

Oregon Clarifies, Overhauls Manufacturing Overtime Rules

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Oregon Governor Kate Brown has signed into law a bill that remedies ambiguities in Oregon's decades-old daily overtime law, which covers non-union employees working in mills, factories, and manufacturing establishments.

H.B. 3458 rejects an Oregon Bureau of Labor and Industries interpretation concerning the pyramiding of overtime entitlements. The new law clarifies that employees who are entitled to receive both daily and weekly overtime must be paid only the greater of the two, rather than both.

The new law also sets new limits on weekly work hours, while providing certain employers a new undue hardship exemption.

Finally, the H.B. 3458 adds new enforcement provisions.

Background

Oregon employers with operations in mills, factories, and manufacturing establishments have been required to pay employees daily overtime after 10 hours of work. Existing law also caps daily work hours in mills, factories, and manufacturing establishments at 13 hours. Non-exempt employees, of course, also are entitled to overtime compensation under state and federal law for work beyond 40 hours per week.

Before 2016, the Bureau of Labor and Industries (BOLI) interpreted the respective overtime rules to require employers to pay only the greater of daily or weekly overtime in a workweek, not both. However, in December 2016, BOLI revised its interpretation and opined that employers must pay both daily and weekly overtime, even if an employee is compensated twice for the same hours worked.

While at least one Oregon trial court has rejected BOLI's new interpretation, it was unclear whether BOLI's enforcement policies would reflect its new interpretation.

New Law

H.B. 3458, which was championed by business groups, rejects BOLI's interpretation and clarifies any ambiguity. It expressly provides that employers should calculate an employee's overtime calculation on both a daily and weekly basis and pay the greater of the two. The clarifying language becomes effective immediately on passage.

In addition, the new law revises limits on weekly work hours for those employed in mills, factories, or other manufacturing establishments. Absent an undue hardship, employers may not require or permit employees to work more than 55 hours a week. However, employees may request or consent in writing to work up to 60 hours a week.

The new law makes it an unlawful employment practice to discipline employees for declining to consent to work in excess of 55 hours a week.

Under the new undue hardship exemption, employers that process perishable products may permit employees to consent to work up to 84 hours a week, with certain limitations.

Addressing further ambiguities in the existing law, H.B. 3458 provides a private right of action in favor of employees for violations of the daily and weekly caps on work hours. Employees claiming they were required or coerced to work beyond 13 hours in a day, or 55 hours in a week, may recover \$3,000 for each violation, plus liquidated damages equal to twice the employee's overtime wages earned during the period of non-compliance. In addition, the bill reaffirms BOLI's authorization to assess civil penalties against non-compliant employers.

The new weekly hours cap and new private right of action will become effective January 1, 2018.

To ensure compliance with these new developments, employers should review and update their existing

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Please contact Jackson Lewis with any questions about these developments, compliance, or related matters.

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