

81st OREGON LEGISLATIVE ASSEMBLY  
House Committee on Business and Labor

Testimony of Bruce Goldstein, President, Farmworker Justice  
In Support of HB2358, An Act Regarding Overtime Pay for Agricultural Workers

March 8, 2021

On behalf of the Board of Directors and staff of Farmworker Justice, I thank you for the opportunity to testify regarding labor and employment policies affecting agricultural workers in Oregon.

My name is Bruce Goldstein. I am President of Farmworker Justice. Farmworker Justice is a national organization based in Washington, D.C. and founded in 1981. Its mission is to empower farmworkers to improve their wages and working conditions, occupational safety, health, immigration policy and access to justice. Our staff collaborates with organizations throughout the country, and for many years we have collaborated with farmworker organizations in Oregon. Farmworker Justice engages in substantial policy analysis, advocacy in legislatures and administrative agencies, litigation, public education, training and technical assistance and corporate social responsibility initiatives.

As to my background, I graduated from the New York State School of Industrial and Labor Relations at Cornell University in 1977 and the School of Law at Washington University in St. Louis, Missouri in 1980. After practicing law in the Midwest, I joined Farmworker Justice as a staff attorney in 1988 and later became its chief executive.

I am here today to support granting farmworkers the right to time-and-one-half overtime pay after 40 hours of work per week and the enactment of House Bill 2358.

Oregon's overtime pay law, like the federal Fair Labor Standards Act of 1938, denies overtime pay protection to the farmworkers who engage in back-breaking work every day to ensure America's food supply.

It is about time – really long past the appropriate time – to end the discrimination against agricultural workers. Enactment of this bill would take a step towards redressing the unfair discrimination farmworkers face in labor protections. It will create a financial disincentive to imposing excessive long hours that deprive farmworkers of time with their families and place them at greater risk of injury, illness and death. This bill on overtime pay also will help ensure that farmworkers are fairly paid for the rigorous work they do to provide our nation with an abundant supply of safe, healthy food.

America's history of agricultural exceptionalism is rooted in racism and political expediency. The sponsors of the New Deal era labor legislation mustered enough votes for passage by appeasing legislators from southern states with the exclusion of agricultural workers from these protections. At the time, the farmworker population in the South was predominantly African American, and often was subjected to plantation-like conditions. Today, the majority of agricultural workers are Latino. Discrimination in our immigration and labor laws has persisted over the decades, depriving

farmworkers of basic workplace protections and fundamental civil, human, and democratic rights.

There is no valid justification for excluding farmworkers from overtime pay protections that apply to other workers. Farmworkers should be paid fairly for the work that they do. For decades we have understood that most working people's fair pay means time-and-one-half pay after 40 hours of work in a week. Agricultural employers have no special justification for paying substandard wages and inflicting economic harm on farmworkers and their families. Many farm operations today are quite large; although the large majority of farms are ultimately owned by families, most are incorporated businesses. While many farms operate seasonally, so do many other businesses that are covered by overtime, including those in construction, tourism, and education.

The treatment of farmworkers in this country is unjust, unreasonable, and unsustainable. Many farmworkers live in extreme poverty—the most recent National Agricultural Workers Survey by the U.S. Department of Labor report shows 30 percent of farmworker families had household income below the poverty level. The ability to earn overtime will help some farmworkers earn higher income.

I've often wondered if there is a hidden clause in the Constitution that guarantees agricultural businesses a low-wage, vulnerable labor force. There is no clause in the Constitution that guarantees agricultural businesses a labor force that is

less expensive and less protected than workers in other sectors of the economy. Nor is there any inherent right of agricultural employers to a workforce that is so intimidated and threatened that it will rarely challenge unfair or illegal labor practices.

Yet our broken immigration system is harming many farmworkers. In this country, we have effectively allowed agricultural employers to hire hundreds of thousands of farmworkers from foreign countries but have denied those workers the opportunity for immigration status and citizenship. Today the majority of farmworkers are undocumented immigrants, even though there are authorized immigrants with permanent status and U.S. citizens. National statistics show that on average farmworkers have lived in the U.S. for about 18 years. About one-half of the nation's roughly 2.5 million farmworkers are married and have children.

Many farmworkers live in fear of being arrested and deported and having their families broken up. In those circumstances, few farmworkers are willing to take the risk of challenging illegal employment or asking for better wages or working conditions. The COVID-19 pandemic has harmed farmworkers disproportionately, with many fearing the risks of seeking a test or the vaccine.

Another increasing portion of the farm labor force is temporary foreign workers under the H-2A guestworker program. They are often unwilling to challenge unfair or illegal conduct because their employer controls their visa. If they want to keep their job for the season and be called back in the following season, they depend on their

employer to request their visas for them. H-2A workers have certain labor protections, but they are often too intimidated to seek to enforce them.

Because a substantial percentage of the farm labor force is undocumented or a guestworker, all farmworkers are weakened in their economic bargaining power. And it is not just about wages, but about occupational safety. Farm work is ranked among the few highest levels of job fatalities and occupational injuries. And those rates in part result from the workers' fear of retaliation, which inhibits them from speaking up to make their workplaces safer or to take action when injuries occur.

Moreover, undocumented workers and guestworkers lack the right to vote, while their employers exercise the right to vote, to lobby for legislation and to give campaign contributions to elect people who will agree with them.

Under these circumstances it is hardly surprising that farmworkers remain among the lowest paid workers despite their arduous, dangerous labor, with very high rates of poverty, lack of access to health care, and decrepit or crowded housing.

Farmworkers have been forced into difficult, vulnerable circumstances not of their own making. Farmworkers should be protected by labor laws, not excluded from them.

And what of the employers' claims that agriculture will be decimated if farmworkers are given the same rights that apply to other workers? When these battles were fought long ago, employers in other industries said the same thing, and yet our

economy is the strongest in the world. Businesses adapt to many circumstances in the marketplace and they have adapted to paying overtime pay in other sectors. They will do so in Oregon. California – the most successful agricultural state -- has been phasing in overtime pay for farmworkers. California also granted virtually of the state's farmworkers the state minimum wage, unemployment compensation, workers' compensation, collective bargaining rights, strong pesticide safety standards, and other protections applicable to most workers.

It is long past the time for the agricultural sector to modernize its labor relations and build its profitability based on treating farmworkers with the dignity and respect they deserve and creating business models that don't depend on exploitation and exclusions from labor protections. We are in the midst of a pandemic that has killed 500,000 people and in which farmworkers have been designated as "essential workers" to our food and agriculture system; we've always known that to be true but now it is official.

There has never been a valid justification for excluding farmworkers from the labor and employment protections applied to other workers. The denial of legal protections to workers has been based on raw political power. And it is no coincidence that the victims of this exercise of political power have been people who are predominantly people of color and immigrants, who have been marginalized on the basis of the color of their skin and their place of birth, or their ancestors' place of birth.

It is time to remedy the discrimination against farmworkers. This overtime pay legislation is an important step in remedying longstanding wrongs inflicted on farmworkers.

I urge you to enact House Bill 2358. Thank you very much for the opportunity to testify.

Bruce Goldstein  
Farmworker Justice  
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