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House Committee on Business and Labor

Oregon Farm Bureau Opposes HB 2358 and the -1 Amendment

March 8, 2021

The Oregon Farm Bureau strongly opposes HB 2358, which would require agricultural employers to pay overtime wages and penalties to employees who work over 40 hours a week. By way of background, the Oregon Farm Bureau (OFB) is the state's largest general agricultural trade association, representing nearly 7,000 farm and ranch families in the state.

The Oregon Farm Bureau and its members support our agricultural employees in this state, and want to ensure economic prosperity for all that live and work on the farm. Our opposition to HB 2358 is not rooted in any philosophical beliefs about the value of agricultural employees – our sector recognizes the essential value of farm employees. However, we also must recognize the essential value of farms and ranches themselves. The economic reality is that our farms and ranches are price takers; without functioning farms and ranchers, we cannot feed the nation, employ our workers, or provide the critical services our world demands of its agricultural industry.

OFB is opposed to HB 2358 because we are concerned about the practical effects of this proposal on the ability of our members to continue farming in this state as well as the potential loss of jobs and reduction of wages for agricultural employees.

Oregon's agricultural industry is struggling, and many of our family farms will not make it through this year. Even before COVID-19 pandemic, producers were already under tremendous pressure. Net income on farms is half of what it was five years ago. Market prices are at record lows across many commodities, and farmers and ranchers are already grappling with significant recent regulatory costs imposed by the Oregon legislature as well as the closure of NORPAC. Since the pandemic, Oregon farmers have faced market collapses across several industries due to trade disruptions, including those who sell directly to restaurants, cancellation of festivals, and direct marketing opportunities many farms depend on.

At the same time, farm work is seasonal and subject to the whims of mother nature. Rural Oregonians were severely impacted by the unprecedented wildfires that began over the Labor Day weekend. Many OFB members were on the front lines in their communities, evacuating and caring for their employees, neighbors, animals, and friends who were in danger. Those who lost homes across the state were largely members of the agricultural community, including over a hundred agricultural employees whose homes were decimated by the Almeda Fire. Most recently, the

February 2021 ice storms that wiped out power for thousands of Oregonians caused severe crop damage to agricultural producers. From collapsed greenhouses to frozen hazelnut orchards, Oregon's farmers and ranchers will be feeling the impacts of this winter's storm for the remainder of the year.

As you can see, Oregon's farmers and ranchers are already struggling to stay afloat, and the stress of doing this work is compounding. Chronic farm stress is causing measurable health impacts on our farm families. As a result, we have seen an alarming increase in the rate of suicide and opioid dependency amongst America's farmers, including those in Oregon.¹ These family farms and ranches truly cannot afford hundreds of thousands of dollars in new payroll costs at this time.

Passing HB 2358 will result in Oregon farmers and ranchers going out of business or mechanizing their operations. Employees, in turn, will see their hours cut and jobs lost. While well intentioned, HB 2358 will not improve the lives of agricultural employees, many of whom may actually work more hours as they have to pick up second shifts because of curtailment on hours on their primary farm. For these reasons, OFB strongly urges the legislature to consider the practical implications of HB 2358 and vote "no" on this bill.

Additionally, we would like to take the opportunity to address questions about the reasons for the federal overtime exemption for agricultural workers and the myth that passage of HB 2358 will ensure higher earnings for agricultural employees:

1. Agriculture is not the only sector exempted from overtime requirements under federal law:

There is a long list of careers that are exempted under the Fair Labor Standards Act (FLSA), either from the rule entirely, or just from the overtime requirements, because of the nature of the work. For example, vehicle, boat, or aircraft salespersons, railroad and air carrier employees, taxi drivers, local delivery employees paid on approved trip rate plans, radio announcers, news editors, chief engineers of certain non-metropolitan broadcasting stations, in-home service workers who reside in their employers' residences, and employees of movie theaters are all exempt from FLSA overtime coverage.² Additionally, executives, administrative professionals, and certain professional computer and outside sales employees are exempt under the FLSA.³

2. Agricultural employees are exempt from overtime provisions because of the perishable nature of agricultural products:

The legislative history of the Fair Labor Standards Act (FLSA) reveals that there were (and still are) concerns about extending overtime provisions to agriculture because of the unique perishable nature of crops, and the seasonal nature of agricultural production. As an example, the following statement was made during the passage of the FLSA in 1937:

¹ [Farm State of Mind - Stronger Together \(fb.org\); Suicide Is Rising Among American Farmers As They Struggle To Keep Afloat : NPR](https://www.farmstateofmind.org/2021/02/24/suicide-is-rising-among-american-farmers-as-they-struggle-to-keep-afloat/)

² [Overtime Exemptions - Workplace Fairness](https://www.dol.gov/eis/whd/over/over.html)

³ [fs17a_overview.pdf \(dol.gov\)](https://www.dol.gov/eis/whd/over/over.html)

“[W]e all know that the tomato crop ripens perhaps at one particular time and frequently comes into the market all at once. So men go out and catch fish, and sometimes there is a large run of fish on a particular day, due to a flood or a freshet or what not, and the fish have to be canned. My reading of the bill leads me to believe that it is the intention of the bill that where a bona-fide case is made out for putting up perishable goods, whether they be products of the orchard or the farm or the fishery or what not, the maximum-hours provisions shall not apply where food where otherwise be lost if it should apply.” 81 CONG. REC. 7652-3 (1937)(Statement of Democratic Senator, Millard Tydings).

The legislative history of the FLSA indicates that there were legitimate reasons for the overtime exemption for agricultural employees based on concerns regarding the unique and seasonal nature of agriculture that may necessitate employees working longer hours during peak seasons to preserve perishable agricultural products.

3. HB 2358 is a false promise to agricultural employees:

HB 2358 operates on the assumption that removing the overtime exemption for agricultural workers will mean bigger paychecks for agricultural employees. However, this is a false promise, and there is no data on the success of other state programs at increasing take-home pay. Agricultural employers in Oregon have indicated that they cannot afford the payroll costs of HB 2358 (see OFB survey data submitted to OLIS). This means that agricultural employers will be forced to take steps to reduce the number of hours that employees work, and employees will not be widely compensated for overtime as promised by proponents. OFB fears that HB 2358 may serve to economically disadvantage agricultural employees.

As warned by Philip Martin, professor emeritus of agricultural economics at the University of California, Davis, when California considered passing mandatory overtime for ag workers, there is no data to assist in predicting how new overtime rules will affect farmworkers and their employers, “so in a sense, we're making policy based on assumptions which may or may not be true.”⁴ The Oregon legislature should not move forward on any overtime requirements until fully understanding the practical implications for Oregon’s agricultural employers and employees.

4. HB 2358 -1 will penalize employers and employees, even when employees want to work over 40 hours a week:

The -1 amendment will not only make employers liable for overtime wages, but require additional penalty wages for hours not authorized or approved by the employer. Specifically, line 15 of the -1 requires civil penalties under ORS 652.150, which on its face should only apply to employees

⁴ [Why California's New Farmworker Overtime Bill May Not Mean Bigger Paychecks : The Salt : NPR](#); [4 ways the new overtime rules may affect your paycheck \(cnn.com\)](#); [Proposed overtime rules will result in lost wages and benefits | The Maine Wire](#)

who have been terminated. However, because of the drafting of ORS 653.055 (Liability of noncomplying employer), the penalty wages in ORS 652.150 will apply even if an employee has not been terminated. This means that in every wage claim under this bill, an employer will be liable for not only full wages owed, but also additional penalties of the employee's hourly rate for 8 hours a day for up to 30 days. For example, an employer who owes an employee as little as \$21 in overtime could have to pay penalty wages of \$3,360. Additionally, the -1 expressly prohibits employees and employers from entering into voluntary agreements outlining a different wage schedule than required under this bill.

The practical effect of the -1 is not the assurance of higher paychecks for agricultural employees, but rather an extreme penalty for any employee that works over 40 hours a week. The -1 amendment will all but ensure that employers strictly enforce working hours because the risk of going over 40 hours will be too high. This means that employees will actually be limited in how much they can earn and cannot negotiate different hours or a pay structure that works for them.

For these reasons we strongly encourage the Committee to not adopt the -1 amendment and to vote NO on HB 2358. Thank you and please do not hesitate to reach out with any questions.

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