

# Oregon overtime bill likely to pit agricultural workers against farmers



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## **PHOTOS: Willamette Valley farmworkers prepare for extreme heat**

Farmworkers prepare for extreme heat in the Willamette Valley

Oregon legislators have once again introduced a bill that would bring overtime pay to the thousands of agricultural workers in the state.

It's a bill likely to pit farmworkers against farmers, and — at the Capitol — Democrats against Republicans.

Many farm owners strongly oppose the measure, saying the costs the bill would bring are unsustainable for most owners. They also warn about having to cut hours and automating or reducing what they grow. Some say they will be forced to sell their farms to larger corporations.

Farmworkers and their advocates say it is long overdue. Changing the law would eliminate a practice rooted in white supremacy, they say. And they say it would bring relief to a labor force where individuals make \$15,000 to \$19,000 a year — far below the average individual annual income in Oregon of \$33,763.

At the behest of white southern farmers, the federal government excluded farmworkers and domestic workers from the landmark provisions of the Federal Fair Labor Standards in 1938. The agricultural and domestic labor force was mostly Black then. Today, it is mostly Latino.

Few states have passed legislation to guarantee overtime protections to agricultural workers. With House Bill 4002, Oregon would become the third, following similar laws in California and Washington. Four other states have laws that cover overtime for some, but not all, agricultural workers.

Oregon's bill would phase in overtime requirements over five years with growers required to pay overtime starting in 2023.

Similar legislation, HB 2358, failed last year. Overtime requirements would have been phased in over the course of three years, not five. In an effort to move the bill forward, legislators added an amendment that would have earmarked \$100 million for the creation of the Agricultural Worker Overtime Account that would pay farmers up to 80% of their overtime costs in 2022, 2023 and 2024.

## **'We feel a bit separate'**

Gustavo M. has worked in Oregon grape fields for 14 years. He calls the proposal a “good law.”

He is paid \$15 an hour for the 45 to 47 hours a week he works during the winter and slower season. During the busier summer months, he is often in the field for 55 hours a week, still earning the same hourly rate with no overtime.

Gustavo said agricultural workers are confused about why they aren't treated the same as people who work in other industries. They were among the workers deemed “essential” during the pandemic, expected to be in the fields despite COVID-19's disproportionate impact on farmworkers.

“Farmworkers, we feel a bit separate,” he said. “As if you’re in a separate industry that must work, that is important, but they don’t give workers the importance they have.”

Gustavo said the workforce has become accustomed to working long hours without overtime pay and he is excited at the prospect of that changing. Coworkers have spoken about preparing for the law to come to Oregon after similar bills passed in California and Washington, he said.

“[Oregon] usually follows them,” he said.

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He also acknowledged workers are worried farm owners may cut workers' hours or hire more people to work fewer hours to avoid paying overtime.

“Paying overtime will make labor much more expensive,” Gustavo said. “I don’t know how the owners are going to react.”

He hopes the five-year phase-in would help farms prepare for the change.

Lawmakers also are proposing in the bill an income or corporate excise tax credit to offset the additional wages employers would pay.





## **Farmers fear they won't survive**

Under HB 4002, employers would be prohibited by 2027 from requiring agricultural workers to work more than 40 hours in one workweek without compensating them for overtime hours.

The bill would be phased in over five years. Farmers would pay time and a half to workers who work more than 55 hours in the first two years, starting in 2023. In 2025 and 2026, workers would be paid overtime starting at 48 hours a week and in 2027 onwards, they would be paid for hours past 40 hours a week.

A tax credit would cover 50% of the increased cost to farmers in 2023 and 2024. In the following two years, the tax credit would cover 35% of excess wages paid before dropping to 20% by 2029.

Owners have pointed to a study sponsored by the Oregon Farm Bureau as evidence that HB 4002 could devastate Oregon growers. In it, researchers warn that overtime pay would result in mixed but mostly negative impacts on workers and farmers.

According to the study, which is based largely on a survey of Oregon farmers and ranchers, employers would be forced to reduce labor costs by investing in machines, transitioning to crops that require fewer workers, reducing worker hours, moving operations outside of the state, or selling their family-owned farms to larger corporate businesses.

Molly McCargar operates Pearmine Farms in Gervais alongside her brother. It is a fourth generation family farm consisting of 750 acres of hops, sweet cherries and vegetables such as cauliflower and squash.

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McCargar employs three workers year-round. Last month, she said, they worked 43 to 45 hours a week. During cherry harvest, the farm usually has an additional 60 to 65 employees.

“We try our hardest every year to try to keep up and pay more and we give raises whenever we can,” McCargar said.

Wages, she said, account for close to a third of the farm’s expenses.

“It's easy for people who are looking in from the outside to think that it's possible and doable and everything will work out but I don't know,” she said.

The tax credits and gradual phase-in would do little to help farms like hers, McCargar said.

“That's kind of like, your house is on fire, and here's a fire extinguisher rather than a fire truck,” she said. “It just slows the burning but it doesn't put it out because then it disappears. And then your house goes up in flames.”

The industry, she explained, has faced big law changes in the past but this one is particularly daunting.

“This one doesn't have that same feeling like the others,” she said. “We can survive the other stuff but not this one.”

McCargar isn't sure what the solution would be.

A legislative workgroup meant to continue negotiations on the bill was unable to reach a consensus before the legislative session began.

"We're not saying no to overtime," Jeff Stone, president of the Oregon Association of Nurseries, said. "We're just saying how can we find something that can be workable?"

Stone said he understands the topic often pits farmworkers against farmers and didn't deny that excluding farmworkers from the Fair Labor Standards Act was done so to exclude a primarily Black labor force in 1938.

He expressed disappointment with the stalemate at the end of a legislative workgroup.

"I honestly believe that if you can sit down, you can come to an accord. You can come to a resolution that is both good for the long-term health of the farmworker and the long-term health of their employer," Stone said.

The addition of a tax credit is not something his members wanted, he added. Instead, Stone asks if 40 hours is the correct number to trigger overtime. He said members hope legislators can take a step back and consider alternatives perhaps similar to Colorado's recent farmworker overtime law.

Colorado growers will pay workers overtime starting at 60 hours per week later this year. By 2025, they will pay overtime starting at 48 hours per week. However, the law also sets a designated peak labor period where growers won't have to pay overtime until workers reach 56 hours a week.

"We don't want money. We would trade money for flexibility," Stone said.





Farmworkers prepare for extreme heat in August 2021 in Brooks. Temperatures then were expected to surpass 100 degrees. ABIGAIL DOLLINS / STATESMAN JOURNAL

## Experience in California

In 2016, California became the first state in the country to introduce overtime pay for farmworkers. Farms with 26 or more employees began paying overtime when workers reached 55 hours per workweek at the start of 2019. In 2022, those farms began paying overtime after 40 hours. Employers with 25 or fewer were not required until last month to pay time and a half after an employee works 55 hours.

Gov. Jay Inslee signed Washington's farmworker overtime bill last year. Full overtime pay for agricultural workers will come by 2024. Under Washington's law, workers will be paid overtime for any time worked over 55 hours a week in 2022. In 2023, the threshold is lowered to 48 hours a week.

“There's just no valid argument, I think, for excluding agriculture,” said Daniel Costa, Director of Immigration Law and Policy Research at the [Economic Policy Institute](#) based in Washington, D.C.

Costa has worked at EPI for 11 years, looking specifically at the intersection of immigration and labor policy issues. The nonprofit, nonpartisan institute was established in 1986 to include the needs of low- and middle-income workers in economic policy discuss

He said he has heard the same arguments against farmworker overtime in several states throughout the years.

In January, Costa spoke in front of the New York State Department of Labor's Farm Laborers Wage Board as it considered lowering the overtime threshold to 40 hours a week.

The testimony he provided presented some of the limited available evidence on the impact of overtime pay on California's agricultural industry.

"California's farm economy and labor market indicators have held steady since implementation of the state requirement that farmworkers be paid overtime," Costa wrote.

Average hours worked by farmworkers in California remained constant during the overtime phase-in period, he said. To show this, he looked at the U.S. Department of Agriculture's Farm Labor data.

"Between 2014 and 2018, the five years preceding the overtime phase-in period mandated by AB 1066, California's farmworkers worked an average of 42.8 hours per week," Costa said. "In the three years that AB 1066's overtime provisions have been in effect, farmworkers worked an average of 41.9 hours per week, less than one hour difference from the preceding five years."

Concerns that farms would disappear also have been unfounded, he said.

**Farmworker pay:** Farmworkers keep Oregonians fed, but often struggle to put food on their own tables

According to Costa, looking at Quarterly Census of Employment and Wages data reveals that the number of agricultural establishments in California has remained constant over the past decade.

The QCEW recorded 16,840 agricultural establishments in 2020. There were 16,812 in 2018—the year before AB 1066's overtime provisions took effect.



“I would ask the public to take some of the claims, some of the most outlandish claims that the employer groups make, you know, with a grain of salt,” Costa said. “Think about how these are some of the lowest-paid workers in the entire labor market.”

“They’re used to having a powerless and low-paid workforce,” he added. “The rules for farm workers need to be brought into the 21st century.”

Stone argued the full impact of overtime law changes in California is still unclear.

It is the first year California has had its medium-sized growers abide by the 40-hour limit. Current data, he said, reflects corporate farms, which were more equipped to deal with the change.

Stone countered that “we have family farms. Unlike California, we're not heavy into the corporate farm arena.”

## **‘No valid argument’**

Zachary Ramirez, owner of Willamette Farm Labor Contracting can sympathize with farm owners’ concerns. Farm owners come to him for help in finding additional employees, filling job positions as they need. Ramirez connects them with as many as 3,000 employees a year.

He said passing overtime pay will require farmers to do a simple math equation: How much of their budget are they willing to put towards labor?

It’s a question he doesn’t think many growers are prepared to answer. The thinking for many is still, “We've been doing this for however long and this is how it works,” he said.

“I think it's very clear that they think that way because they're obviously not excited about changing the overtime rule,” Ramirez said. “If it were easy, they wouldn't complain about it.”



Vineyard workers harvest grapes for sparkling wine at Willamette Valley Vineyards site in Dundee during the wildfires after Labor Day 2020. The vineyard earlier this year voluntarily began paying workers overtime. *Emily Teel/Statesman Journal*

Even if growers aren't ready, he believes it is necessary to introduce overtime provisions for the workers he interacts with every day.

He said the work is some of the most physically demanding of any job, exposing workers to the heat of the summers and the cold of the winters.

In other industries, such as fast food, employees are making similar hourly wages.

"Except the fast-food restaurant pays overtime and outdoor doesn't," he said. "It's not necessarily fair. And that's why I believe that this is kind of overdue."

## Public hearing

HB 4002 is set for its first public hearing at 5:30 p.m. on Tuesday. The public can watch committee hearings live streamed from the Oregon Legislative Information System at [olis.oregonlegislature.gov](https://olis.oregonlegislature.gov). There will also be five viewing stations set up within the Capitol where the OLIS live stream is broadcast. About 15 chairs are available in the viewing areas.

To submit comments or written testimony, go to OLIS and click on the "Committees" button in the upper right corner. Select the appropriate committee for the bill. HB 4002 currently sits in the House Committee On Business and Labor. On the committee overview page, click on the "Click to Submit Testimony" link to pick the correct committee, meeting date and bill.

Detailed instructions to testify virtually can be found at [oregonlegislature.gov/citizen\\_engagement/Pages/How-to-Testify.aspx](https://oregonlegislature.gov/citizen_engagement/Pages/How-to-Testify.aspx).

Registration to testify virtually closes one hour prior to the scheduled start time of the meeting.

There also is a walk-up station inside the Capitol in Room 167.

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