

Oregon moves one step closer to overtime for agricultural workers

The 2022 Oregon legislative session has officially adjourned. Although there were several bills that related to employment laws in Oregon, none was quite as contentious as House Bill 4002, which phases out the long-standing overtime exemption for agricultural workers over the next five years.

On March 7, the Oregon Senate passed HB 4002, also known as the Farmworker Overtime Bill, with 17 Democrats in favor of the bill and 10 Republicans against it. The bill previously passed the House along party lines, 37 to 23. The chief sponsors of the bill include Senate Majority Leader Rob Wagner (D-Lake Oswego) and Senator Kathleen Taylor (D-Milwaukie, Oak Grove, Southeast and Northeast Portland). The bill is now before Gov. Kate Brown for her signature.

Federal and state wage and hour laws require most employers to pay most workers overtime, subject to limited statutory exemptions, at the rate of one-and-a-half times the employee's regular rate of pay for all hours worked exceeding 40 in a workweek. However, both federal and Oregon state law include an exemption from overtime pay requirements for agricultural workers. Under the long-standing exemption, all employees who perform only agricultural work in the workweek are exempt from overtime pay. If any nonagricultural work is performed by the employee in a workweek, the exemption does not apply and overtime must be paid. This exemption stems from the exclusion of farmworkers from overtime requirements in the Fair Labor Standards Act of 1938.

HB 4002 will phase in overtime



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COMMENTARY

requirements for agricultural workers in Oregon over a period of five years. Beginning Jan. 1, 2023, employers must pay agricultural workers overtime for hours worked exceeding 55 in one workweek. Beginning Jan. 1, 2025, employers will be required to pay overtime for hours exceeding 48 in a workweek. Starting Jan. 1, 2027, employers will pay overtime for hours exceeding 40 in a workweek.

The bill has a broad definition of agriculture worker and applies it to individuals who perform services in areas that include the following: farming in all its branches, including the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting or any agricultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals or poultry; and 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.

However, the bill does not apply to certain hand harvest and pruning laborers, certain members of the employer's immediate

family, and salaried employees principally engaged in the range production of livestock, who are exempt from minimum wage requirements under ORS 653.020(1). It also does not apply

to employees who qualify for the "white collar" exemptions, including certain administrative, executive and professional salaried employees.

In an effort to offset the economic impacts of the bill on farmers, the Legislature provided refundable tax credits for farmers and other agricultural employers required to pay overtime under HB 4002. A tax credit based on a percentage of the overtime wages paid will be available for employers based on whether they employ more than 50 workers, between 25 and 50 workers, or fewer than 25 workers. Farmers also asked for flexibility around peak seasons, but it was squarely rejected by labor advocates.

Supporters of HB 4002 have framed its provisions as providing long overdue pay equity and called out the agriculture overtime exemption as discriminatory and rooted in racism. Some also cited the impact of climate change causing increased outdoor temperatures and wildfire smoke. Negotiations about elimination of the overtime exemption took place for over a year and resulted in an extended phase-in period from three years to five, tax credits, and a required report in 2026 covering the

economic impacts of the bill. More than 1,000 people reportedly submitted testimony about the bill. HB 4002 is being hailed as one of the most hotly debated measures of the 2022 legislative session.

A spokesperson for Brown said HB 4002 strikes a balance between supporting farmworkers and Oregon's agricultural sector. Although Brown is expected to sign the bill, the Oregon Farm Bureau will ask her to veto the bill instead. In a press release, the organization called the bill "unworkable" and said it would lead to reduced wages and hours, and ultimately, closure of family farms. If the bill is signed, Oregon will join two neighboring states, Washington and California, where similar laws recently passed.

Employers of agricultural workers should familiarize themselves with the bill's requirements and status, and reach out to counsel with any questions.

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