-time equivalent employee” means an employee or a combination of employees that perform at least 2,080 hours of work for an employer in a calendar year.

(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 required under section 2 of this 2022 Act to be paid, for work performed in Oregon, by an eligible employer to agricultural workers on an hourly basis. The amount of the credit shall equal a percentage of the actual excess paid to agricultural workers during the calendar year in which the tax year begins, 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.

(c) Notwithstanding ORS 317.090 (3), a credit under this section is allowed against the tax imposed under ORS 317.090.

(d) A credit is not allowed under this section for any overtime wages paid to an employee who is exempt from the provisions of section 2 of this 2022 Act as a member of the immediate family of the employer.

(3) Prior to claiming the credit allowed under this section, a taxpayer is required to receive a notice of acknowledgment from the Department of Revenue, as provided in section 10 of this 2022 Act, stating the maximum amount of credit that the taxpayer may claim for the calendar year.

(4) If the amount allowable:

(a) As a credit under this section against taxes imposed under ORS chapter 316, when added to the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583, other tax prepayment amounts and other refundable credit amounts, exceeds the taxes imposed by ORS chapters 314 and 316 for the tax year after application of any nonrefundable credits allowable for purposes of ORS chapter 316 for the tax year, the amount of the excess shall be refunded to the taxpayer as provided in ORS 316.502.

(b) As a credit under this section against taxes imposed under ORS chapter 317 or 318, when added to the sum of the amount of estimated tax paid under ORS 314.515 and any other tax prepayment amounts, exceeds the taxes imposed by ORS chapters 314 and 317 for the tax year (reduced by any nonrefundable credits allowable for purposes of ORS chapter 317 for the tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS 314.415.

(5) Any amount that is refunded to the taxpayer under this section and that is in excess of the tax liability of the taxpayer does not bear interest.

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

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

(8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed under this section shall be determined in a manner consistent with ORS 316.117.

(9) The Department of Revenue shall adopt rules for the purposes of sections 8 to 11 of this 2022 Act, including policies and procedures for providing notice to taxpayers regarding the credit allowed under this section as required in section 10 of this 2022 Act.

SECTION 9. (1) The amount of credit allowed under section 8 of this 2022 Act shall be equal to a percentage of the additional wages paid as required overtime pay to agricultural workers by an eligible employer, in excess of regular pay, as set forth in subsections (2) to (5) of this section.

(2) If during the calendar year the taxpayer employs more than 50 full-time equivalent employees and is not primarily engaged in the business of dairying, the following percentages of excess wages paid by the employer in a calendar year shall apply, for the following calendar years:

- (a) 60 percent, for 2023 or 2024.
- (b) 45 percent, for 2025.
- (c) 30 percent, for 2026.
- (d) 15 percent, for 2027 or 2028.

(3) If during the calendar year the taxpayer employs more than 25 but not more than 50 full-time equivalent employees, or employs more than 25 full-time equivalent employees and is primarily engaged in the business of dairying, the following percentages of excess wages paid by the employer in a calendar year shall apply, for the following calendar years:

- (a) 75 percent, for 2023.
- (b) 60 percent, for 2024 or 2025.
- (c) 50 percent, for 2026, 2027 or 2028.

(4) If during the calendar year the taxpayer employs not more than 25 full-time equivalent employees and is not primarily engaged in the business of dairying, the following percentages of excess wages paid by the employer in a calendar year shall apply, for the following calendar years:

- (a) 90 percent, for 2023.
- (b) 80 percent, for 2024 and 2025.
- (c) 60 percent, for 2026, 2027 and 2028.

(5) If during the calendar year the taxpayer employs not more than 25 full-time equivalent employees and is primarily engaged in the business of dairying, the credit shall equal 100 percent of excess wages paid by the employer.

SECTION 10. (1) In order to receive a notice of acknowledgment from the Department of Revenue in support of a tax credit allowed under section 8 of this 2022 Act, a taxpayer shall submit to the department an application under this section. The application shall be made in the form and manner prescribed by the department and must be submitted by the taxpayer no later than January 31 following the calendar year for which the taxpayer seeks credit.

(2) The taxpayer must include with the application required under this section the following:

- (a) The address and tax identification number of the taxpayer.
- (b) A statement by the taxpayer of the overtime hours worked and overtime wages paid, on an hourly basis, to agricultural workers employed by the taxpayer and the amount of overtime wages paid by or on behalf of the taxpayer as compensation to agricultural workers during the calendar year. The taxpayer shall provide aggregate data as to employees of the taxpayer who received overtime pay from the taxpayer and those who did not.
- (c) The number of the license issued under ORS 658.410 to any labor contractor used to recruit, solicit, supply or employ workers on behalf of the taxpayer, or other permit or registration numbers issued to the labor contractor.

(d) If applicable, any license required under ORS 475C.065 or 571.281 or registration required under ORS 475C.792.

(e) Any other information required by the department to verify the identity of the taxpayer or the potential maximum amount of credit allowed to the taxpayer under section 8 of this 2022 Act.

(3) Upon receipt of an application under this section, the department shall immediately allow an extension, from the next applicable due date, for filing of the taxpayer's income or corporate excise tax return.

(4) Not later than June 1 of the year in which the application under subsection (1) of this section is filed, the department shall issue written notice to taxpayers that meet the application requirements of this section. The notice of acknowledgment shall state the maximum amount of credit for which the taxpayer is eligible for the tax year. The credit claimed may not exceed the actual amount of excess paid as overtime wages to agricultural workers during the calendar year by the taxpayer.

SECTION 11. The total amount allowed for tax credits for overtime wages under section 8 of this 2022 Act, as acknowledged in notices provided by the Department of Revenue under section 10 of this 2022 Act, may not exceed \$55 million for all taxpayers for any calendar year. If the department receives applications for the credit sufficient to exceed this amount, the department shall by rule proportionately reduce the amount of certified credits among all taxpayers applying for the credit.

SECTION 12. Section 8 of this 2022 Act applies to tax years beginning on or after January 1, 2023.

SECTION 12a. Following receipt of a report required under section 6a of this 2022 Act and submitted to a regular or interim committee of the Legislative Assembly, the Legislative Assembly shall consider making adjustments to the structure of the credit allowed under section 8 of this 2022 Act and shall revise the credit rate amounts provided in section 9 of this 2022 Act, if deemed appropriate by the Legislative Assembly.

SECTION 12b. Notwithstanding any provision of ORS 314.835 or 314.840, the Department of Revenue and the Bureau of Labor and Industries may share information necessary for the effective administration of sections 2 and 8 of this 2022 Act, for the purpose of carrying out the provisions of sections 2 and 8 of this 2022 Act, provided that the department and the bureau do not disclose personally identifiable information.

SECTION 13. ORS 316.502 is amended to read:

316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

(2) A working balance of unreceipted revenue from the tax imposed by this chapter may be retained for the payment of refunds, but such working balance shall not at the close of any fiscal year exceed the sum of \$1 million.

(3) Moneys are continuously appropriated to the Department of Revenue to make:

(a) The refunds authorized under subsection (2) of this section; and

(b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262, 315.264, 315.266 and 316.090 and section 3, chapter 589, Oregon Laws 2021, **and section 8 of this 2022 Act.**

SECTION 14. ORS 317.850 is amended to read:

317.850. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds, shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

(2) A working balance of unreceipted revenue from the tax imposed by this chapter may be retained for the payment of refunds, but such working balance shall not at the close of any fiscal year exceed the sum of \$500,000.

(3) Moneys are continuously appropriated to the Department of Revenue to make:
(a) The refunds authorized under subsection (2) of this section; and
(b) The refund payments in excess of tax liability authorized under section 8 of this 2022 Act.

SECTION 15. ORS 314.772 is amended to read:

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

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

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

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

(5) As used in this section, "business tax credit" means the following credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 8 of this 2022 Act (agricultural overtime pay).**

SECTION 16. ORS 318.031 is amended to read:

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

SECTION 17. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House March 1, 2022

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 3, 2022

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2022

Approved:

.....M,....., 2022

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2022

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Shemia Fagan, Secretary of State