

Testimony of Paul K. Sonn

National Employment Law Project

In Support of Extending 40-Hour Overtime to Oregon's Farmworkers

Hearing on H.B. 4002 before the Oregon House of Representatives

Committee on Business and Labor

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Thank you Chair Holvey, Vice-Chairs Bonham and Grayber, and members of the Committee, for the opportunity to testify today. My name is Paul Sonn, and I am the State Policy Program Director at the National Employment Law Project. We're a nonprofit research and advocacy organization focused on workforce policy and we closely follow farmworker overtime developments across the nation.

The proposal before you today is part of a long overdue wave of national action to end the unfair and racially discriminatory exclusion of farmworkers from the overtime protections that most other workers have enjoyed for decades.

In this testimony I make the following key points:

First, agriculture is one of the nation's most dangerous industries, with a workplace fatality rate six times the all-industry average. Excessive work hours have been shown to increase injuries and deaths for farmworkers—and 40-hour overtime can reduce them.

Second, there are a wide range of industries that confront conditions similar to those in agriculture—seasonal labor demand spikes, the impact of weather, and the need to provide staffing seven-days-a-week over long hours—and yet have operated for decades successfully with 40-hour overtime.

Third, there is a growing consensus among national leaders, from President Biden and Vice President Harris to members of Congress, that we can and must finally end the farmworker overtime exclusion.

Fourth, fortunately a growing number of states are now adopting 40-hour farmworker overtime. Oregon's neighbors California and Washington State are both phasing it in and New York is now poised to follow them. Moreover, the fact that Oregon's neighbors, California and Washington, have already acted on farmworker overtime, minimizes any competitive disadvantage employers in the state might face by doing so.

Fifth, as Daniel Costa from the Economic Policy Institute and Gordon Lafer explain in their testimony, California's economic indicators show no evidence that the overtime transition there has been unmanageable—and, in particular, show no signs it has led to an increase in farm closures. And the California evidence calls into question predictions that 40-hour farmworker overtime will backfire for workers by resulting in lower net farmworker earnings as a result of work hours being capped at 40. Instead, the evidence from California suggests that while average weekly hours have declined, because of the farm labor shortage, the average farmworker still works some overtime—and will now receive time-and-a-half pay for those hours.

For these reasons, we recommend that Oregon follow California, Washington State and, soon, New York's lead and transition its farm economy to a system that ends overwork and substandard pay by finally affording farmworkers the equal protection of the law. Action in Oregon would not only right a historic wrong, but

also play a key role in continuing to build momentum for long overdue national reform.

Farm Work Is Exceptionally Dangerous and Very Long Hours Have Been Shown to Increase Injuries and Deaths; Stronger Overtime Protection Are Needed to Protect Farm Laborers from Overwork and Injury

One of the many reasons it is urgent to extend 40-hour overtime to farmworkers is to protect them against the increased incidence of injuries and deaths that result from excessive hours and overwork. Farmworkers labor under dangerous conditions that expose them to extreme temperatures, require them to work with heavy machinery, carry burdensome loads, and expose them to dangerous chemicals and pesticides.¹ The continued exclusion of farmworkers from overtime pay enables and incentivizes farms to require farmworkers to labor from sunrise to sunset, regardless of the toll that such hours place on farmworkers' bodies and family lives.

Agriculture is one of the most dangerous industries in the country, with far higher injury rates than virtually all others. According to the Centers for Disease Control, every day 100 farmworkers across the country suffer a lost-work-time injury.² Similarly, the industry suffers a high fatality rate of 21.4 deaths per 100,000 workers.³ By contrast, the all-industries average is just 3.5 fatalities per 100,000 workers.⁴ Significant numbers of farmworkers suffer chronic musculoskeletal pain from repeated tasks like pruning, harvesting, and machine operation.⁵

Research shows that as weekly work hours increase, mortality rates rise by nearly 20 percent.⁶ Studies have also shown that being required to work overtime hours is associated with significantly higher injury hazard rates.⁷

The health and safety implications of denying farmworkers 40-hour per week overtime protection were recently recognized by the Washington State Supreme Court, which held that Washington State's exclusion of farmworkers from such overtime protections denied the workers the fundamental right to workplace health and safety protection, as guaranteed by the state constitution.⁸

Other Industries Face Conditions Like Those in Agriculture—Such as Seasonal Spikes in Labor Demand, Vulnerability to Weather, the Need for Seven-Day-A-Week Staffing Over Long Hours, and Work With Living or Perishable Commodities—Yet Have Long Operated Successfully Under 40-Hour Overtime

Opponents have argued that 40-hour overtime is not feasible for agriculture because it faces conditions unlike those facing other industries that operate successfully under such standards. However, examination of the conditions facing agriculture reveals that other industries that have long operated under 40-hour overtime face similar conditions—showing that agriculture can make the transition as well.

For example, the fact that fruit and vegetable farming involves a seasonally intense need for labor hours around harvest time does not set it apart from other industries. Industries like retail, construction, landscaping, and resort hotels also face seasonal

spikes in their labor needs but have all operated under 40-hour overtime for decades. Moreover, dairy farming, is not substantially seasonal at all.

It is true that the dairy industry requires staffing seven-days-a-week over long hours as cows must be regularly milked and cared for. But the same is true for many other industries such as hospitals and emergency response services, yet they operate successfully under 40-hour overtime. And while some farm products are perishable, other workers in the supply chain—from packing house and cannery workers to delivery workers—also work with perishable items yet are entitled to overtime.

In addition, the fact that hours of work in agriculture can be unpredictable, and on any given day can be influenced by the weather, does not set it apart. Construction workers' schedules are also unpredictable and influenced by the weather. And other workers, such as retail and fast-food workers, also have unpredictable schedules—so unpredictable that states and localities are beginning to regulate the unpredictability of these schedules. Yet these industries all operate with 40-hour overtime.

Instead, what sets agriculture apart is the fact that it has long operated under this unfair overtime exemption—and that as a result, the industry has grown accustomed to a staffing model based on overwork and substandard pay. It is time to help the industry transition away from that model, as other states are now doing.

There Is a Growing Consensus Among National Leaders That We Can And Must Finally End The Farmworker Overtime Exclusion

Happily, there is a growing national consensus, reflected by both national leaders and escalating action in the states, that we must finally end the farmworker overtime exclusion.

President Biden has called the overtime exemption an “unconscionable race-based exclusion[] put in place generations ago” that must be ended.⁹

Vice President Harris, as a senator, was the lead sponsor of the Fairness for Farmworkers Act, which calls for ending the overtime exclusion nationally.¹⁰

And last year Congress called attention to this shameful history by holding a U.S. House of Representatives hearing titled, “From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act.”¹¹ As NELP’s executive director Rebecca Dixon explained in testimony at the hearing, the exclusion of farmworkers from basic labor protections like overtime pay is a vestige of Jim Crow, which continues to harm today’s largely Latinx and Caribbean farm workforce and contributes to the the persistent racial earnings gap that Black and Latinx workers still face.¹²

The racial history and impact of the farmworker overtime exemption doesn’t mean that today’s farm employers in Oregon harbor ill will towards their workforces. You have heard at these hearings from farm employers who are people of good will struggling to make a living in a challenging industry. But the current farm labor staffing model relies on employment laws that accept as the norm a model of

overwork and substandard pay not tolerated in any other industry. It does not have to continue this way.

The Fact That California and Washington State Are Phasing in 40-Hour Overtime for Farmworkers—and New York Is Poised to Do the Same—Shows That It Is Feasible for Oregon to Do the Same

Fortunately, a growing number of states are moving to end the farmworker overtime exclusion. California and Washington State are now phasing in 40-hour overtime for farmworkers, and New York is poised to do the same. These actions show how Oregon can and should similarly transition its agricultural economy to operating under 40-hour overtime.

California. California has been phasing in 40-hour overtime since January 2019. For large employers, 40-hour overtime took effect in January 2022. For employers with fewer than 25 employees, these standards are being phased in more slowly, and will reach 40 hours by 2025.¹³ Moreover, California has also extended to farmworkers daily overtime for work beyond eight hours in a day, and double-time for work beyond twelve hours in a day.¹⁴ And as noted below and explained in greater detail by Gordon Lafer and by Daniel Costa from the Economic Policy Institute, economic indicators from California during this phase-in have been positive.

Washington State. Following California's action, in 2021, Washington State approved a similar but more rapid phase-in of 40-hour overtime for farmworkers. It started this month and will fully phase in for employers of all sizes by 2024:¹⁵

New York. New York is the next state that is poised to adopt 40-hour farmworker overtime this year. On January 28, 2022, following hearings like those held in Oregon, a wage board appointed by New York's Commissioner of Labor approved a series of resolutions to phase New York's current 60-hour farmworker overtime threshold down to 40-hours over ten years by 2032.¹⁶ If the board's recommendations are approved by New York's Labor Commissioner, as is expected, they will become binding law later this year. (In recent years, all wage board recommendations have been approved by the Commissioner.)

President Biden has praised the California and Washington State 40-hour overtime laws and urged other states to follow their lead:

For too long—and owing in large part to unconscionable race-based exclusions put in place generations ago—farmworkers have been denied some of the most fundamental rights that workers in almost every other sector have long enjoyed, including the right to a forty-hour work week and overtime pay. I was proud to stand with farmworkers during the Obama-Biden Administration, when California passed the nation's first farmworker overtime bill, and I am proud to stand with the farmworkers of Washington State today. It is long past time that we put all of America's farmworkers on an equal footing with the rest of our national workforce when it comes to their basic rights¹⁷

As California Has Phased in 40-Hour Overtime, Economic Indicators for the Agricultural Economy Have Remained Steady and There Has Been No Evidence of Increased Farm Closures

Since California is the first state to have phased in 40-hour overtime, its experiences are especially instructive. As is explained in the testimony of Daniel Costa from the Economic Policy Institute (EPI), review of key economic indicators for California's agricultural sector shows no evidence that the transition to the lower overtime threshold has been significantly disruptive or unmanageable.

This evidence from California casts serious doubt on predictions that 40-hour farmworker overtime in Oregon would lead to widespread farm closures. The Economic Policy Institute's analysis of California shows that:

- The number of agricultural establishments in California has held steady during this period at approximately 16,000—and there has therefore been no evidence of increased farm closures.¹⁸
- Average hours worked by farmworkers have declined slightly from about 43 hours a week to about 41 hours, as one would expect.¹⁹
- Total annual farmworker compensation has increased moderately by about 5% a year.²⁰ Note that California's minimum wage, like Oregon's, has been phasing up during this same period.

As for the fear that some members of the committee and witnesses voiced that 40-hour overtime will backfire for workers resulting in reduced net compensation because their hours will be capped at 40, the California data that EPI analyzes suggests that that does not appear to be happening. It shows that, as one would expect, average weekly farmworker hours worked in California have declined somewhat. Yet, because of the farm labor shortage, average weekly hours still remain above 40—with the result that farmworkers are indeed working slightly shorter hours, but still are working some overtime and will now receive time-and-a-half pay for those hours. This suggests that it is unlikely that net incomes have declined for California farmworkers.

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For the foregoing reasons, we recommend that Oregon follow the lead of California, Washington State, and, soon, New York, by transitioning its farm economy to a system that ends overwork and substandard pay by finally affording farmworkers the equal protection of the law. The fact that Oregon's neighbors, California and Washington, have already acted on overtime, minimizes any competitive disadvantage employers in the state might face. And action in Oregon would not only right a historic wrong, but also play a key role in continuing to build momentum for long overdue national level reform.

Thank you for the opportunity to submit this testimony.

Endnotes

- ¹ Eric Hansen & Martin Donohoe, [Health Issues of Migrant and Seasonal Farmworkers](#), 14 *J. Health Care for the Poor & Underserved* 153, 155-60 (2003).
- ² Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, "[Agricultural Safety](#)."
- ³ Ibid.
- ⁴ AFL-CIO, "[Death on the Job: The Toll of Neglect, 2021](#)."
- ⁵ Hong Xiao, Stephen A. McCurdy, Maria Stoecklin-Marois, Chin-Shang Li, and Marc B. Schenker, "Agricultural work and chronic musculoskeletal pain among Latino farm workers: the MICASA study," *Am J Ind Med*: 56 (3) February 2013.
- ⁶ J. Goh, J. Pfeffer & S. Zenios, [Workplace stressors & health outcomes: health policy for the workplace](#). Behavioral Science & Policy, (2015) 1(1), pp 43-52.
- ⁷ A.E. Dembe et al., [The impact of overtime and long work hours on occupational injuries and illness: new evidence from the United States](#), 62 *J. Occupational & Environmental Medicine* 588 (2005).
- ⁸ *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506, ¶¶ 22, 27-35 (2020).
- ⁹ The White House, "[Statement by President Joseph R. Biden, Jr. in Support of Washington State's Overtime Bill for Farm Workers](#)" (May 11, 2021).
- ¹⁰ Sen. Kamala Harris. "Harris Reintroduces Legislation to Strengthen Labor Protections for Farm Workers." (Feb. 7, 2019). Available at <https://www.harris.senate.gov/news/press-releases/harris-reintroduces-legislation-to-strengthen-labor-protections-for-farm-workers>
- ¹¹ Testimony of Rebecca Dixon, "[From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act](#)," Hearing before the U.S. House of Representatives Education and Labor Committee, Workforce Protections, Subcommittee (May 3, 2020).
- ¹² Ibid.
- ¹³ Calif. Dep't of Indus. Rel., [Overtime for Agricultural Workers](#).
- ¹⁴ Ibid.
- ¹⁵ Wash. State Dep't of Labor & Indus, [Agricultural Overtime](#).
- ¹⁶ N.Y. Dep't of Labor, [Resolutions Adopted By the Farm Laborers Wage Board on 1/28/2022](#).
- ¹⁷ The White House, "[Statement by President Joseph R. Biden, Jr. in Support of Washington State's Overtime Bill for Farm Workers](#)" (May 11, 2021).
- ¹⁸ Daniel Costa, Economic Policy Institute, Testimony in Support of Lowering the Overtime Threshold for Farmworkers in Oregon to 40 Hours Per Week, Hearing on HB 4002, Oregon House of Representatives (Feb. 8, 2022), Table 3.
- ¹⁹ Ibid. Table 1.
- ²⁰ Ibid. Table 2.