



March 8, 2021

Chair Holvey, Vice-Chairs Bonham and Grayber, and Members of the House Business and Labor Committee,

For the record, my name is Reyna Lopez, I am the Executive Director of PCUN, Oregon's Farmworker Union. On behalf of our more than 6,000 members, I am here to testify in support of HB 2358, which would guarantee overtime pay to piece rate and hourly farmworkers. I'd first like to start by pointing out that the exclusion of farm workers from the Fair Labor Standards Act of 1938 is part of the shameful legacy of racism that initially targeted the 85 percent of southern African Americans who were farm workers in the 1930s. Today most farm workers are Latinos. Excluding farm workers from overtime was wrong in 1938; it is still wrong today. Farm workers are not second-class workers. They do not belong to a lower class of workers in Oregon or the nation. Many workers in Oregon *are already* afforded overtime pay. Why should farmworkers, essential workers who showed up to work every day in a pandemic, wildfires and winter storms, continue to be excluded from *basic protections* like overtime pay?

At our annual convention in 2019, our farm workers demanded that overtime pay be extended to all farmworkers in Oregon. For that reason, our champions have introduced HB 2358.

As a society, we're accustomed to profiting and benefiting at the expense of farmworkers. It is shameful to hear the opposition arguments about the potential added labor costs this will have on farmers-how this will cost them thousands of dollars. But I urge you to look at this issue from the perspective of a farmworker. These thousands of dollars are coming from the pockets of farmworkers, despite being one of the lowest paid workers in the country and often facing economic hardships.

During peak harvest season, they work from sunrise to sunset and spend very little time with their families. In many cases, children of farmworkers are also raised by babysitters and older siblings in addition to their parents. We understand that these circumstances have a big impact on the farmworker families as it would in any family where kids rarely get to spend time with their parents. Overtime laws exist because we believe the risk of injury and wear and tear to workers rises if they work past a reasonable limit, and because we believe people's lives should include time for rest, family and off-the-job needs

I think we all know that agricultural work is arduous labor that most people in this country refuse to do. In fact, agricultural work is one of the most physically demanding and exhausting jobs that has even resulted in death. In 2017, 416 farmers and farmworkers died from a work-related



injury, resulting in a fatality rate of 20.4 deaths per 100,000 workers.<sup>1</sup> However, the nature of farmwork and its dependence on the season is not a reasonable excuse to refuse agricultural workers the right to overtime pay. Every industry, from construction to retail to landscaping, has peak times where they have to hire more workers and pay them overtime for their extended hours. The agricultural industry should not be an exception just because it was excluded in the FLSA in 1938.

Additionally, agricultural workers have the least amount of employer-sponsored benefits such as healthcare insurance or retirement savings. Many of the services they need have to come out of their income which, as stated earlier, is one of the lowest in the state. According to the most recent National Agricultural Workers Survey, farmworkers earn a total income of about \$15,000 to \$17,499 a year for individuals and \$20,000 to \$24,999 for a family.<sup>2</sup> This range in total income takes into account income from work outside of farm labor. Oftentimes, farmworkers have to find other sources of income to make ends meet and their exclusion from receiving overtime pay plays a role in the low wages within this industry.

**HB 2358** is simple and straightforward. It compensates one and one-half times the worker's regular rate of pay for each hour the worker works over 40 hours in one workweek; or one and one-half times the regular price for all work done on a piece-rate basis during each overtime hour the worker works over 40 hours in one workweek. Additionally, we fully support the -1 amendment, which would ensure the same enforcement mechanism that covers all other OT, also covers farmworker overtime. An enforcement mechanism should not be a surprise to anyone. If we cannot accurately enforce our important labor laws, how will they protect workers? The enforcement mechanism outlined in -1 amendment is already accepted in Oregon law. And it makes BOLI's job much easier as enforcement would be streamlined and consistent. You'll hear from employers about how this penalizes employers and employees, even when employees want to work over 40 hours a week. This is simply not true. Currently, if employees wish to work more than 40 hrs a workweek and they are covered by OT, then they can and get paid overtime. **Finally, there will be no penalties if the employers follow the law.**

I want to highlight a quote from Justice Gonzalez of the Washington State Supreme Court regarding a case on overtime for dairy workers:

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<sup>1</sup> The National Institute for Occupational Safety and Health (NIOSH), Agricultural Safety. <https://www.cdc.gov/niosh/topics/aginjury/default.html#:~:text=Fatalities,20.4%20deaths%20per%20100%2C000%20workers.>

<sup>2</sup> Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers, 36. [https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS_Research_Report_13.pdf)



“Agricultural work is arduous and dangerous... They are less likely to be voters, less likely to speak English as a first language, aren’t wealthy, and in fact are among the poorest workers in the nation. They have a shorter life expectancy, higher incidence of disease and disability. Limited access to healthcare insurance and education. Less likely to have employer-provided health benefits. Higher rates of sexual harassment and assault. Higher rates of other exploitation including financial. Higher exposure to toxins. Less likely to have sanitary and stable housing, less likely to have collective bargaining rights. Less likely to have lobbyists. Less likely to make campaign contributions to elected officials. Would you then still suggest that it’s a coincidence that labor laws have consistently excluded them from the protections afforded other workers?”

To conclude, I urge you all to vote in favor of HB 2358 considering the racist legacy of this exclusion and the current impacts it has on our farmworker community.

Sincerely,

Reyna Lopez, Executive Director  
PCUN, Oregon’s Farmworker Union