

FINAL BILL REPORT

ESSB 5172

C 249 L 21
Synopsis as Enacted

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).

Senate Committee on Labor, Commerce & Tribal Affairs
House Committee on Labor & Workplace Standards
House Committee on Appropriations

Background: Minimum Wage and Overtime. As of January 1, 2021, the minimum wage in the state of Washington is \$13.69 per hour. The Department of Labor and Industries (L&I) calculates the state minimum wage. Washington employers must pay most employees at least the minimum wage for every hour worked. Most employees who work more than 40 hours in a seven-day workweek must be paid overtime. Overtime pay must be at least 1.5 times the employee's regular hourly rate and employees may not waive their right to overtime pay. Employers must pay overtime to eligible workers regardless of employer size. Collective bargaining agreements and employers may provide more generous overtime pay than state law requires. L&I handles worker rights complaints under the Wage Payment Act. Workers may also choose to file a civil action for violations under the Minimum Wage and Wage Payment Acts.

Overtime Exemptions. Although most employees are entitled to overtime pay after working 40 hours in a seven-day workweek, there are specific categories of employees who are not required to receive overtime, such as executive, administrative, and professional employees in some circumstances; casual laborers; certain seasonal employees; workers performing forest protection and fire prevention activities; and most agricultural workers.

Overtime does not apply to individuals working on a farm involved in:

- soil cultivation;
- raising crops;
- handling livestock;

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- farm operations;
- packing, packaging, grading, storing, or delivering an agricultural or horticultural commodity;
- commercial canning, freezing, or processing an agricultural or horticultural commodity and related delivery; and
- cultivating, raising, harvesting, and processing oysters and related delivery.

Washington Supreme Court Case. On November 5, 2020, the Washington Supreme Court ruled in *Jose Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, that the current law exempting agricultural workers from overtime pay, as applied to dairy workers, is unconstitutional under the Washington State Constitution. Specifically, the court held that the stated purpose of the Minimum Wage Act is to protect the health and safety of Washington workers, as required by the constitution, and under it, the agricultural exemption to overtime pay granted an impermissible privilege or immunity to dairy employers not to pay overtime to their workers. The decision did not address whether dairy employers must pay retroactive overtime for work in excess of 40 hours prior to the date of the decision because neither party raised the issue in its statement of grounds for review, therefore, the issue was not properly before the court.

Summary: Definitions. Agricultural employee means any individual employed:

- on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment;
- in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or
- in commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Agricultural employee does not include a dairy employee.

Dairy employee means any employee engaged in dairy cattle and milk production activities described in code 11210 of the North American industry classification system.

Overtime Phase-In. Agricultural employees are entitled to overtime in the following manner:

- beginning January 1, 2022, no agricultural employee shall be employed for more than 55 hours in any one workweek unless the agricultural employee receives one and one-

- half times the employee's regular rate of pay for all hours worked over 55 in any one workweek;
- beginning January 1, 2023, no agricultural employee shall be employed for more than 48 hours in any one workweek unless the agricultural employee receives one and one-half times the employee's regular rate of pay for all hours worked over 48 in any one workweek; and
- beginning January 1, 2024, no agricultural employee shall be employed for more than 40 hours in any one workweek unless the agricultural employee receives one and one-half times the employee's regular rate of pay for all hours worked over 40 in any one workweek.

Safe Harbor. 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 or a dairy employee seeking unpaid overtime due to the agricultural employee's historical exclusion from overtime under the Minimum Wage Act's agricultural exemption, as it existed on November 4, 2020.

The safe harbor provisions (safe harbor) apply to all claims, causes of action, and proceedings commenced on or after November 5, 2020, regardless of when the claim or cause of action arose. To this extent, safe harbor applies retroactively but applies prospectively in all other respects. Safe harbor 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 *Martinez-Cuevas v. DeRuyter Bros. Dairy*.

Votes on Final Passage:

Senate	37	12	
House	91	7	(House amended)
Senate	42	6	(Senate concurred)

Effective: July 25, 2021