

CHAPTER 22

AN ACT

SB 1513

Relating to mandatory overtime shifts; amending
ORS 652.020 and 652.990.

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

SECTION 1. ORS 652.020 is amended to read:

652.020. (1) As used in this section:

(a) "Machinery" means material-handling equipment and power-driven machines powered by electricity, nuclear or fossil fuels, hydroelectric power, geothermal power or another power source other than by human hand, foot or breath.

(b) "Manufacturing" means the process of using machinery to transform materials, substances or components into new products.

(c) "Manufacturing establishment" means an establishment engaged in manufacturing.

(d) "Perishable product" means any product that may spoil, deteriorate or undergo other material changes that render it unsuitable for the use for which it was produced. "Perishable product" includes agricultural crops, meat and fish.

(e) "Undue hardship period" means the period of time during which perishable product must be processed after harvesting, slaughter or catch.

(f) "Workweek" means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection and subsection (3) of this section, an employer may not require or permit an employee employed in any mill, factory or other manufacturing establishment in this state to work more than:

(A) 10 hours in any one day; or

(B) 55 hours in any one workweek.

(b) An employer may permit an employee described in paragraph (a) of this subsection to work up to 60 hours in one workweek if the employee requests or consents in writing to work more than 55 hours in the workweek.

(c) Notwithstanding paragraph (b) of this subsection, during the period of time that an employer is eligible for an undue hardship period exemption under subsection (4) of this section, an employer may permit an employee described in paragraph (a) of this subsection to work:

(A) Up to 84 hours per workweek for four workweeks; and

(B) Up to 80 hours per workweek for the remainder of the undue hardship period.

(d) Except as provided in subsection (3) of this section, an employer may not require or permit an

employee employed in a sawmill, planing mill, shingle mill or logging camp to work more than:

(A) Eight hours, exclusive of one hour, more or less, in one day; or

(B) 48 hours in one workweek.

(3)(a) An employee may work overtime up to three hours more than the applicable limit for the maximum allowable hours of employment in one day as described in subsection (2) of this section.

(b) An employer shall compensate an employee who works overtime hours described in paragraph (a) of this subsection at one and one-half times the employee's regular rate of pay for each overtime hour or portion of an hour the employee works.

(c) An employer shall calculate an employee's overtime compensation on a daily basis under paragraph (b) of this subsection and on a weekly basis under ORS 653.261 (1) and pay the greater of the two amounts if, during the same workweek, the employee works more than:

(A) The applicable limit for the maximum allowable hours of employment in one day as described in subsection (2) of this section; and

(B) Forty hours in one workweek as described in ORS 653.261 (1).

(d) An employer that makes an overtime payment to an employee pursuant to paragraph (c) of this subsection satisfies the overtime compensation requirements under this subsection and ORS 653.261 (1).

(4)(a) An employer is eligible for an undue hardship period exemption from the restrictions on maximum workweek hours under subsection (2)(a) of this section if the employer, in the ordinary course of the employer's business, processes perishable products. The undue hardship period exemption shall be effective only during an undue hardship period. An employer may be eligible for more than one undue hardship period exemption in a calendar year. However, the combined total duration of the employer's undue hardship period exemptions may not exceed 21 workweeks in a calendar year.

(b) To claim an undue hardship period exemption, an employer must provide notice of the undue hardship period to the Commissioner of the Bureau of Labor and Industries and obtain written consent from each employee whom the employer will request to work more than 55 hours in any workweek during the undue hardship period.

(c)(A) The notice the employer sends to the commissioner under paragraph (b) of this subsection must be in a form prescribed by the commissioner by rule and include a description of the reasons for the undue hardship period, the start and expected end dates of the undue hardship period and any other information required by the commissioner.

(B) The employee's written consent shall be in a form prescribed by the commissioner by rule and include:

(i) A description of the employer's reasons for the undue hardship period;

(ii) The start and expected end dates of the undue hardship period;

(iii) A statement that the employer may require the employee to work up to 84 hours per workweek for up to four workweeks during the undue hardship period;

(iv) A statement that the employer may require the employee to work up to 80 hours per workweek for the remainder of the undue hardship period;

(v) A statement that the employee consents to working up to 84 hours per workweek for up to four workweeks during the undue hardship period and up to 80 hours per workweek for the remainder of the undue hardship period;

(vi) Contact information for the Bureau of Labor and Industries; and

(vii) Any other information required by the commissioner.

(5) An employer may not:

(a) Require any employee employed in a mill, factory or other manufacturing establishment in this state to begin a work shift less than 10 hours after the end of the employee's previous work shift if the employee's previous work shift totaled eight or more hours, unless the employer requires the employee to work additional hours due to disruptions in business operations caused by a power outage, major equipment breakdown, severe weather or similar emergency outside the employer's control;

(b) Require or permit any employee to work in any place described in this section for more hours than the hours provided for in this section during any day of 24 hours;

(c) Take an adverse employment action against any employee who is employed in a manufacturing establishment that is classified within the North American Industry Classification System under code 3118 and who refuses to work a mandatory overtime shift unless the employer has provided the employee with at least five days' advance notice of the overtime shift, including the date and time of the overtime shift;

[(c)] (d) Permit an overseer, superintendent or other agent of the employer to violate this section; or

[(d)] (e) Coerce an employee into consenting to work more than 55 hours in a given workweek.

(6) This section does not apply to:

(a) An employee performing work as a member of a logging train crew, as a guard or as a boiler operator;

(b) An employee engaged in the transportation of workers to and from work;

(c) An employee engaged in the care of quarters or livestock, the conducting of mess halls, the superintendence and direction of work or the loading and removal of finished forest product;

(d) An employee when engaged in making necessary repairs or in the case of emergency where life or property is in imminent danger; or

(e) An employee employed in a mill, factory or other manufacturing establishment whose principal duties are administrative in nature or who is not

otherwise engaged in the direct processing of goods in the usual course of the employee's duties.

(7) Subsections (2) to (5) of this section do not apply to employees who are represented by a labor organization for purposes of collective bargaining with their employer, provided limits on the required hours of work and overtime payment have been agreed to between the employer and labor organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and payments shall not be deemed to be changed from the previous collective bargaining agreement between the employer and labor organization unless the employees have been locked out or are engaged in a strike or the employer has unilaterally implemented new terms and conditions of employment.

(8)(a) In addition to any other remedy provided by law, an employee has a private cause of action against an employer if the employer violates subsection (2) or (3) of this section by requiring the employee to work more than:

(A) Three hours more than the applicable limit for the maximum allowable hours of employment in one day; or

(B) The applicable limit for the maximum allowable hours of employment in one workweek.

(b) If the employee prevails in an action under this section, the court may enter judgment against the employer for:

(A) Actual damages or \$3,000 per claim, whichever is greater;

(B) Equitable relief; and

(C) Liquidated damages in an amount equal to twice the employee's overtime wages earned during the period not allowed under subsection (2) or (3) of this section.

(c) In an action brought under this section, the court may award to the prevailing plaintiff costs, disbursements and reasonable attorney fees. Any attorney fee agreement is subject to approval by the court.

(9)(a) Notwithstanding ORS 652.900, in addition to any other penalty provided by law, the commissioner may assess the following civil penalties against an employer that the commissioner determines has coerced an employee into consenting to work more than 55 hours in one workweek:

(A) \$2,000 per violation if the employer coerced an employee into consenting under subsection (2)(b) of this section to work more than 55 hours in any given workweek; or

(B) \$3,000 per violation if the employer coerced an employee into consenting under subsection (4) of this section to work more than 55 hours per workweek in any given workweek during an undue hardship period.

(b) Each violation described in paragraph (a) of this subsection is a separate and distinct offense. In the case of a continuing violation, each workweek's continuance is a separate and distinct violation.

(c) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this

subsection shall be applied and paid over as provided in ORS 652.900.

(10) A violation of subsection (5)(c) of this section is an unlawful practice under ORS chapter 659A that is subject to enforcement by the Commissioner of the Bureau of Labor and Industries as provided in ORS 659A.820 to 659A.865.

SECTION 2. ORS 652.990 is amended to read:

652.990. (1) Violation of ORS 652.020 (5)(b) or [(c)] **(d)** is a Class A violation. Every day's violation is deemed a separate offense.

(2) Any person, body corporate, general manager or employer who violates ORS 652.040 or causes ORS 652.040 to be violated commits a Class C misdemeanor.

(3) Violation of ORS 652.110 or 652.120 is a Class A violation.

(4) Violation of ORS 652.130 by any employer is a Class C misdemeanor.

(5) In addition to the civil damages recoverable under ORS 652.230, violation of ORS 652.210 to 652.235 is a Class A misdemeanor.

(6) The violation of ORS 652.240 is a Class A misdemeanor.

(7) Violation of ORS 652.355 is a Class C misdemeanor.

(8) Violation of ORS 652.610 or 652.620 is a Class D violation.

(9) Willful violation of ORS 652.635 or 652.640 by a producer or agent of the producer is a Class A misdemeanor.

(10) Violation of any of the provisions of ORS 652.710 or 652.720 by any employer is a Class A violation.

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