



# Electronic Alert

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## **BOLI Issues Revised Guidance on the Relationship of Daily and Weekly Overtime Requirements**

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In response to a lawsuit filed by employees of Portland Specialty Baking, the Oregon Bureau of Labor and Industries (BOLI) issued updated guidance on rules that involve the interplay of daily and weekly overtime. Most employers are aware that overtime pay is required for employees that work over 40 hours in any given workweek. An accompanying law, however, requires overtime pay when workers “employed in a mill, factory or manufacturing establishment” work more than 10 hours in a day. Prior to the lawsuit, BOLI advised employers that they had to pay the greater of the two overtime pay amounts, but not both. Under the new interpretation, BOLI states that the two laws operate independently, so the worker must be paid overtime under both laws, not simply the greater of the two amounts.

The example provided by BOLI involves an employee that works 12 hours on Monday, 8 hours on Tuesday, 5 hours on Wednesday, 5 hours on Thursday, and 11 hours on Friday, for a total of 41 hours in the workweek. Under the revised guidance, the employee is entitled to four hours of overtime pay. Three of those hours based on the daily overtime worked on Monday and Friday, and one hour of weekly overtime, since the employee worked a total of 41 hours that week.

Labor Commissioner, Brad Avakian, submitted a declaration on behalf of the plaintiff’s explaining BOLI’s position and attaching the new guidance. BOLI’s updated technical assistance on this issue can be found [here](#).

BOLI is expected to apply its revised interpretation when enforcing overtime claims, and may expect employers to correct payments made over the prior two-year statute of limitations period. Even though the underlying case is still pending, employers should obtain legal advice to evaluate enforcement risks and potential liability, given BOLI’s issued guidance. Importantly, the Oregon legislature is currently working on revisions to the statute addressing the double payment issue. One of many questions left unanswered by the revised guidance is what happens if the employees are subject to a collective bargaining agreement that specifically addresses daily and weekly overtime, but prohibits pyramiding or double payment of overtime. Stay tuned for further developments on this issue.