

# HOUSE BILL REPORT

## ESSB 5172

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**As Reported by House Committee On:**  
Labor & Workplace Standards

**Title:** An act relating to the retroactivity of overtime claims in exceptional cases.

**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 History:**

**Committee Activity:**

Labor & Workplace Standards: 3/23/21, 3/26/21 [DP].

**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 under the overtime statute as it existed on November 4, 2020, and applies the prohibition retroactively.

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### HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** Do pass. Signed by 6 members: Representatives Sells, Chair; Berry, Vice Chair; Hoff, Ranking Minority Member; Bronoske, Harris and Ortiz-Self.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Mosbrucker, Assistant Ranking Minority Member.

**Staff:** Trudes Tango (786-7384).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Overtime Pay.

Generally, employers must pay their employees at least one and one-half times the employee's regular hourly rate for any hours the employee works over 40 works 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 managing 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; and the 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. (Martinez-Cuevas)* 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.

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## **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 must 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 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.

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**Appropriation:** None.

**Fiscal Note:** Requested on March 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.

**Staff Summary of Public Testimony:**

(In support) This bill is a very important first step in achieving justice for farmworkers. They have been unfairly excluded from overtime pay for 60 years. Farmworkers work from sunrise to sunset picking this nation's fruits and vegetables. They work in difficult working conditions and have been treated unjustly. They are more likely than other categories of workers to be harassed and injured on the job. This bill will help in breaking the cycle of intergenerational poverty. A seasonality carve-out would undermine the state Supreme Court case, which recognized the protective nature of overtime laws in industries that are dangerous. The phase-in is fiscally responsible.

(Opposed) None.

(Other) The retroactivity provision is important and needed, but the bill needs a seasonality

provision to recognize peaks in the growing season. Without a seasonality provision, farmers will have to reduce workers' hours and wages. There will be fewer crops grown, and farms will end up consolidating. It will impact small to medium sized farms, which are the employers that build the strongest bonds with their employees. Profit margins are very slim. The agricultural industry does not set its own prices and cannot pass on higher costs to consumers. This bill will make it harder for Washington farmers to be competitive with farms in neighboring states. Requiring overtime pay will hurt workers. There is so much uncertainty in the agricultural industry already. Other states have seasonality provisions, except for California and now there is no asparagus grown in California anymore. A seasonality provision would provide a cushion for employers to recoup costs during slower parts of the year. Wages for farmworkers in Washington are some of the highest in the nation.

**Persons Testifying:** (In support) Giovanni Severino, Progreso: Latino Progress; Dan Wood, Dairy Federation; Ramon Torres, Familias Unidas por la Justicia; Edgar Franks, Interpreter for R. Torres, Familias Unidas por la Justicia; Areli Arteaga, United Farm Workers; Paul Benz, Faith Action Network; Joe Kendo, Washington State Labor Council, American Federation of Labor and Congress of Industrial Organizations; Matthew Hepner, East Wenatchee City Council, Position 7; Dr. Bernal Baca, Chair, Washington State Commission on Hispanic Affairs; and Jason Sheehan, J & K Dairy, LLC.

(Other) Camas Uebelacker, Joshua Araiza, and Jack Field, Washington Cattle Feeders Association; Michael Gempler, Washington Growers League; Pam Lewison, Washington Policy Center; Manny Imperial, Imperial's Garden; Bre Elsey, Washington Farm Bureau; Nicole Berg, Washington Association of Wheat Growers; Alan Schreiber, Washington Asparagus Commission; Robert Battles, Association of Washington Business; Ignacio Diaz, Double M Orchards; Maria Flores; Uriel Vargas; Elvia Saucedo, Washington Farm Bureau Interpreter; Jason Matson, Matson Fruit Company; Flor de Maria Maldonado, M&A Orchards; and Chelsea Durfey Campbell, Lighthouse Farms.

**Persons Signed In To Testify But Not Testifying:** None.