
Labor & Workplace Standards Committee

ESSB 5172

Brief Description: Providing overtime standards for the agricultural workforce.

Sponsors: Senate Committee on Labor, Commerce & Tribal Affairs (originally sponsored by Senators King, Brown, Fortunato, Honeyford, Muzzall, Schoesler, Short and Wagoner).

Brief Summary of Engrossed Substitute Bill

- Phases in overtime pay requirements for certain agricultural employees as follows: (1) beginning January 1, 2022, after 55 hours; (2) beginning January 1, 2023, after 48 hours; and (3) beginning January 1, 2024, after 40 hours.
- Prohibits the award of damages or other relief to agricultural employees seeking unpaid overtime due under the overtime statute, as it existed on November 4, 2020, and applies the prohibition retroactively.

Hearing Date: 3/23/21

Staff: Trudes Tango (786-7384).

Background:

Overtime Pay.

Generally, employers must generally pay their employees at least one and one-half times the employee's regular hourly rate for any hours the employee works over 40 hours in a workweek. One exemption to this requirement applies to agricultural workers. In particular, it applies to individuals working on a farm, including: soil cultivation; crop raising, including harvesting; handling livestock, including raising, shearing, feeding, caring for, training, and management of

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livestock, bees, poultry, furbearing animals, and wildlife; farm operations, including management, conservation, improvement, or maintenance of a farm, its tools and equipment; packing, packaging, grading, storing, or delivering any agricultural or horticultural commodity; commercial canning, freezing, or processing any agricultural or horticultural commodity including its delivery to a terminal market for distribution for consumption; cultivation, raising, harvesting, and processing of oysters, including delivery to a terminal market for distribution for consumption.

State Supreme Court Case.

On November 5, 2020, the state Supreme Court issued its decision in the *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.* case. The majority opinion of the court held that the overtime exemption for agricultural employees was unconstitutional as applied to dairy workers because it violated the Privileges and Immunities clause of the state constitution. Part of the court's analysis was determining whether there were reasonable grounds to exempt the agricultural industry from the overtime laws, and the court found no convincing legislative history showing reasonable grounds.

The court did not address the issue of the retroactive application of its ruling. Generally, court decisions apply retroactively. However, courts have discretion to apply decisions prospectively in exceptional cases where the court is overruling a law that was justifiably relied on and retroactive application would be substantially unfair. When considering the equities of retroactive application, courts ask whether: (1) the decision established a new rule of law that either overruled clear precedent that parties relied on or was not clearly foreshadowed; (2) retroactive application would tend to impede the policy objectives of the new rule; and (3) retroactive application would produce a substantially inequitable result.

Summary of Engrossed Substitute Bill:

Overtime Pay For Agricultural Employees.

A phased approach to overtime pay for certain agricultural employees is established:

- Beginning January 1, 2022, overtime pay of one and one-half times the agricultural employee's regular rate of pay must be paid for all hours the employee worked over 55 hours in any one workweek.
- Beginning January 1, 2023, overtime pay is required for hours worked over 48 hours in any one workweek.
- Beginning January 1, 2024, overtime pay is required for hours worked over 40 hours in any one workweek.

The phase-in does not apply to hours worked by an agricultural employee for an employer engaged in dairy cattle and milk production activities described in the North American Industrial Classification System.

The overtime exemption for agricultural employees is stricken from the statute as of January 1, 2024.

The payment of compensation or providing compensatory time off in addition to a salary shall not be considered when determining whether a person is exempt from overtime because the person is employed in an executive, administrative, or professional capacity.

Retroactive Claims For Overtime Pay.

No damages, statutory or civil penalties, attorneys' fees and costs, or other type of relief may be granted against an employer to an agricultural employee seeking unpaid overtime under the overtime statute, as it existed on November 4, 2020. This bar on unpaid overtime based on the statute as it existed on that date applies retroactively to claims filed after November 5, 2020 and before the effective date of the section. This bar does not apply to agricultural employees entitled to backpay or other relief as a result of being a member in the class of plaintiffs in the *Martinez-Cuevas* case.

Appropriation: None.

Fiscal Note: Requested on 03/19/2021.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to striking the agricultural employee exemption from the overtime statute, which takes effect January 1, 2024.