

# SENATE BILL REPORT

## SB 5476

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As of February 9, 2023

**Title:** An act relating to authorizing an agricultural employer to select any 12 weeks in a calendar year as special circumstance weeks for labor demand, during which in each of the selected 12 weeks, the agricultural employer may employ agricultural employees for up to 50 hours before the requirement to pay overtime applies under RCW 49.46.130.

**Brief Description:** Authorizing agricultural employers to select 12 weeks a year to employ workers for up to 50 hours a week before overtime applies.

**Sponsors:** Senators King, Mullet, Torres and Warnick.

**Brief History:**

**Committee Activity:** Labor & Commerce: 2/09/23.

**Brief Summary of Bill**

- Allows an agricultural employer (employer) to select 12 weeks in a calendar year, during which the employer may employ an agricultural employee (employee) for up to 50 hours in a workweek before paying the employee overtime.
- Requires an employer to provide an initial disclosure and written notice to an employee regarding the 12 selected weeks, which may be changed under certain conditions.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Staff:** Jarrett Sacks (786-7448)

**Background:** Minimum Wage and Overtime. As of January 1, 2023, the minimum wage in the state of Washington is \$15.74 per hour, which is annually calculated by the Department of Labor and Industries (L&I). Washington employers must pay most

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employees at least the minimum wage for every hour worked, and 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. L&I handles worker rights' complaints under the Wage Payment Act. Workers may also choose to file a civil action for violations of the Minimum Wage and Wage Payment Acts. Until 2021, most agricultural workers were excluded from receiving overtime after working more than 40 hours in a workweek.

Engrossed Substitute Senate Bill 5172. In 2021, the Legislature passed ESSB 5172. ESSB 5172, in part, created an overtime phase-in for agricultural employees, other than dairy employees, as follows:

- beginning January 1, 2022, agricultural employees must receive overtime for all hours worked over 55 in a workweek;
- beginning January 1, 2023, agricultural employees must receive overtime for all hours worked over 48 in a workweek; and
- beginning January 1, 2024, agricultural employees must receive overtime for all hours worked over 40 in a workweek.

Since November 5, 2020, dairy employees are required to receive overtime for all hours worked over 40 in a workweek based on the Washington Supreme Court case, *Jose Martinez-Cuevas v. DeRuyter Bros. Dairy Inc.*

**Summary of Bill:** Special Circumstance Weeks. An agricultural employer (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 an agricultural employee (employee) for up to 50 hours before the requirement to pay overtime under the phase-in applies.

Agricultural Employer Requirements. An employer must provide an annual initial disclosure of a good-faith estimate of the selected 12 weeks to its employees at least 30 days in advance of the first expected week, or upon hiring for those who start work fewer than 30 days in advance. For employees employed under a temporary work visa, the employer must provide the disclosure no later than the date of the worker's visa application. An employer must keep records of which special circumstance weeks were utilized.

An 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 week, or upon hiring for those starting work after the seventh day. The employer may change the special circumstance weeks after the notice if:

- the employer provides at least one week's written notice of any week being added or removed;
- the initial disclosure was the employer's good-faith, reasonable expectation of which weeks would be special circumstance weeks; and
- the changes are based on unforeseeable circumstances.

**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2023.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony (Regular Session 2023):** PRO: Farmers do not control the weather or prices for products they produce. Sometimes they have a short period of time to harvest to salvage their season. The bill allows a farmer to have seasonality for 12 weeks. Other states allow for seasonality. H2A workers receive a minimum wage of \$17 per hour and get free housing. The overtime law means they earn less. Workers want to be able to work more hours per week and the law prevents that. Instead, workers will need to get a second job. Farm workers cannot work as much during the winter so they need to be able to work more in the summer to save for the winter. Forty hours a week is not enough work. After they law passed, farm workers are making less money. Employers are unable to cover the cost of overtime, which will lead to skimping on other non-harvest work. Current law puts a lot of pressure on smaller growers. The overtime law will destroy the domestic asparagus market.

CON: The overtime bill that was negotiated in good faith. There were many compromises, including excluding lawsuits and retroactive pay. There is misinformation blaming hours cut on the bill. Washington should uphold progressive laws instead of ones that promote of systemic racism. Employers will choose busiest time to exclude, which is when workers could make the most overtime. If there is a shortage of farmworkers, than a massive reduction in hours does not add up.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Enrique Gastelum, wafla; Kyle E Shinn; Joel Cervantes, Double R Farmworkers; Maggie Elliot, Hop Growers of Washington; Charlie Brown, Washington Asparagus Commission; Jamie Gunst; Howard Jensen, Sunheaven Farms/Columbia-Snake River Irrigators Association; Jaime Reyna; Carlos Garcia; Mark Hambelton, WA State Tree Fruit Association; Salvador Martinez; Howard Jensen, Columbia Snake River Irrigators Association; Nicho Lopez; Carlos Lopez; Claudio Cruz; Luis Isiordia, Translator; Tomas Flores; Oscar Crescencio; Edgar Avelino; Cesar Crescencio; Carlos Rodriguez; Ruben Orozco; Tim Warner; Michael Gempler, Washington Growers League; Ryan Poe, Washington Association of Wheat Growers; Ariadna Acosta, LULAC Yakima Valley; Maria Rodriguez, Visions Economic Development.

CON: Ana Ramirez; Giovanni Severino, Progreso: Latino Progress; Edgar Franks, Familias Unidas por la Justicia; Senaida Perez Villegas, Community to Community Development; Andrea Schmitt, Columbia Legal Services; Lucy Madrigal; Sybill Hyppolite, Washington State Labor Council, AFL-CIO; Elizabeth Strater, United Farm Workers.

**Persons Signed In To Testify But Not Testifying:** PRO: Rachel McCauley; TRAVIS ROOSMA, FARMERS EQUIPMENT COMPANY.

OTHER: Adriana Cedano; Francisco Ornelas; Ana Navarro.