

Oregon Law Changes to Manufacturing Employees Overtime and Maximum Hours Worked Rules Effective January 1, 2018

Background

Oregon law has long required that employees employed in mills, factories, and manufacturing establishments must be paid at one and one-half times the employee's regular rate of pay for hours worked in excess of 10 in any day and any hours in excess of 40 hours per workweek. Additionally, employees may not work more than 13 hours in any 24-hour period.

A manufacturing establishment is defined as an establishment engaged in the process of using machinery to transform materials, substances, or components into new products.

Amendment to Manufacturing Overtime law – 10 Hours Off between Shifts

Effective January 1, 2018, employers are required to provide employees employed in mills, factories, and manufacturing establishments 10 hours of rest between the end of one shift of eight hours or more and the start of another shift, unless the additional hours are due to the disruptions in business operations caused by a power outage, major equipment breakdown, severe weather or similar emergency outside the employer's control.

House Bill 3458 – Weekly Caps on Hours Worked

Effective January 1, 2018, employees working in in mills, factories, and manufacturing establishments may not work more than 55 hours in a workweek, which can be increased to 60 hours a workweek if the employee requests or agrees in writing to work more than 55 hours.

- Employees must consent in writing before they begin working more than 55 hours (See Attached Consent Form Template).
- The employer must retain a copy of each employee's written consent during the period for which the written consent is in effect and one year after.
- Employees can withdraw their consent at any time with written notice seven calendar days' prior to the start of the workweek in which the employee no longer consents to work over 55 hours in the workweek.

Exceptions to Law

Employees are not considered "employed in" a mill, factory, or manufacturing establishment and the overtime rules and restrictions do not apply to them provided they perform duties that

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do not include work in connection with production machinery and are in a location that is physically separated from the actual production process by means of an architectural barrier.

The law also provides an exemption for employees working in the following positions:

- Security guards,
- Boiler operators,
- Employees who, as one of their regular duties, are engaged in the transportation of other employees to and from work,
- Employees whose primary duty is that of making necessary repairs. This includes employees conducting maintenance on buildings, equipment or machinery,
- Employees whose primary duty is that of supervising and directing work. This includes supervisors, managers, and persons who are temporarily acting in these capacities in the absence of supervisory employees,
- Employees whose primary duty is the loading and removal of finished forest products, and,
- Employees engaged in emergency work in which life or property is in imminent danger.

A determination of whether an employee is in a position exempt from the overtime rules and restrictions is based on his or her primary duty and must be made on a daily basis because an employee's position may vary from day to day.

Currently, the daily and weekly overtime rules and restrictions do not apply to employees of sawmills, planing mills, shingle mills, and logging camps. The 48-hour weekly maximum for certain lumber industry employees is still part of the law.

Collective Bargaining Agreements

The law does not apply to employees subject to a collective bargaining agreement provided that the collective bargaining agreement:

- Is in effect at the employee's worksite;
- Contains a provision that limits the employee's required hours of work; and
- Contains a provision for the payment of overtime hours of work.

Penalties for Violations

The law makes it unlawful for employers to requiring or coercing an employee to work hours in excess of maximums, discharge, refuse to hire, discriminate, or retaliate against employees or prospective employees who inquire about their rights to overtime compensation under the law, report violations, file complaints, or decline to consent to work more than 55 hours in a workweek.

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- Employees may file complaints with BOLI to enforce their rights or file fee-bearing private civil actions.
- In addition to recovering damages, BOLI has authority to assess civil penalties of up to \$3,000 per violation.

Special Rules for Employers with Perishable Products

Manufacturers with *perishable products* are allowed to raise the 55 hour cap to 80 hours per workweek for up to 21 workweeks, upon filing of an undue hardship notice with BOLI (See Attached Undue Hardship Notice Template).

- An undue hardship period is defined as, the period of time during which perishable products must be processed after harvesting, slaughter, or catch.
- During that 21-week period, the hours cap can be raised to 84 hours per workweek for four workweeks, upon filing of an additional undue hardship notice.
- Employers may be eligible for more than one undue hardship period in a calendar year provided all undue hardship periods combined do not exceed 21 workweeks.
- The undue hardship notice must be filed with BOLI seven calendar days in advance of employees working beyond the 55 hour cap and must include written consent forms from every employee who will be working more than 55 hours a workweek (See Attached Undue Hardship Consent Form Template).

Next Steps

Employers with mills, factories, or manufacturing operations in Oregon should consider taking the following steps to ensure compliance with the new law:

- Review the amended statutes carefully with counsel to determine which provisions apply to their employees and which do not;
- If an employer has not already done so, establish and communicate to employees what is considered the “workweek” and a “24-hour period” (see definitions below for more information).
- Examine past employee schedules and timesheets to determine the frequency with which employees worked both daily and weekly overtime hours in a single week;
- If employees work more than 55 hours in any week and are not processing perishable goods, the employer should implement new scheduling policies and hire new employees as necessary to ensure uninterrupted operations, while complying with the new weekly maximum;

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- If an employer processes perishable goods, it should determine which workweek(s) of the year it may need employees to work more than 55 hours, and draft the employee consent and BOLI notification forms necessary to claim the undue hardship exemption;
- Train human resources, payroll, and managerial staff on the new requirements; and
- Edit employee handbooks and new hire materials to reflect the new requirements.

UEA Attorneys are available to advise Member companies on complying with the new requirements of the law.

HB 3458 web link:

<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB3458/Enrolled>

Definitions

Workweek is defined as 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 only be changed by the employer if the change is intended to be permanent and is not designed to evade overtime requirements.
- If an employer fails to establish the beginning of the workweek, the workweek will begin on the day the individual commences work and end seven consecutive days after the work began.

A 24-hour period means any time period of 24 consecutive hours. The employer shall establish the beginning time and the ending time of the 24-hour period to be used by the employer for purposes of complying with these rules.

- Once established, the beginning time of the day shall not be changed, unless the change is intended to be permanent and is not designed to circumvent the overtime requirements.
- If the employer fails to establish the beginning and ending times of 24-hour period, it will begin at the time the individual employee commences work and end 24 consecutive hours after the work began.

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