

# Washington works on OT rules as farms await court ruling

## Overtime changes will affect broad cross section of state businesses

By **DON JENKINS**  
Capital Press

For once, the Washington Farm Bureau isn't sure what to say about a new rule proposed by a state agency.

The Department of Labor and Industries plans to make more workers eligible for overtime pay. Agricultural employers could be affected, depending on how the state Supreme Court decides a lawsuit, *Martinez-Cuevas v. DeRuyter Brothers Dairy*.

The lawsuit challenges agriculture's exemption from paying time-and-a-half for hours worked beyond 40 in a week. The exemption applies to farm managers, as well as field workers. The court will hear the case Oct. 24. The comment period for L&I's proposal closed Sept. 6.

"It puts us in a pickle," Washington Farm Bureau associate director of government relations Bre Elsey said. "If we knew we were going to lose the DeRuyter case, we'd be in vocal opposition."

The rule will dictate who can and who can't be paid a flat salary, regardless of hours worked. Currently, Washington follows the federal standard. A salaried worker must be paid at least \$455 a week, or \$23,660 a year.

The Trump administration has proposed raising the threshold to \$35,308 a year. L&I proposes to go higher and set the threshold at 2.5 times the state's minimum wage. Employers must follow the law most favorable to workers.

The increase would be phased in over six years. By 2026, L&I projects that anyone paid less than \$79,872 a year — \$1,536 a week — would have to be paid for overtime. The threshold would rise annually with inflation.

The overtime requirement would apply to part owners, if they own less than 20% of the business.

"It's an overreach, and we're opposed to it," Washington State Dairy Federation labor policy analyst Scott Dilley said. "This is going to have a tremendous impact on all industries."

L&I has projected the new threshold



DON JENKINS/CAPITAL PRESS

The Temple of Justice in Olympia: As Washington moves to substantially increase minimum salaries, the state Supreme Court will decide whether farmworkers should remain exempt from overtime pay rules.

would affect 250,000 workers by 2026. But the agency says it doesn't have enough information to make some projections.

"Some small businesses may face higher costs because of this rule making, but there is no data indicating the magnitude of this cost," according to an agency economic analysis.

According to L&I, the overtime rule has two purposes: protect employees from being overworked and encourage employers to hire more workers.

L&I said it doesn't know of any studies to indicate how employers will respond. Some may eliminate overtime and may hire more workers, but some may "spread the work to existing employees to replace the lost hours," according to the analysis.

"Because of the lack of data, L&I cannot estimate how many jobs will be created due to the proposed rule," the analysis states.

Elsey and Dilley said it's unknown how many agricultural employees could be affected.

In analyzing the rule, L&I put agriculture, forestry, fishing and hunting into one category. The agency reported that 7,208 businesses in that category employed 122,097 workers and that 165 would be affected by the rule.

"I think that's low," Dilley said. "Farms are going to want to look at the rules and make sure they're following the exemptions."

Besides a certain income, workers must have professional, administrative or management duties to be exempt from overtime pay. Executives must directly supervise at least two other full-time employees.

L&I says the current threshold is out-of-date and unfair to workers.

The Obama administration proposed in 2014 doubling the threshold and adjusting annually for inflation. The rule was struck down by a federal judge.

The Washington Farm Bureau and Washington State Dairy Federation have intervened in the lawsuit against DeRuyter Brothers Dairy, a Yakima County farm. The two farm groups say eliminating the agricultural overtime exemption would cost producers millions of dollars.

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