

Offsetting Overtime Costs with Legislative Action

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Washington Growers League 2022 Labor Conference

2021 Agriculture Overtime Bill

- SB 5172
 - 2022 – 55 hours
 - 2023 – 48 hours
 - 2024 – 40 hours
 - No retroactive overtime suits

Agriculture Overtime in Other States

- Hawaii - 48 hrs in 20 weeks chosen by employer
- Maryland – 60 hours
- Minnesota – 48 hours
- New York – 60. There is a current proposal to decrease to 40 hours in front of Farm Workers Wage Board in NY Dept of Labor
- Cal – 40 (26 or more ees) 50 (less than 25 employees) double time over 12 hrs
- Colorado – 60 hours. 48 hours on 1-1-24. bill passed June 21, 2021

Adjusting to the New Law

- **Schedule work** to avoid overtime shifts
 - Farm employees want hours, but will see reduction in earnings in some work
- More **H-2A**
- Accelerate **Innovation and Automation**
 - Mechanization to reduce size of weeding and harvest crews
- Replacing high labor crops (e.g., tree fruit, asparagus) with **low labor crops**

Can Agriculture Get Relief from OT?

HB 1750

(b) Beginning January 1, 2023, and except as provided in (d) of this subsection, any agricultural employee shall not be employed for more than 48 hours in any one workweek unless the agricultural employee receives one and one-half times that agricultural employee's regular rate of pay for all hours worked over 48 in any one workweek.

(c) Beginning January 1, 2024, and except as provided in (d) of this subsection, any agricultural employee shall not be employed for more than 40 hours in any one workweek unless the agricultural employee receives one and one-half times that agricultural employee's regular rate of pay for all hours worked over 40 in any one workweek.

- By Representatives Hoff, Walen, Rude, J. Johnson, Ybarra, Klippert, Dolan, Dent, and Corry Prefiled 01/04/22.
- House need 9 Democrats. There are 3 Democratic co-sponsors now
- Senate -- need 6 Democrats no bill yet

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- 14 (d)(i) Beginning January 1, 2023, an agricultural employer may select any 12 weeks in a calendar year as special circumstance weeks for labor demand. During each of the selected 12 weeks, the agricultural employer may employ agricultural employees for up to 50 hours before the requirement to pay overtime under this section applies.

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(ii) In addition to the records required to be kept under RCW 21 49.30.020, an agricultural employer is responsible for maintaining records of which special circumstance weeks were utilized.

(iii) An agricultural employer must provide an annual initial disclosure of a good-faith estimate of the selected 12 weeks to their agricultural employees at least 30 days in advance of the first expected special circumstance week, or upon hiring for those who start work fewer than 30 days in advance. For agricultural employees employed under, and in compliance with federal requirements for, temporary work visas, the disclosure of a good-faith estimate must be made no later than the date of the worker's visa application, contemporaneous with required federal preemployment written disclosures to visa workers ordinarily due by the date of the worker's visa application.

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(iv) An agricultural employee must be provided written notice, at least annually, of which weeks will be special circumstance weeks, no later than the seventh day before the first special circumstance week, or upon hiring for those starting work after the seventh day. The employer may change which are the special circumstance weeks after that notice if:

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- (A) The employer provides at least one week's written notice of any week being added or removed as a special circumstance week;
- (B) The initial disclosure was the employer's good-faith, reasonable expectation of which weeks would be the special circumstance weeks;
- and (C) The changes are based on circumstances not foreseeable at the time of the initial disclosure.

Can we Get Relief?

- **Tax Break as offset?**