

OREGON LABOR

## Turner-based wine producer offers overtime pay to agricultural workers as most are excluded from state rules

Willamette Valley Vineyards is following the overtime pay regulations recently adopted by the state of Washington for agricultural employees who work 55 hours per week. Currently, Oregon has no such rule for agricultural workers.

By Ardeshir Tabrizian - Salem Reporter

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***Rows of grapes growing at Willamette Valley Vineyards in Turner.  
(Troy Brynelson/Salem Reporter)***

All employees at Willamette Valley Vineyards will qualify for overtime pay starting Jan. 1, as state regulations still exclude most agricultural workers in Oregon from getting it.

The decision will affect pay for the company's 45 full-time hourly agricultural workers, and seasonal agricultural workers employed during harvest. Jim Bernau, the winery's CEO, said the company has 296 regular employees and 376 during harvest, of whom 135 are agricultural workers.

A top pinot noir producer based in Turner, the company is following the same approach recently signed into law by the Washington Legislature where the number of weekly hours required to work for overtime pay would drop over the next three years.

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In 2022, the vineyard's workers would qualify for overtime after working 55 hours per week. In 2023, they would receive overtime after 48 hours of work, and in 2024, after 40 hours per week.

Bernau said the decision was in response to the impact inflation has had on agricultural employees, with rising costs particularly in transportation, food and rent. Most of his employees can cope with rising consumer costs by counting on incentives like commission and time and a half. But lower-income agricultural workers, he said, have no way of recovering from the higher costs besides with their time and are already working as much as they are physically capable. "So, they're trapped," he said.

State Bureau of Labor and Industries rules require most Oregon employers to pay employees overtime when they work more than 40 hours per week, but most agricultural workers are exempt from that.

The exemption is the subject of a pending legal challenge in the Oregon Court of Appeals. On Nov. 30, the Oregon Law Center filed a petition on behalf of Oregon farmworkers Javier Ceja and Anita Santiago and Salem nonprofit Mano a Mano Family Center to challenge the current BOLI rules that exclude agricultural workers from getting overtime pay.

Oregon has around 86,000 agricultural workers, more than 13,000 of whom are in Marion County, according to a 2018 state report. The vast majority are Hispanic.

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During the 2021 legislative session, farmworker advocacy groups tried unsuccessfully to pass House Bill 2358, which would have subjected agricultural employers including farms, ranches and dairies to overtime requirements. If passed, it would have required those employers to pay workers time and a half for working over 40 hours.

Reyna Lopez, executive director of Oregon farmworker union PCUN, wrote in a statement that all farmworkers deserve to be paid for working overtime, regardless of their employer.

“While PCUN and the Farmworker Overtime coalition appreciate that Willamette Valley Vineyards is taking steps to compensate their workers fairly, our advocacy will continue until fair wages and working conditions are guaranteed for all farmworkers through state policy,” Lopez said.

“This is an equity issue. The Latinx community is overrepresented among farmworkers in the U.S. and excluding them from overtime pay protection that all other workers have is contributing to racial health and financial disparities. Oregon needs to make clear that in our state, we believe in treating farmworkers with the same dignity as all other employees,” she said.

At the inception of Oregon’s overtime rules, Bernau said field agricultural work was exempt for good reason. Farmers, he said, have a hard time regulating their unpredictable work schedules because nature dictates when they work.

“It’s very logical how this all happened, but now we’re at a point where we’ve got to make a change,” he said.

“Farmers are having real challenges in retaining their employees because there’s lots of other options for them.”



***Jim Bernau seated at his office at Willamette Valley Vineyards. Bernau bought the land in 1981 to grow pinot noir. (Troy Brynelson/Salem Reporter)***

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The Oregon Winegrowers Association represents more than 300 wine grape growers and wine producers, two-thirds of whom are in the Willamette Valley. Executive Director Jana McKamey said the trade association is working with labor advocates, legislators and agricultural producers to find an approach to overtime pay that reflects the dynamics of Oregon’s agriculture industry.

“Finding a policy that can address the disparity in farm worker pay while also ensuring that ag businesses can remain viable is really the key focus right now,” McKamey said.

She said the recent legal challenge in the state appeals court “has created some complications” for the legislative workgroup, but whether it delays their process remains to be seen.

“That work continues, and discussions should be continuing to see if there's a solution that could be crafted for one of the upcoming legislative sessions. I don't know if it's 2022, 2023, but certainly we're continuing to participate in good faith and I think other ag groups are doing the same,” she said.

Bernau said phasing in the hours needed for overtime pay rather than starting at 40 hours will help give farmers time to implement the changes to protect employees' jobs while not putting their business at risk.

As an “emergency measure,” he said Willamette Valley Vineyards is also giving hourly agricultural workers an increase in their base wage starting Jan. 1 that will be tied to federal inflation measures. “I've been farming for 40 years, I have never seen such a rapid increase in consumer costs,” he said, “especially in rent, transportation and food. And so, the people at the lower levels of compensation in your business are the ones that are most adversely impacted by those rapidly rising costs.”

Willamette Valley Vineyards' addition of overtime pay could cost the company \$330,000, and the base wage increase will cost at least \$111,000. But Bernau said the fact that they grow their own grapes and sell their own wine means they can create new products and open new markets, using sales to help pay those costs.

Meanwhile many other commodity growers in Oregon don't have the same opportunities to recover from high market costs. “They're stuck. They're literally between a rock and a hard place, and that's why I'm asking state lawmakers to be very careful how they design a phase-in

and the rules that they use in the detail of the law," he said.

McKamey said she has not heard of other local farms offering any kind of overtime pay for agricultural workers. "I'm just not aware of anyone. That doesn't mean it isn't happening," she said.

For companies who have the resources to pay agricultural workers overtime, "you have a duty to make sure that you're holding up your end of the bargain as a good employer," Bernau said. "We have to be a good financial partner to our farmworkers or we won't have them."

Bernau's company has many employees who started as migrant workers over 40 years ago and have worked there since.

"Every farm is a little different, and every agricultural sector is different," he said. "What I'm doing is not only trying to give our employees hope, but I'm also hoping that lawmakers take great care and understand really a sign of goodwill on our part, that we want to get to the same place they want to go. We just need to make sure that we're not damaged along the way."

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