

DAVIS WRIGHT TREMAINE LLP

# Oregon Ag Overtime Update

A Legal Resource Provided by Davis Wright Tremaine LLP

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Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

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# A longstanding “agricultural exemption” from overtime laws is now phasing out in Oregon

## Overtime Pay Eligibility:

Both federal and state law provide certain rights to “non-exempt” employees, including overtime pay when working more than 40 hours in a defined workweek. Historically, agricultural employees have been exempt from this requirement. (*Agricultural employees* generally includes vineyard work *and* work performed “by a farmer on a farm” as incident to or in conjunction with those farming operations—employers should consult legal counsel for specific analysis of covered employees. The longstanding industry exemption has not included agricultural workers who handle or work on crops not grown by their employer—for example, handling grapes from a neighboring vineyard—who have been eligible for overtime in those workweeks.)

However, in 2022, the Oregon legislature passed a bill removing the exemption over several years. Specifically:

- *Jan 1, 2023*: overtime for hours worked above 55 hours in a workweek.
- *Jan 1, 2025*: overtime for hours worked above 48 hours in a workweek.
- *Jan 1, 2027*: overtime for hours worked above 40 hours in a workweek

Thus, employers with vineyard-based employees must either plan scheduling to avoid overtime, or pay the higher (“time-and-one-half”) rate unless another exemption applies.

## Other exemptions:

Remember that other exemptions may still apply. As one example, a manager of at least two full-time equivalent workers may still qualify for a different exemption, if that manager has sufficient decision making authority and other duties under applicable law, and is paid on a salary basis. And, there are still pockets of workers not eligible for overtime under exemptions like the “small farm,” “family”, and the “daily commuter” (hand harvesters employed fewer than 13 weeks in ag in the prior year). Employers should review the detailed requirements to meet such exceptions, and seek legal advice with questions.

## Next Steps:

Some steps employers are taking include:

- Considering whether engaged farm labor contractors and vineyard management companies understand wage and hour law for their employees. Relatedly, reviewing contracts with such entities to ensure the winegrower understands legal rights and obligations by each party.
- Reviewing scheduling and operational decisions. Employers can work to reduce the amount of overtime worked; employers must however, pay overtime if those hours are actually worked.
- Communicating with payroll providers regarding the change in exempt status.
- Assessing recordkeeping practices.
- Educating managers, and communicating with employees about the change.

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