

A-Engrossed House Bill 4002

Ordered by the House February 15
Including House Amendments dated February 15

Sponsored by Representatives SALINAS, HOLVEY, Senator TAYLOR, Representative VALDERRAMA, Senators FREDERICK, JAMA, MANNING JR, WAGNER; Representatives ALONSO LEON, BYNUM, CAMPOS, HUDSON, NELSON, REYNOLDS, RUIZ, SANCHEZ, Senators LAWRENCE SPENCE, LIEBER (Presession filed.)

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.

Prohibits employers from permitting or requiring agricultural workers to work in excess of maximum allowable hours unless workers are compensated for overtime hours worked. **Specifies exemptions to overtime compensation requirements.**

Creates **refundable** income or corporate excise tax credit allowed to employer for excess amount of wages paid as overtime pay to agricultural workers.

Applies to tax years beginning on or after January 1, 2023, and before January 1, 2029.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to overtime for agricultural workers; creating new provisions; amending ORS 314.772,
3 316.502, 317.850, 318.031, 653.055 and 653.256; and prescribing an effective date.

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

5 **SECTION 1. As used in this section and sections 2 and 4a of this 2022 Act:**

6 (1) **“Agricultural worker” means an individual who performs services in agriculture for**
7 **an employer in exchange for an agreed remuneration or rate of pay.**

8 (2) **“Agriculture” includes:**

9 (a) **Farming in all its branches, including the cultivation and tillage of the soil;**

10 (b) **Dairying;**

11 (c) **The production, cultivation, growing and harvesting of any agricultural or**
12 **horticultural commodities;**

13 (d) **The raising of livestock, bees, fur-bearing animals or poultry; and**

14 (e) **Any other practices performed by a farmer or on a farm as an incident to or in con-**
15 **junction with farming operations, including preparation for market, delivery to storage or**
16 **to market, or delivery to carriers for transportation to market.**

17 (3) **“Salary” has the meaning given that term in ORS 653.010.**

18 (4) **“Workweek” means a fixed period of time established by an employer that reflects a**
19 **regularly recurring period of 168 hours or seven consecutive 24-hour periods.**

20 **SECTION 2. (1) Except as provided in subsection (2) of this section, an employer may not**
21 **permit, require or suffer an agricultural worker to work a total number of hours in excess**
22 **of:**

23 (a) **For calendar years 2023 and 2024, 55 hours in one workweek.**

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 (b) For calendar years 2025 and 2026, 48 hours in one workweek.

2 (c) For calendar year 2027 and each year thereafter, 40 hours in one workweek.

3 (2) An employer may permit, require or suffer an agricultural worker to work more than
4 the maximum allowable hours in one workweek provided under subsection (1) of this section
5 if the employer compensates the agricultural worker at one and one-half times the worker's
6 regular rate of pay for each overtime hour or portion of an hour that the worker works in
7 excess of the maximum allowable hours.

8 (3)(a) For purposes of this section, a workweek may begin on any day of the week and
9 at any hour of the day and need not coincide with a calendar week.

10 (b) An employer may change the beginning of an agricultural worker's workweek if the
11 change is intended to be permanent and is not designed to evade overtime requirements.

12 (4) A claim for a violation of this section may be made under ORS 653.055.

13 **SECTION 3.** Section 2 of this 2022 Act is amended to read:

14 **Sec. 2.** (1) Except as provided in subsection (2) of this section, an employer may not permit,
15 require or suffer an agricultural worker to work a total number of hours in excess of:]

16 [(a) For calendar years 2023 and 2024, 55 hours in one workweek.]

17 [(b) For calendar years 2025 and 2026, 48 hours in one workweek.]

18 [(c) For calendar year 2027 and each year thereafter,] 40 hours in one workweek.

19 (2) An employer may permit, require or suffer an agricultural worker to work more than [*the*
20 *maximum allowable*] 40 hours in one workweek [*provided under subsection (1) of this section*] if the
21 employer compensates the agricultural worker at one and one-half times the worker's regular rate
22 of pay for each overtime hour or portion of an hour that the worker works in excess of [*the maxi-*
23 *mum allowable*] 40 hours.

24 (3)(a) For purposes of this section, a workweek may begin on any day of the week and at any
25 hour of the day and need not coincide with a calendar week.

26 (b) An employer may change the beginning of an agricultural worker's workweek if the change
27 is intended to be permanent and is not designed to evade overtime requirements.

28 (4) A claim for a violation of this section may be made under ORS 653.055.

29 **SECTION 4.** The amendments to section 2 of this 2022 Act by section 3 of this 2022 Act
30 become operative on January 1, 2027.

31 **SECTION 4a.** The provisions of section 2 of this 2022 Act relating to overtime compen-
32 sation requirements for agricultural workers do not apply to:

33 (1) An individual described in ORS 653.020 (1).

34 (2) An individual employed in agriculture whose principal duties are administrative,
35 executive or professional work and who:

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

37 (b) Exercises discretion and independent judgment; and

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

39 **SECTION 5.** ORS 653.055 is amended to read:

40 653.055. (1) Any employer who pays an employee less than the wages to which the employee is
41 entitled under ORS 653.010 to 653.261 or section 2 of this 2022 Act is liable to the employee af-
42 fected:

43 (a) For the full amount of the wages, less any amount actually paid to the employee by the
44 employer; and

45 (b) For civil penalties provided in ORS 652.150.

1 (2) Any agreement between an employee and an employer to work at less than the wage rate
2 required by ORS 653.010 to 653.261 **or section 2 of this 2022 Act** is no defense to an action under
3 subsection (1) of this section.

4 (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in
5 connection with a wage claim based on ORS 653.010 to 653.261 **and section 2 of this 2022 Act** as
6 the commissioner has under ORS 652.310 to 652.445 and in addition the commissioner may, without
7 the necessity of assignments of wage claims from employees, initiate suits against employers to en-
8 join future failures to pay required minimum wages or overtime pay and to require the payment of
9 minimum wages and overtime pay due employees but not paid as of the time of the filing of suit.
10 The commissioner may join in a single proceeding and in one cause of suit any number of wage
11 claims against the same employer. If the commissioner does not prevail in such action, the commis-
12 sioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account.

13 (4) The court may award reasonable attorney fees to the prevailing party in any action brought
14 by an employee under this section.

15 **SECTION 6.** ORS 653.256 is amended to read:

16 653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
17 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that
18 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611,
19 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, **or section**
20 **2 of this 2022 Act** or any rule adopted thereunder.

21 (2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty
22 not to exceed \$1,000 against any person that intentionally violates ORS 653.077 or any rule adopted
23 thereunder.

24 (3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS
25 183.745.

26 (4)(a) All sums collected as penalties under this section shall be first applied toward reimburse-
27 ment of costs incurred in determining the violations, conducting hearings under this section and
28 addressing and collecting the penalties.

29 (b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section
30 shall be paid over by the commissioner to the Department of State Lands for the benefit of the
31 Common School Fund of this state. The department shall issue a receipt for the money to the com-
32 missioner.

33 (c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section
34 shall be paid over by the commissioner to the Department of Human Services for the benefit of the
35 Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the
36 moneys to the commissioner.

37 **SECTION 7.** Sections 8 to 11 of this 2022 Act are added to and made a part of ORS
38 chapter 315.

39 **SECTION 8.** (1) As used in this section and sections 9 and 10 of this 2022 Act:

40 (a) “Agricultural worker” has the meaning given that term in section 1 of this 2022 Act.

41 (b) “Eligible employer” means an employer doing business in 2017 North American In-
42 dustry Classification System code 111, crop production, or code 112, animal production and
43 aquaculture.

44 (c) “Full-time equivalent employee” means an employee or a combination of employees
45 that perform at least 2,080 hours of work for an employer in a calendar year.

1 **(2)(a) A credit against taxes that are otherwise due under ORS chapter 316 or, if the**
2 **taxpayer is a corporation, under ORS chapter 317 or 318 is allowed for overtime compen-**
3 **sation paid by an eligible employer to agricultural workers on an hourly basis. The amount**
4 **of the credit shall equal a percentage of the actual excess paid to agricultural workers during**
5 **the calendar year in which the tax year begins, as determined under section 9 of this 2022**
6 **Act.**

7 **(b) A labor contractor licensed under ORS 658.410 may not claim a credit under this**
8 **section. An eligible employer may claim a credit under this section for wages paid to workers**
9 **recruited, solicited, supplied or employed by a labor contractor on behalf of the eligible em-**
10 **ployer.**

11 **(3) Prior to claiming the credit allowed under this section, a taxpayer is required to re-**
12 **ceive written certification from the Department of Revenue stating that the taxpayer is an**
13 **eligible employer and indicating the maximum amount of credit for which the taxpayer is**
14 **eligible for the calendar year, as provided in section 10 of this 2022 Act.**

15 **(4) If the amount allowable:**

16 **(a) As a credit under this section against taxes imposed under ORS chapter 316, when**
17 **added to the sum of the amounts allowable as payment of tax under ORS 316.187 or 316.583,**
18 **other tax prepayment amounts and other refundable credit amounts, exceeds the taxes im-**
19 **posed by ORS chapters 314 and 316 for the tax year after application of any nonrefundable**
20 **credits allowable for purposes of ORS chapter 316 for the tax year, the amount of the excess**
21 **shall be refunded to the taxpayer as provided in ORS 316.502.**

22 **(b) As a credit under this section against taxes imposed under ORS chapter 317 or 318,**
23 **when added to the sum of the amount of estimated tax paid under ORS 314.515 and any other**
24 **tax prepayment amounts, exceeds the taxes imposed by ORS chapters 314 and 317 for the tax**
25 **year (reduced by any nonrefundable credits allowable for purposes of ORS chapter 317 for the**
26 **tax year), the amount of the excess shall be refunded to the taxpayer as provided in ORS**
27 **314.415.**

28 **(5) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,**
29 **or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440,**
30 **the credit allowed under this section shall be prorated or computed in a manner consistent**
31 **with ORS 314.085.**

32 **(6) The Department of Revenue shall adopt rules for the purposes of sections 8 to 11 of**
33 **this 2022 Act, including policies and procedures for certifying taxpayers as eligible for the**
34 **credit allowed under this section as required in section 10 of this 2022 Act.**

35 **SECTION 9. (1) The amount of credit allowed under section 8 of this 2022 Act shall be**
36 **equal to a percentage of the additional wages paid as overtime pay to agricultural workers**
37 **by an eligible employer, in excess of regular pay, as set forth in subsections (2) and (3) of this**
38 **section.**

39 **(2) If during the calendar year the taxpayer employs more than 25 full-time equivalent**
40 **employees, the following percentages shall apply:**

41 **(a) 60 percent of excess wages paid in calendar year 2023 or 2024.**

42 **(b) 45 percent of excess wages paid in calendar year 2025.**

43 **(c) 30 percent of excess wages paid in calendar year 2026.**

44 **(d) 15 percent of excess wages paid in calendar year 2027 or 2028.**

45 **(3) If during the calendar year the taxpayer employs 25 or fewer fulltime equivalent em-**

1 **ployees, the following percentages shall apply:**

2 (a) **75 percent of excess wages paid in calendar year 2023 or 2024.**

3 (b) **60 percent of excess wages paid in calendar year 2025.**

4 (c) **45 percent of excess wages paid in calendar year 2026.**

5 (d) **30 percent of excess wages paid in calendar year 2027.**

6 (e) **15 percent of excess wages paid in calendar year 2028.**

7 **SECTION 10. (1) In order to obtain certification from the Department of Revenue for a**
8 **tax credit allowed under section 8 of this 2022 Act, a taxpayer shall submit to the department**
9 **an application for certification under this section. The application shall be made in the form**
10 **and manner prescribed by the department and must be submitted by the taxpayer no later**
11 **than January 31 following the calendar year for which the taxpayer seeks credit.**

12 (2) **The taxpayer must include with the application required under this section the fol-**
13 **lowing:**

14 (a) **The address and tax identification number of the taxpayer.**

15 (b) **A statement by the taxpayer of the overtime hours worked and overtime wages paid,**
16 **on an hourly basis, to each agricultural worker employed by the taxpayer and the amount**
17 **of overtime wages paid on or behalf of the taxpayer as compensation to agricultural workers**
18 **during the calendar year.**

19 (c) **The number of the license issued under ORS 658.410 to any labor contractor used to**
20 **recruit, solicit, supply or employ workers on behalf of the taxpayer, or other permit or reg-**
21 **istration numbers issued to the labor contractor.**

22 (d) **Any other information required by the department to verify the identity of the tax-**
23 **payer, the eligibility of the taxpayer for the credit allowed under section 8 of this 2022 Act**
24 **or the amount of credit allowable to the taxpayer.**

25 (3) **Upon receipt of an application under this section, the department shall immediately**
26 **allow an extension, from the next applicable due date, for filing of the taxpayer's income or**
27 **corporate excise tax return.**

28 (4) **Not later than August 1 of the year in which the application under subsection (1) of**
29 **this section is filed, the department shall issue written certification to taxpayers that are**
30 **eligible to claim the credit under section 8 of this 2022 Act. The certification shall state the**
31 **maximum amount of credit for which the taxpayer is eligible for the tax year. The credit**
32 **claimed may not exceed the actual amount of excess paid as overtime wages to agricultural**
33 **workers during the calendar year by the taxpayer.**

34 **SECTION 11. The total amount certified by the Department of Revenue for tax credits**
35 **for overtime wages under section 8 of this 2022 Act may not exceed \$27 million for all tax-**
36 **payers for any calendar year. If the department receives applications for the credit sufficient**
37 **to exceed this amount, the department shall by rule proportionately reduce the amount of**
38 **certified credits among all taxpayers applying for the credit.**

39 **SECTION 12. Section 8 of this 2022 Act applies to tax years beginning on or after January**
40 **1, 2023, and before January 1, 2029.**

41 **SECTION 13. ORS 316.502 is amended to read:**

42 **316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and**
43 **amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held**
44 **in the General Fund as miscellaneous receipts available generally to meet any expense or obligation**
45 **of the State of Oregon lawfully incurred.**

1 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-
2 tained for the payment of refunds, but such working balance shall not at the close of any fiscal year
3 exceed the sum of \$1 million.

4 (3) Moneys are continuously appropriated to the Department of Revenue to make:

5 (a) The refunds authorized under subsection (2) of this section; and

6 (b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262, 315.264,
7 315.266 and 316.090 and section 3, chapter 589, Oregon Laws 2021, **and section 8 of this 2022**
8 **Act.**

9 **SECTION 14.** ORS 317.850 is amended to read:

10 317.850. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds,
11 shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts
12 available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

13 (2) A working balance of unreceipted revenue from the tax imposed by this chapter may be re-
14 tained for the payment of refunds, but such working balance shall not at the close of any fiscal year
15 exceed the sum of \$500,000.

16 (3) **Moneys are continuously appropriated to the Department of Revenue to make:**

17 (a) **The refunds authorized under subsection (2) of this section; and**

18 (b) **The refund payments in excess of tax liability authorized under section 8 of this 2022**
19 **Act.**

20 **SECTION 15.** ORS 314.772 is amended to read:

21 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
22 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
23 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
24 allowable to the shareholders of the S corporation.

25 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on
26 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
27 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
28 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
29 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
30 manner prescribed under section 1377(a) of the Internal Revenue Code.

31 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
32 of this section shall be determined as if such item were realized directly from the source from which
33 realized by the corporation, or incurred in the same manner as incurred by the corporation.

34 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
35 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
36 316.117, then that provision shall apply to the nonresident shareholder.

37 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
38 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
39 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
40 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
41 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
42 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
43 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
44 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
45 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-

1 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
2 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
3 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS
4 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643
5 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account
6 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone
7 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research
8 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,
9 Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 8 of this 2022 Act (agri-**
10 **cultural overtime pay).**

11 **SECTION 16.** ORS 318.031 is amended to read:

12 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
13 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
14 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
15 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
16 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
17 315.643 **and section 8 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS
18 chapter 317.

19 **SECTION 17.** **This 2022 Act takes effect on the 91st day after the date on which the 2022**
20 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

21