

Requested by Representative BOSHART DAVIS

**PROPOSED AMENDMENTS TO
HOUSE BILL 4002**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and delete line 3 and insert “653.055, 653.256 and 653.261; and prescribing
3 an effective date.”.

4 Delete lines 5 through 28 and delete pages 2 through 6 and insert:

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

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

9 **“(2) ‘Agriculture’ includes:**

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

12 **“(b) Dairying;**

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

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

16 **“(e) The production of livestock off the range; and**

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

21 **“(3) ‘Peak labor period’ means a period of time during which agri-**

1 cultural workers perform peak seasonal agricultural activities, in-
2 cluding but not limited to planting, harvesting, shipping or processing
3 of crops.

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

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

10 “(a) For calendar year 2023, 60 hours in one workweek.

11 “(b) For calendar year 2024, 54 hours in one workweek.

12 “(c) For calendar year 2025 and each year thereafter, 50 hours in
13 one workweek.

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

21 “(3)(a) Notwithstanding subsection (2) of this section, beginning in
22 calendar year 2024 and each year thereafter, during a peak labor pe-
23 riod, an employer may permit, require or suffer an agricultural worker
24 to work more than 60 hours in one workweek if the employer com-
25 pensates the agricultural worker at one and one-half times the
26 worker’s regular rate of pay for each overtime hour or portion of an
27 hour that the worker works in excess 60 hours in one workweek.

28 “(b)(A) An employer shall designate the time period during which
29 a peak labor period will occur but in no event may a peak labor period
30 exceed 22 weeks per calendar year.

1 **“(B) The weeks that comprise a peak labor period need not be con-**
2 **secutive nor coincide with a designated peak labor period in any pre-**
3 **vious calendar year.**

4 **“(4) The overtime requirements set forth under this section do not**
5 **apply to:**

6 **“(a) An agricultural worker who performs work for an employer**
7 **who is the parent, spouse, child or other member of the employer’s**
8 **immediate family.**

9 **“(b) An agricultural worker who is engaged in dairying or the pro-**
10 **duction of livestock on or off the range.**

11 **“(5)(a) Subject to paragraph (b) of this section, once each year, an**
12 **employer shall provide written notice to the agricultural workers em-**
13 **ployed by the employer that:**

14 **“(A) Informs the workers of the maximum allowable working hours**
15 **and overtime compensation requirements that are applicable during a**
16 **peak labor period;**

17 **“(B) Provides a good faith estimate of the weeks and months within**
18 **which a peak labor period is expected to occur; and**

19 **“(C) Explains that the good faith estimate of an expected peak labor**
20 **period may change as a result of unforeseen circumstances or changes**
21 **in conditions outside of the employer’s control, including but not**
22 **limited to unusual weather events.**

23 **“(b) The employer shall provide the notice to agricultural workers**
24 **at least 30 days prior to the first week in which a peak labor period is**
25 **expected to begin except that:**

26 **“(A) If an agricultural worker is hired after the 30-day period com-**
27 **mences, the employer shall provide the notice to the worker at the**
28 **time of hire.**

29 **“(B) If the agricultural worker participates in a federal temporary**
30 **contractor labor program, the employer shall provide the notice to the**

1 worker not later than the date on which the worker’s visa application
2 is due.

3 “(6) For purposes of this section, a workweek may begin on any day
4 of the week and at any hour of the day and need not coincide with a
5 calendar week. An employer may change the beginning of an agricul-
6 tural worker’s workweek if the change is intended to be permanent
7 and is not designed to evade overtime requirements.

8 “(7) A claim for a violation of this section may be made under ORS
9 653.055.

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

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

14 “[*(a) For calendar year 2023, 60 hours in one workweek.*]

15 “[*(b) For calendar year 2024, 54 hours in one workweek.*]

16 “[*(c) For calendar year 2025 and each year thereafter,*] 50 hours in one
17 workweek.

18 “(2) An employer may permit, require or suffer an agricultural worker to
19 work more than [*the maximum allowable*] **50** hours in one workweek [*speci-*
20 *fied under subsection (1) of this section*] if the employer compensates the ag-
21 ricultural worker at one and one-half times the worker’s regular rate of pay
22 for each overtime hour or portion of an hour that the worker works in excess
23 of [*the maximum allowable*] **50** hours.

24 “(3)(a) Notwithstanding subsection (2) of this section, [*beginning in cal-*
25 *endar year 2024 and each year thereafter,*] during a peak labor period, an
26 employer may permit, require or suffer an agricultural worker to work more
27 than 60 hours in one workweek if the employer compensates the agricultural
28 worker at one and one-half times the worker’s regular rate of pay for each
29 overtime hour or portion of an hour that the worker works in excess 60
30 hours in one workweek.

1 “(b)(A) An employer shall designate the time period during which a peak
2 labor period will occur but in no event may a peak labor period exceed 22
3 weeks per calendar year.

4 “(B) The weeks that comprise a peak labor period need not be consecutive
5 nor coincide with a designated peak labor period in any previous calendar
6 year.

7 “(4) The overtime requirements set forth under this section do not apply
8 to:

9 “(a) An agricultural worker who performs work for an employer who is
10 the parent, spouse, child or other member of the employer’s immediate fam-
11 ily.

12 “(b) An agricultural worker who is engaged in dairying or the production
13 of livestock on or off the range.

14 “(5)(a) Subject to paragraph (b) of this section, once each year, an em-
15 ployer shall provide written notice to the agricultural workers employed by
16 the employer that:

17 “(A) Informs the workers of the maximum allowable working hours and
18 overtime compensation requirements that are applicable during a peak labor
19 period;

20 “(B) Provides a good faith estimate of the weeks and months within which
21 a peak labor period is expected to occur; and

22 “(C) Explains that the good faith estimate of an expected peak labor pe-
23 riod may change as a result of unforeseen circumstances or changes in con-
24 ditions outside of the employer’s control, including but not limited to
25 unusual weather events.

26 “(b) The employer shall provide the notice to agricultural workers at least
27 30 days prior to the first week in which a peak labor period is expected to
28 begin except that:

29 “(A) If an agricultural worker is hired after the 30-day period commences,
30 the employer shall provide the notice to the worker at the time of hire.

1 “(B) If the agricultural worker participates in a federal temporary con-
2 tractor labor program, the employer shall provide the notice to the worker
3 not later than the date on which the worker’s visa application is due.

4 “(6) For purposes of this section, a workweek may begin on any day of
5 the week and at any hour of the day and need not coincide with a calendar
6 week. An employer may change the beginning of an agricultural worker’s
7 workweek if the change is intended to be permanent and is not designed to
8 evade overtime requirements.

9 “(7) A claim for a violation of this section may be made under ORS
10 653.055.

11 **“SECTION 4. The amendments to section 2 of this 2022 Act by sec-**
12 **tion 3 of this 2022 Act become operative on January 1, 2025.**

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

14 “653.055. (1) Any employer who pays an employee less than the wages to
15 which the employee is entitled under ORS 653.010 to 653.261 **or section 2**
16 **of this 2022 Act** is liable to the employee affected:

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

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

20 “(2) Any agreement between an employee and an employer to work at less
21 than the wage rate required by ORS 653.010 to 653.261 **or section 2 of this**
22 **2022 Act** is no defense to an action under subsection (1) of this section.

23 “(3) The Commissioner of the Bureau of Labor and Industries has the
24 same powers and duties in connection with a wage claim based on ORS
25 653.010 to 653.261 **and section 2 of this 2022 Act** as the commissioner has
26 under ORS 652.310 to 652.445 and in addition the commissioner may, without
27 the necessity of assignments of wage claims from employees, initiate suits
28 against employers to enjoin future failures to pay required minimum wages
29 or overtime pay and to require the payment of minimum wages and overtime
30 pay due employees but not paid as of the time of the filing of suit. The

1 commissioner may join in a single proceeding and in one cause of suit any
2 number of wage claims against the same employer. If the commissioner does
3 not prevail in such action, the commissioner shall pay all costs and dis-
4 bursements from the Bureau of Labor and Industries Account.

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

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

8 “653.256. (1) In addition to any other penalty provided by law, the Com-
9 missioner of the Bureau of Labor and Industries may assess a civil penalty
10 not to exceed \$1,000 against any person that willfully violates ORS 653.025,
11 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611, 653.616,
12 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws
13 2015, **or section 2 of this 2022 Act** or any rule adopted thereunder.

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

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

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

23 “(b) The remainder, if any, of the sums collected as penalties under sub-
24 section (1) of this section shall be paid over by the commissioner to the De-
25 partment of State Lands for the benefit of the Common School Fund of this
26 state. The department shall issue a receipt for the money to the commis-
27 sioner.

28 “(c) The remainder, if any, of the sums collected as penalties under sub-
29 section (2) of this section shall be paid over by the commissioner to the De-
30 partment of Human Services for the benefit of the Breastfeeding Mother

1 Friendly Employer Project. The department shall issue a receipt for the
2 moneys to the commissioner.

3 **SECTION 7.** ORS 653.261 is amended to read:

4 “653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries
5 may adopt rules prescribing such minimum conditions of employment, ex-
6 cluding minimum wages, in any occupation as may be necessary for the
7 preservation of the health of employees. The rules may include, but are not
8 limited to, minimum meal periods and rest periods, and maximum hours of
9 work, but not less than eight hours per day or 40 hours per workweek;
10 however, after 40 hours of work in one workweek overtime may be paid, but
11 in no case at a rate higher than one and one-half times the regular rate of
12 pay of the employees when computed without benefit of commissions, over-
13 rides, spiffs and similar benefits.

14 “(b) As used in this subsection, ‘workweek’ means a fixed period of time
15 established by an employer that reflects a regularly recurring period of 168
16 hours or seven consecutive 24-hour periods. A workweek may begin on any
17 day of the week and any hour of the day and need not coincide with a cal-
18 endar week. The beginning of the workweek may be changed if the change
19 is intended to be permanent and is not designed to evade overtime require-
20 ments.

21 “(2) Rules adopted by the commissioner pursuant to subsection (1) of this
22 section do not apply to individuals employed by this state or a political
23 subdivision or quasi-municipal corporation thereof if other provisions of law
24 or collective bargaining agreements prescribe rules pertaining to conditions
25 of employment referred to in subsection (1) of this section, including meal
26 periods, rest periods, maximum hours of work and overtime.

27 “(3) Rules adopted by the commissioner pursuant to subsection (1) of this
28 section regarding meal periods and rest periods do not apply to nurses who
29 provide acute care in hospital settings if provisions of collective bargaining
30 agreements entered into by the nurses prescribe rules concerning meal peri-

1 ods and rest periods.

2 “(4) Rules adopted by the commissioner pursuant to subsection (1)
3 of this section regarding maximum hours of work and overtime do not
4 apply to agricultural workers, as defined in section 1 of this 2022 Act.

5 “[~~(4)(a)~~] (5)(a) The commissioner shall adopt rules regarding meal periods
6 for employees who serve food or beverages, receive tips and report the tips
7 to the employer.

8 “(b) In rules adopted by the commissioner under paragraph (a) of this
9 subsection, the commissioner shall permit an employee to waive a meal pe-
10 riod. However, an employer may not coerce an employee into waiving a meal
11 period.

12 “(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty
13 provided by law, the commissioner may assess a civil penalty not to exceed
14 \$2,000 against an employer that the commissioner finds has coerced an em-
15 ployee into waiving a meal period in violation of this subsection. Each vio-
16 lation is a separate and distinct offense. In the case of a continuing
17 violation, each day’s continuance is a separate and distinct violation.

18 “(d) Civil penalties authorized by this subsection shall be imposed in the
19 manner provided in ORS 183.745. All sums collected as penalties under this
20 subsection shall be applied and paid over as provided in ORS 653.256 (4).

21 **“SECTION 8. This 2022 Act takes effect on the 91st day after the**
22 **date on which the 2022 regular session of the Eighty-first Legislative**
23 **Assembly adjourns sine die.”**

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