



1           3.       However, with respect to certain types of industries, Oregon law creates  
2 additional overtime protections to restrict the length of the workday, requiring employers to pay  
3 their employees overtime wages for hours worked after 10 in a day.

4           4.       It has come to BOLI's attention that there may be some confusion regarding the  
5 relationship between these various overtime regulations. In some of its guidance materials, the  
6 bureau's Technical Assistance for Employers Program has stated that an employer would be in  
7 compliance with the various overtime requirements if, for weeks in which an employee earned  
8 both daily and weekly overtime, the employer paid the greatest amount of overtime that the  
9 employee had earned, either daily or weekly. In its published materials, the Technical  
10 Assistance for Employers Program acknowledges that the information it provides is a summary  
11 only and is not intended as legal advice.

12           5.       The Wage and Hour Division, which enforces the state's overtime regulations and  
13 officially interprets wage and hour law, believes that the state's daily and weekly overtime  
14 regulations operate independently of one another and, as such, there is no basis for offsetting the  
15 overtime wages earned pursuant to one of the state's overtime provisions against the other in  
16 those cases where an employee has earned both daily and weekly overtime. To do so would  
17 either remove the incentive in the law to limit work days to no more than ten hours, or work  
18 weeks to no more than 40 hours.

19           6.       Although no overtime case has been filed with the agency that would have made  
20 these different interpretations apparent, the pending Multnomah County Circuit Court case of  
21 Mazahua v. Oregon Specialty Baking, LLC, which addresses this issue specifically, has  
22 prompted BOLI to take a closer look at this matter.

23



## FIELD OPERATIONS MANUAL

VOLUME:	I – <b>Wage Collection</b> III – Minimum Wage/Overtime/Working Conditions	ORS: 652.020 653.261
SUBJECT:	Relationship of Daily and Weekly Overtime Requirements	OAR: 839-020-0030
SOURCE:	Administration	DATE: 12/16
<input type="checkbox"/> POLICY	<input checked="" type="checkbox"/> INTERPRETATION	<input type="checkbox"/> REFERENCE
		PAGE: <u>1</u> of <u>1</u>

Generally, unless exempt, employees in Oregon who are subject to the state’s minimum wage law are entitled to receive overtime pay at a rate of one and one-half times their regular rate of pay for hours worked beyond 40 in a work week. However, certain statutes in the state’s wage collection law also provide for overtime to be paid on a daily basis. Specifically, ORS 652.020 requires that persons employed in any mill, factory or manufacturing establishment be paid at an overtime rate of one and one-half times their regular rate of pay for hours worked after 10 in a day.

Neither ORS 653.261, which authorizes the Bureau of Labor and Industries to adopt rules concerning maximum hours of work and overtime pay for hours worked after 40 in a week, nor ORS 652.020 stipulates that overtime liability earned under its provisions should be offset by overtime earned pursuant to a separate regulation for work performed during the same work week. The two statutes enact distinct overtime requirements and serve different purposes with respect to restrictions on hours worked by employees. Whereas ORS 653.261 permits the adoption of rules designed to preserve the health of employees by requiring the payment of premium pay when an employee exceeds the weekly maximum, ORS 652.020 specifically restricts the daily hours of work in a manufacturing establishment and requires the payment of a premium when the number of hours of work exceed the daily maximum on any given day. There is no indication in either law that these two overtime regulations are intended to work in tandem, so that only one or the other would be applied when an employee earns both daily and weekly overtime.

Therefore, it is the Wage and Hour Division’s position that employers, when determining the amount of overtime earned by an employee who, during a work week, has worked more than 10 hours per day in a manufacturing establishment and more than 40 hours in the week, must calculate the amount of overtime earned by the employee under each regulation and pay both overtime amounts to the employee.

Example: A manufacturing establishment employee must be paid overtime for any hours worked over 10 in a day and 40 in a work week.

Day	Hours
Monday	12
Tuesday	8
Wednesday	5
Thursday	5
Friday	11

Total Hours Worked = 41

Daily Overtime Hours Worked = 3

Weekly Overtime Hours Worked = 1

The employer must pay for four hours of overtime.