

House Bill 3374

Sponsored by Representative MARSH; Representatives DOHERTY, FAHEY, HELM, HERNANDEZ, HOLVEY, KENY-GUYER, MCLAIN, MEEK, MITCHELL, NOSSE, POWER, PRUSAK, SALINAS, SANCHEZ, SMITH WARNER, WILDE, WILLIAMS, Senators DEMBROW, FAGAN, GOLDEN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes salary threshold for employees who are exempt from overtime requirements.
Makes conforming amendments.

A BILL FOR AN ACT

1
2 Relating to salary threshold for overtime exemption; creating new provisions; and amending ORS
3 653.020 and 653.261.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 653.020 is amended to read:

6 653.020. ORS 653.010 to 653.261 do not apply to any of the following employees:

7 (1) An individual employed in agriculture if:

8 (a) Such individual is employed as a hand harvest or pruning laborer and is paid on a piece-rate
9 basis in an operation which has been, and is customarily and generally recognized as having been
10 paid, on a piece-rate basis in the region of employment and is employed by an employer who did not,
11 during any calendar quarter during the preceding year use more than 500 piece-rate-work-days of
12 agricultural labor;

13 (b) Such individual is the parent, spouse, child or other member of the employer's immediate
14 family;

15 (c) Such individual:

16 (A) Is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an
17 operation which has been, and is customarily and generally recognized as having been, paid on a
18 piece-rate basis in the region of employment;

19 (B) Commutes daily from a permanent residence to the farm on which the individual is so em-
20 ployed; and

21 (C) Has been employed in agricultural labor less than 13 weeks during the preceding calendar
22 year;

23 (d) Such individual, other than an individual described in paragraph (c) of this subsection:

24 (A) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate
25 basis in an operation which has been, and is customarily and generally recognized as having been,
26 paid on a piece-rate basis in the region of employment; and

27 (B) Is paid at the same piece-rate as employees over 16 years of age on the same farm; or

28 (e) Such employee is principally engaged in the range production of livestock and earns a salary
29 and is paid on a salary basis.

30 (2) An individual employed in domestic service on a casual basis in or about a family home.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (3) **Except as applicable to the overtime provisions authorized under ORS 653.261**, an in-
2 dividual engaged in administrative, executive or professional work who:

3 (a) Performs predominantly intellectual, managerial or creative tasks;

4 (b) Exercises discretion and independent judgment; and

5 (c) Earns a salary and is paid on a salary basis.

6 (4) An individual employed by the United States.

7 (5) An individual who is employed by an institution whose function is primary or secondary ed-
8 ucation, and in which the individual is an enrolled student.

9 (6) An individual engaged in the capacity of an outside salesperson or taxicab operator.

10 (7) An individual domiciled at a place of employment for the purpose of being available for
11 emergency or occasional duties for time other than that spent performing these duties, provided that
12 when the individual performs emergency or occasional duties, the individual must be paid no less
13 than the wage specified in ORS 653.025.

14 (8) An individual paid for specified hours of employment, the only purpose of which is to be
15 available for recall to duty.

16 (9) An individual domiciled at multiunit accommodations designed to provide other people with
17 temporary or permanent lodging, for the purpose of maintenance, management or assisting in the
18 management of same.

19 (10) An individual employed on a seasonal basis at:

20 (a) An organized camp operated for profit that generates gross annual income of less than
21 \$500,000; or

22 (b) A nonprofit organized camp.

23 (11) An individual employed at a nonprofit conference ground or center operated for educational,
24 charitable or religious purposes.

25 (12) An individual who performs services as a volunteer firefighter, as defined in ORS 652.050.

26 (13) An individual who performs child care services in the home of the individual or in the home
27 of the child.

28 (14) An individual employed in domestic service employment in or about a family home to pro-
29 vide companionship services for individuals who, because of age or infirmity, are unable to care for
30 themselves.

31 (15) An individual who performs service as a caddy at a golf course in an established program
32 for the training and supervision of caddies under the direction of a person who is an employee of
33 the golf course.

34 (16) An individual who volunteers as a golf course marshal if:

35 (a) The services the individual provides are limited to monitoring starting times and speed of
36 play and informing golfers of golf course etiquette;

37 (b) The individual is not allowed to provide volunteer golf course marshal services for more than
38 30 hours in a calendar week; and

39 (c) The individual receives no wage other than golf passes for providing the volunteer golf
40 course marshal services.

41 (17) An individual employed as a resident manager by an adult foster home that is licensed
42 pursuant to ORS 443.705 to 443.825 and who is domiciled at the adult foster home.

43 (18) An individual residing in a mobile home park or manufactured dwelling park designed to
44 provide other people with temporary or permanent lodging, for the purpose of maintenance, man-
45 agement or in assisting in the management of same.

1 (19) An individual who volunteers as a campground host and who resides in a campground
 2 owned by a public agency that provides temporary accommodations for travelers, whether under
 3 public or private management, and who provides information and emergency assistance.

4 (20) An individual who:

5 (a) Is registered with the National Ski Patrol or a similar nonprofit ski patrol organization as
 6 a nonprofessional ski patroller and who receives no wage other than passes authorizing access to
 7 and use of a ski area, as defined in ORS 30.970, for performing ski patrol services, including but not
 8 limited to services related to preserving the safety of and providing information to skiers or
 9 snowboarders; or

10 (b) Receives no wage other than passes authorizing access to and use of a ski area, as defined
 11 in ORS 30.970, for performing services directly related to the organizing or conducting of skiing or
 12 snowboarding races or other similar competitions that are:

13 (A) Sponsored and organized by a nonprofit corporation, as defined in ORS 65.001; and

14 (B) Held in a ski area, as defined in ORS 30.970.

15 **SECTION 2.** ORS 653.261 is amended to read:

16 653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules pre-
 17 scribing such minimum conditions of employment, excluding minimum wages, in any occupation as
 18 may be necessary for the preservation of the health of employees. The rules may include, but are
 19 not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less
 20 than eight hours per day or 40 hours per workweek; however, after 40 hours of work in one
 21 workweek overtime may be paid, but in no case at a rate higher than one and one-half times the
 22 regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs
 23 and similar benefits.

24 (b) As used in this subsection, “workweek” means a fixed period of time established by an em-
 25 ployer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods.
 26 A workweek may begin on any day of the week and any hour of the day and need not coincide with
 27 a calendar week. The beginning of the workweek may be changed if the change is intended to be
 28 permanent and is not designed to evade overtime requirements.

29 **(c) The overtime compensation requirements authorized under paragraph (a) of this**
 30 **subsection do not apply to an individual who is engaged in administrative, executive or pro-**
 31 **fessional work as described in ORS 653.020 (3) and who earns a salary and is paid on a salary**
 32 **basis, provided that the monthly salary equals at least two times the state minimum wage**
 33 **rate set pursuant to ORS 653.025 or the federal minimum wage rate, whichever is greater,**
 34 **multiplied by 2,080 hours per year, then divided by 12 months.**

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

40 (3) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal
 41 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-
 42 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning
 43 meal periods and rest periods.

44 (4)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food
 45 or beverages, receive tips and report the tips to the employer.

1 (b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-
2 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an
3 employee into waiving a meal period.

4 (c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the
5 commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commis-
6 sioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each
7 violation is a separate and distinct offense. In the case of a continuing violation, each day's con-
8 tinuance is a separate and distinct violation.

9 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS
10 183.745. All sums collected as penalties under this subsection shall be applied and paid over as
11 provided in ORS 653.256 (4).

12 **SECTION 3. The amendments to ORS 653.020 and 653.261 by sections 1 and 2 of this 2019**
13 **Act apply to salaries paid on or after the effective date of this 2019 Act.**

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