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4	DI THE COLOR IT COLOR	OF TI	IE STATE OF OBECON			
5	IN THE CIRCUIT COURT OF THE STATE OF OREGON					
6	FOR THE COUNT	YOF	MULTNOMAH			
7	Jose Ignacio Mazahua Reyes, Nabeel Al)	Case No. 16CV25324			
8	Shaikhli, Hsit Hsit, Ingryd Nieves Estrada, Manuela Peña, Ry Som, and Columbus Wah, individually and on behalf of all others similarly situated,		DECLARATION OF BRAD			
9			AVAKIAN, COMMISSIONER OF THE BUREAU OF LABOR AND INDUSTRIES			
10	Plaintiffs,)	AND INDUSTRIES			
11	vs.)				
12	PORTLAND SPECIALTY BAKING, LLC, a Domestic Limited Liability Company,)))				
13	Defendant.					
14			1 00 1			
15	Brad Avakian, under penalty of perjury does hereby affirm and say:					
16	1. I am the state of Oregon's Commissioner of the Bureau of Labor and Industries. I					
17	make this declaration based upon my own knowledge and belief, and hereby solemnly affirm:					
18	2. One of the ways in which Oregon's long-standing wage and hour regulations seek					
19	to promote the health and well-being of the state's workforce is by limiting the number of hours					
20	employees may be required to work and establishing overtime premiums for work periods that					
21	exceed these limitations. In general, these regulations require employers to pay their non-exemp					
22	employees a rate of pay which is one and one-half times their regular wage rate when employees					
23	work more than 40 hours in a week.		ts.			

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- 3. However, with respect to certain types of industries, Oregon law creates additional overtime protections to restrict the length of the workday, requiring employers to pay their employees overtime wages for hours worked after 10 in a day.
- 4. It has come to BOLI's attention that there may be some confusion regarding the relationship between these various overtime regulations. In some of its guidance materials, the bureau's Technical Assistance for Employers Program has stated that an employer would be in compliance with the various overtime requirements if, for weeks in which an employee earned both daily and weekly overtime, the employer paid the greatest amount of overtime that the employee had earned, either daily or weekly. In its published materials, the Technical Assistance for Employers Program acknowledges that the information it provides is a summary only and is not intended as legal advice.
- 5. The Wage and Hour Division, which enforces the state's overtime regulations and officially interprets wage and hour law, believes that the state's daily and weekly overtime regulations operate independently of one another and, as such, there is no basis for offsetting the overtime wages earned pursuant to one of the state's overtime provisions against the other in those cases where an employee has earned both daily and weekly overtime. To do so would either remove the incentive in the law to limit work days to no more than ten hours, or work weeks to no more than 40 hours.
- 6. Although no overtime case has been filed with the agency that would have made these different interpretations apparent, the pending Multnomah County Circuit Court case of Mazahua v. Oregon Specialty Baking, LLC, which addresses this issue specifically, has prompted BOLI to take a closer look at this matter.

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1	7.	Attached as Exhibit I is the official interpretation from the Wage and Hour		
2	Division's Fi	eld Operations Manual reflecting the agency's policy which may be relied upon by		
3	others interpreting the law.			
4	8.	Handbooks and other reference materials published by the bureau's Technical		
5	Assistance for Employers Program have been updated accordingly.			
6	Signed and affirmed under penalty of perjury this day of December, 2016.			
7				
8		Brad Avakian		
9		Commissioner of the Bureau of Labor and Industries		
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FIELD OPERATIONS MANUAL

VOLUME:	I – Wage CollectionIII – Minimum Wage/Overtime/Working Conditions	ORS:	652.020 653.261
SUBJECT:	Relationship of Daily and Weekly Overtim Requirements	e OAR	839-020-0030
SOURCE:	Administration	DATI	E: 12/16
□ POLICY	☑ INTERPRETATION ☐ REFER	ENCE PAGI	E: <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.