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Breaking: Court Rules Against Double Overtime for Oregon Manufacturing Employers



By **John Dudrey** and **Ed Reeves** on March 10, 2017

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Oregon manufacturing employers have been following the ongoing turmoil surrounding the Oregon Bureau of Labor and Industries' ("BOLI") recent interpretation of Oregon's requirement that manufacturing employees receive overtime when they work more than 10 hours in a day. In the latest turn, a Multnomah County Circuit Court judge ruled yesterday that, contrary to BOLI's advice, a manufacturing employer is not required to pay employees daily overtime and weekly overtime when manufacturing employees work more than 40 hours in a work week. Instead, the judge ruled that the employer must pay the employees the greater of either weekly overtime or daily overtime, but not both. A copy of the opinion in the case (*Mazahua v. Portland Specialty Baking LLC*) is here.

Here is the background. Oregon law requires that most non-exempt employees be paid overtime when they work more than 40 hours in a single seven-day work week. However, Oregon law also requires that manufacturing employees receive daily overtime anytime they work more than 10 hours in a single work day, no matter how many hours they work in a work week. So, what happens if a manufacturing employee works three 12-hour shifts and one six-hour shift (a total of 42 hours) in a single seven-day work week?

For years, BOLI's position had been that the employee was entitled to six hours of overtime, i.e., two hours of daily overtime for each of his or her three 12-hour shifts. Because the employer paid the employee for two hours of daily overtime on each 12-hour shift, it was entitled to an offset and did not have to pay an additional two hours of weekly overtime.

In December 2016, however, BOLI quietly announced that it was abandoning its earlier advice. Per BOLI, effective January 1, 2017, Oregon manufacturing employers would no longer be allowed to offset daily overtime payments to non-exempt employees against weekly overtime obligations. Instead, manufacturing employers would need to pay non-exempt employees the daily overtime amounts and any weekly overtime amounts in addition. A link to BOLI's new advice is here: https://www.oregon.gov/boli/TA/pages/t_faq_tamanufacturing.aspx

BOLI's recent advice on the daily-weekly overtime requirement has a strange relationship with the *Mazahua* case. On the one hand, BOLI consulted with the attorneys representing the plaintiffs in *Mazahua* prior to changing its advice on how to calculate daily-weekly overtime. On the other hand, the judge's opinion discusses BOLI's change in position mostly in passing, instead relying on an analysis of the text of ORS 652.020 (the daily overtime statute) and ORS 653.261 (BOLI's administrative authority to require weekly overtime) to reach the same conclusion that

BOLI did before December 2016: that a manufacturing employer is only required to pay the greater of the daily and weekly overtime amounts.

What Does This Mean For Manufacturing Employers?

So what does the judge's decision in *Mazahua* mean for manufacturing employers that have been struggling with how to respond to BOLI's new advice? The decision is certainly good news, and provides some rationale for employers that have not changed their pay practices to comply with BOLI's new interpretation to continue under the prior interpretation. However, it is important to remember the ruling in *Mazahua* has limitations. The decision is not binding on anyone except the parties in the case; private plaintiffs are still free to attempt to pursue claims for double overtime in other cases against other employers. Along the same lines, the judge did not formally invalidate BOLI's new advice or order BOLI not to enforce its interpretation against employers in the future. In other words, employers are not out of the woods yet on BOLI's new interpretation of the daily and weekly overtime requirements.

Employers should also be aware that a bill (SB 984) has been introduced to restore BOLI's former interpretation. If you're interested, please contact us for more information about how to get in touch with your legislator to advocate for the bill. You can read the text of SB 984 here: <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB0984/Introduced>.

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