

Senate Bill 457

Sponsored by Senator HANSELL (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 **as introduced**.

Directs Employment Department to develop Agricultural Worker Overtime Relief Payment Program to provide eligible agricultural workers with payments for hours worked beyond 40 hours but not exceeding 48 hours per workweek.

Requires employers to pay overtime to agricultural workers who work in excess of 48 hours per workweek. For agricultural workers who earn agricultural salary and for agricultural workers who perform work during peak labor period, sets maximum allowable hour threshold before employer is required to pay overtime to 55 hours per workweek.

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

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to agricultural overtime; creating new provisions; amending ORS 314.772, 316.502, 317.850
3 and 318.031 and section 16, chapter 82, Oregon Laws 2022, and sections 1, 2 and 12, chapter 115,
4 Oregon Laws 2022; repealing sections 12, 13, 14 and 15, chapter 82, Oregon Laws 2022, and
5 sections 4, 7, 8, 9, 10, 11, 12a and 12b, chapter 115, Oregon Laws 2022; and prescribing an ef-
6 fective date.

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

8 **SECTION 1. (1) The Employment Department shall develop an Agricultural Worker**
9 **Overtime Relief Payment Program under which agricultural workers, as defined in section**
10 **1, chapter 115, Oregon Laws 2022, who meet the eligibility criteria under subsection (3) of this**
11 **section may apply to the department to receive payments for hours worked by the worker**
12 **in excess of 40 hours in one workweek but not exceeding the maximum hours allowable per**
13 **workweek as specified in section 2, chapter 115, Oregon Laws 2022.**

14 **(2)(a) The department shall prescribe by rule application forms and the process by which**
15 **agricultural workers may apply for payments under the program.**

16 **(b) Applicants shall apply directly to the third-party administrator with which the de-**
17 **partment enters into an agreement under subsection (4) of this section for administration**
18 **of the program.**

19 **(c) Applicants may apply once each calendar month that is a month in which the agri-**
20 **cultural worker worked more than 40 hours in one workweek but not more than the maxi-**
21 **imum hours allowable per workweek as specified under section 2, chapter 115, Oregon Laws**
22 **2022.**

23 **(d) A worker who submits an application under this section shall include with the appli-**
24 **cation a copy of the worker's paycheck stubs.**

25 **(e) Applications shall be submitted under penalties for false swearing under ORS 162.075.**

26 **(3) An agricultural worker is eligible for a payment under the program established under**
27 **this section if the worker:**

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 (a) Lives in Oregon;

2 (b) Worked more than 40 hours in one workweek at a farm located in this state; and

3 (c) Did not receive one and one-half times the worker’s regular rate of pay for the hours
4 worked in excess of 40 hours in one workweek but not exceeding the maximum hours al-
5 lowable per workweek as specified in section 2, chapter 115, Oregon Laws 2022.

6 (4) The department shall enter into an agreement with an exempt organization under
7 which the organization shall administer the program developed under subsection (1) of this
8 section.

9 (5) As soon as practicable after receiving an application under this section, the third-
10 party administrator shall:

11 (a) Consider the application if it is timely and complete;

12 (b) Determine the eligibility of the applicant for payments under this section;

13 (c) Approve or reject the application; and

14 (d) Notify the applicant of the administrator’s decision.

15 (6)(a) Within 30 days following approval of an application, the third-party administrator
16 shall make a payment directly to the agricultural worker in an amount equal to one-half
17 times the regular rate of pay for each hour the worker worked over 40 hours in one
18 workweek but not exceeding the maximum hours allowable per workweek as specified in
19 section 2, chapter 115, Oregon Laws 2022.

20 (b) Notwithstanding paragraph (a) of this subsection, if there are insufficient moneys
21 available for relief payments, all payments shall be reduced proportionately based on the
22 relative dollar amounts of the payments until there are sufficient moneys to make the pay-
23 ments.

24 (7) As used in this section:

25 (a) “Exempt organization” means an organization described in section 501(c)(3) of the
26 Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal
27 Revenue Code.

28 (b) “Third-party administrator” means the exempt organization with which the depart-
29 ment enters into an agreement under this section for administration of the program estab-
30 lished under this section.

31 **SECTION 2.** (1) The Agricultural Worker Overtime Relief Fund is established in the State
32 Treasury, separate and distinct from the General Fund. Interest earned by the fund shall be
33 credited to the fund. The fund consists of moneys appropriated, allocated, deposited or
34 transferred to the fund by the Legislative Assembly. The moneys in the fund are contin-
35 uously appropriated to the Employment Department for the purposes specified in section 1
36 of this 2023 Act.

37 (2)(a) The department shall use the moneys in the fund to reimburse the department for
38 actual costs incurred by the department in developing and implementing the program devel-
39 oped under section 1 of this 2023 Act.

40 (b) After payment of the costs described in paragraph (a) of this subsection, the depart-
41 ment shall distribute the remaining balance to the third-party administrator with which the
42 department enters into an agreement under section 1 of this 2023 Act for payments to eligi-
43 ble agricultural workers.

44 **SECTION 3.** Section 1, chapter 115, Oregon Laws 2022, is amended to read:

45 **Sec. 1.** As used in this section and sections 2 and 4a, **chapter 115, Oregon Laws 2022** [of this

1 2022 Act]:

2 (1) **“Agricultural salary” means no less than the wage set pursuant to ORS 653.025,**
3 **multiplied by 2,704 hours per year, then divided by 12 months.**

4 [(1)] (2) “Agricultural worker” means an individual who performs services in agriculture for an
5 employer in exchange for an agreed remuneration or rate of pay.

6 [(2)] (3) “Agriculture” includes:

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

8 (b) Dairying;

9 (c) The production, cultivation, growing and harvesting of any agricultural or horticultural
10 commodities;

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

12 (e) Any other practices performed by a farmer or on a farm as an incident to or in conjunction
13 with farming operations, including preparation for market, delivery to storage or to market, or de-
14 livery to carriers for transportation to market.

15 [(3)] (4) “Salary” has the meaning given that term in ORS 653.010.

16 [(4)] (5) “Workweek” means a fixed period of time established by an employer that reflects a
17 regularly recurring period of 168 hours or seven consecutive 24-hour periods.

18 **SECTION 4.** Section 2, chapter 115, Oregon Laws 2022, as amended by section 3, chapter 115,
19 Oregon Laws 2022, is amended to read:

20 **Sec. 2.** (1) Except as provided in subsection (2) of this section, an employer may not permit,
21 require or suffer an agricultural worker to work a total number of hours in excess of [40] **48** hours
22 in one workweek.

23 (2)(a) An employer may permit, require or suffer an agricultural worker **who does not earn**
24 **an agricultural salary** to work more than [40] **48** hours in one workweek if the employer compen-
25 sates the agricultural worker at one and one-half times the worker’s regular rate of pay for each
26 overtime hour or portion of an hour that the worker works in excess of [40] **48** hours.

27 (b) **An employer may permit, require or suffer an agricultural worker who earns an ag-**
28 **ricultural salary to work more than 55 hours in one workweek if the employer compensates**
29 **the agricultural worker at one and one-half times the applicable minimum wage rate under**
30 **ORS 653.025 for each overtime hour or portion of an hour that the worker works in excess**
31 **of 55 hours in one workweek.**

32 (3)(a) **Notwithstanding subsection (2) of this section, during a peak labor period, an em-**
33 **ployer may permit, require or suffer an agricultural worker who does not earn an agricul-**
34 **tural salary to work more than 55 hours in one workweek if the employer compensates the**
35 **agricultural worker at one and one-half times the worker’s regular rate of pay for each**
36 **overtime hour or portion of an hour that the worker works in excess 55 hours in one**
37 **workweek.**

38 (b)(A) **An employer shall designate the time period during which a peak labor period will**
39 **occur but in no event may a peak labor period exceed 15 weeks per calendar year.**

40 (B) **The weeks that comprise a peak labor period need not be consecutive nor coincide**
41 **with a designated peak labor period in any previous calendar year.**

42 [(3)(a)] (4)(a) For purposes of this section, a workweek may begin on any day of the week and
43 at any hour of the day and need not coincide with a calendar week.

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

1 [(4)] (5) A claim for a violation of this section may be made under ORS 653.055.

2 **SECTION 5.** ORS 316.502, as amended by section 13, chapter 115, Oregon Laws 2022, is
3 amended to read:

4 316.502. (1) The net revenue from the tax imposed by this chapter, after deducting refunds and
5 amounts described in ORS 285B.630 and 285C.635, shall be paid over to the State Treasurer and held
6 in the General Fund as miscellaneous receipts available generally to meet any expense or obligation
7 of the State of Oregon lawfully incurred.

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

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

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

13 (b) The refund payments in excess of tax liability authorized under ORS 315.174, 315.262, 315.264,
14 315.266 and 316.090 and section 3, chapter 589, Oregon Laws 2021[, *and section 8, chapter 115,*
15 *Oregon Laws 2022*].

16 **SECTION 6.** ORS 317.850, as amended by section 14, chapter 115, Oregon Laws 2022, is
17 amended to read:

18 317.850. (1) The net revenue from the tax imposed by this chapter, after deduction of refunds,
19 shall be paid over to the State Treasurer and held in the General Fund as miscellaneous receipts
20 available generally to meet any expense or obligation of the State of Oregon lawfully incurred.

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

24 (3) Moneys are continuously appropriated to the Department of Revenue to make[:]

25 [(a)] the refunds authorized under subsection (2) of this section[: *and*]

26 [(b)] *The refund payments in excess of tax liability authorized under section 8, chapter 115, Oregon*
27 *Laws 2022*].

28 **SECTION 7.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section
29 15, chapter 115, Oregon Laws 2022, is amended to read:

30 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
31 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
32 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
33 allowable to the shareholders of the S corporation.

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

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

43 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
44 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
45 316.117, then that provision shall apply to the nonresident shareholder.

(5) As used in this section, “business tax credit” means the following credits: ORS 315.104 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774, Oregon Laws 2013 (alternative fuel vehicle contributions), **and** section 2, chapter 34, Oregon Laws 2022 (small forest option)[, *and section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay)*].

SECTION 8. ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section 16, chapter 115, Oregon Laws 2022, is amended to read:

318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter 317 shall be administered as uniformly as possible (allowance being made for the difference in imposition of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are incorporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and 315.643 and section 2, chapter 34, Oregon Laws 2022, [*and section 8, chapter 115, Oregon Laws 2022,*] (all only to the extent applicable to a corporation) and ORS chapter 317.

SECTION 9. Section 12, chapter 115, Oregon Laws 2022, is amended to read:

Sec. 12. [*Section 8 of this 2022 Act*] **The repeal of sections 8, 9, 10 and 11, chapter 115, Oregon Laws 2022, by section 12 of this 2023 Act** applies to **all** tax years [*beginning on or after January 1, 2023*].

SECTION 10. Section 16, chapter 82, Oregon Laws 2022, is amended to read:

Sec. 16. (1) The amendments to ORS 284.368 by section 1, **chapter 82, Oregon Laws 2022,** [*of this 2022 Act*] apply to fiscal years beginning on or after July 1, 2022.

(2) The amendments to sections 3 and 5, chapter 589, Oregon Laws 2021, by sections 3 and 4, **chapter 82, Oregon Laws 2022,** [*of this 2022 Act*] apply to tax years beginning on or after January 1, 2022, and before January 1, 2024, and to estimated payments due on and after June 15, 2022.

(3) The amendments to section 2, chapter 527, Oregon Laws 2021, by section 8, **chapter 82, Oregon Laws 2022,** [*of this 2022 Act*] apply to applications for precertification under section 4, chapter 527, Oregon Laws 2021, and applications for exemption under section 5, chapter 527, Oregon Laws 2021, without precertification, filed on or after [*the effective date of this 2022 Act*] **June 3, 2022.**

(4) Section 10 [*of this 2022 Act*], **chapter 82, Oregon Laws 2022,** applies to tax years beginning

1 on or after January 1, 2022, and before January 1, 2026.

2 *[(5) Sections 13 and 15 of this 2022 Act apply to tax years beginning on or after January 1, 2023,*
3 *and before January 1, 2029, and to any tax year to which a net operating loss arising in those tax*
4 *years is carried back.]*

5 **SECTION 11. In addition to and not in lieu of any other appropriation, there is appro-**
6 **propriated to the Employment Department, for the biennium beginning July 1, 2023, out of the**
7 **General Fund, the amount of \$50,000,000, which shall be expended for the purposes set forth**
8 **in section 1 of this 2023 Act.**

9 **SECTION 12. Sections 4, 7, 8, 9, 10, 11, 12a and 12b, chapter 115, Oregon Laws 2022, and**
10 **sections 12, 13, 14 and 15, chapter 82, Oregon Laws 2022, are repealed.**

11 **SECTION 13. This 2023 Act takes effect on the 91st day after the date on which the 2023**
12 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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