

Electronic Alert

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Oregon Legislature Confirms Overtime Pay Rules for Certain Industry Employers By Tyler Volm

As we initially reported in January, most employers employing workers “in a mill, factory or manufacturing establishment” were aware that they had to pay their employees overtime for any work exceeding 10 hours in one day, and that these employees were entitled to overtime for all hours over 40 in a workweek. Most employers were accustomed to paying the greater of these two amounts, but not both. In January, the Oregon Bureau of Labor and Industries took the position in a lawsuit that the employer should be required to pay both daily and weekly overtime, not the greater of the two. Notably, this was a break from BOLI’s traditional enforcement practices of only requiring payment of the greater of the two amounts. [Here](#) is a link to our January article.

In March, Multnomah County Circuit Court Judge Kathleen Dailey, who was presiding over the lawsuit, ruled that employees are entitled to only the greater of the daily or weekly overtime pay, but not both. [Here](#) is a link to our March article.

Over this last legislative session, the Oregon legislature took steps to codify the prior BOLI interpretation, upheld by Judge Dailey. House Bill 3458 amends ORS 652.020 and 653.265 to specifically state that employers in these industries (mills, factories, manufacturing, canneries, driers, and packing) are only required to pay the greater of the daily or weekly overtime amounts, but not both. This bill provides important clarity on an issue that had many important local agricultural and industrial employers on edge.

However, effective January 1, 2018, the bill also creates new restrictions on the maximum number of hours employees in a mill, factory, manufacturing establishment, cannery, drier, or packing plant may work in a workweek (the daily maximum of 13 hours still applies). Maximum weekly hours are now capped at 55 per workweek, but may be increased to 60 hours in a workweek if the employee requests or consents in writing to work more than 55 hours. However, employees may work up to 84 hours in a workweek for four workweeks of an “undue hardship period” and 80 hours per week after that, so long as the employee consents in writing, the employer registers the undue hardship period with BOLI, and the total undue hardship period does not exceed 21 workweeks in a calendar year. Undue hardship is reserved for those employers who need to process a perishable product in a short period of time after its harvest, slaughter, or catch. Note that seafood processors (canneries, driers or packing plants that process seafood) are not subject to any of these weekly overtime maximums.

Finally, the bill prohibits employers, including their overseer, superintendent, or other agent, from requiring an employee to work hours in excess of the revised maximums, coercing an employee into consenting to work more than 55 hours in a given workweek or retaliating against an employee for inquiring about these requirements or reporting a violation. The bill creates a private right of action for any violation.

The bill is currently awaiting the governor's signature, which is expected soon. A copy of the bill can be found [here](#).

Employers across these industries can breathe a sigh of relief, but should review the revisions to the statute and confirm that they are compliant with the revised requirements. BOLI is charged with adopting rules and the form for the notice of undue hardship exemption, which we anticipate being available by the end of the year before the new maximum weekly overtime caps go into effect.