Oregon's Farmworker Overtime Law and its Legislative Future

Mary Follo, MPP, MS
November 2024

Overview

In 2022, the Oregon state legislature passed HB 4002 which mandates overtime pay for farmworkers. Implemented in waves, as of 2023 employers are required to pay overtime to agricultural workers for any work over 55 hours in a week. In 2025 overtime pay will be required for work over 48 hours. And in 2027, overtime pay will be required for work over 40 hours. Oregon's law also includes tax credits which employers can apply for to support businesses and offset the impact of higher wage bills during this transition.

With the passage of HB 4002, Oregon became the eighth state to mandate overtime pay for agricultural workers led by California's adoption of farm worker overtime in 2016. Beginning when the California legislation was initially proposed, opponents have argued that granting farmworkers the same overtime rights as all other employees would pose grave threats to the agriculture industry and inflect economic harm on farmworkers themselves. Most recently, *opponents have argued that hours of work for California farmworkers have decreased as employers turn to hiring more employees rather than paying overtime, resulting in lower average wages for farmworkers overall.*

Opponents of Oregon's law have voiced a desire to amend, restrict or repeal that law in the upcoming 2025 Legislative session. It is likely that this opposition will raise similar arguments to those made against the California law. Therefore, we provide below a brief analysis of the California debate, in hopes that it may prove useful to Oregon policy makers.

Existing research and its shortcomings

The primary research cited by opponents of California's farmworker overtime law is "California's Overtime Law for Agricultural Workers: What Happened to Worker Hours and Pay" produced by Alexandra Hill at the University of California's Giannini Foundation of Agricultural Economics . This article uses preliminary data to suggest that the law may be harming rather than helping farm workers. *On close examination, however, there are a number of methodological problems with this study that shed doubt on its conclusions:*

» **Insufficient data.** The data used in this study comes from the National Agricultural Workers Survey (NAWS). However, at the time of publication, NAWS only had data through 2020. Since California's law went into effect for large employers in 2019 and small employers 2022, *this means that data is limited to a two year period and to only a subset of the impacted population.* Additionally, NAWS does not include H2A workers in their survey despite estimates that California employs over 40,000 H2A workers.

» **Potentially misleading data.** The NAWS survey measures farm jobs (as reported by employers) rather than individual farm workers. *Thus, a worker employed on several farms would be counted as multiple workers with low hours rather than one worker with a combined total of higher hours and wages.*

» **Data contradicted by other sources.** If an economic impact is real, it should show up the same in all studies. *However, other data sources measuring this question suggest that average hours have remained fairly constant over the phase-in period,* as have the number of agricultural establishments.

» **Failure to adequately account for COVID impacts.** This study was conducted at the height of the COVID epidemic, which had dramatic impacts on the agriculture industry. These impacts were particularly hard felt in California, where the COVID-19 pandemic marked "an abrupt disruption to the agricultural supply chain" due to the state's high concentration of perishable crops. ***The study's author claims to account for potential COVID impacts by comparing employment trends in California with those in other states with similar agricultural production whose employment was less severely impacted. Upon examination, however, this comparison does not work, because the primary crops grown in California are different than those in the "comparison" states.*** As shown on the next page in Table 1, of the top seven products grown in California, only one or two are grown in each of the comparison states. Furthermore, many of the top agricultural commodities in the comparison states were less perishable, thus rendering them less sensitive to COVID-related disruptions.

» **Data appears to reflect temporary rather than long-term conditions.** Finally, actual agricultural employment estimates for California show that while employment dipped during 2020, levels have steadily risen in the following years and for some commodities are back to pre-covid and pre-overtime bill levels.

Primary Agricultural Products: Overlap Between California and "Comparator" States

California: Primary Agricultural Products	Primary product of Idaho?	Primary product of Oregon?	Primary product of Texas?	Primary product of Arizona?	Primary product of Florida?
Almonds	✗	✗	✗	✗	✗
Cattle	✗	✓	✓	✓	✓
Dairy	✓	✗	✓	✓	✓
Grapes	✗	✗	✗	✗	✗
Lettuce	✗	✗	✗	✓	✗
Pistachios	✗	✗	✗	✗	✗
Strawberries	✗	✗	✗	✗	✓

Conclusion

Given the short time period, limited data on all workers, poor case comparisons, and failure to adequately account for the impact of COVID on state agriculture production, we believe that the Hill study cannot be taken as evidence that workers are worse off with the right to overtime pay. Since there are no other statistically rigorous studies making a similar case, ***at this time we see no reason for policy makers to alter their assessments on the value of overtime pay for Oregon farmworkers.***

[1] Alexandra Hill, "California's Overtime Law for Agricultural Workers: What Happened to Worker Hours and Pay?," 2023, https://giannini.ucop.edu/publications/.
[2] "Testimony before the NY State Department of Labor’s Farm Laborers Wage Board: The Overtime Threshold for Farmworkers in New York State Should Be Lowered to 40 Hours per Week," Economic Policy Institute, accessed October 16, 2024, https://www.epi.org/publication/ny-state-farm-laborers-wage-board-testimony-on-overtime-threshold/; "Fact Sheet—California Farmworker Earnings after Overtime Protections" (UC Merced Community and Labor Center, March 2024), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/farmworker_earnings_after_overtime.pdf.
[3] "Economic Impacts of the COVID-19 Pandemic on California Agriculture" (ERA Economics LLC, 2020).