



# Electronic Alert

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## **New Oregon Rules May Require You to Pay Daily Overtime after 10 Hours**

**By Nicole Elgin**

Do your employees use a machine to make a “new product”? Do those employees sometimes work longer than 10 hours per day or more than 40 hours in a week? If so, you may be surprised to learn that your company could be subject to Oregon’s overtime laws specific to mills, factories, canneries, and manufacturing establishments. While the definitions of mills, factories, and canneries may be straightforward, the broad definition of “manufacturing establishment” is forcing many employers to reevaluate whether these overtime rules apply to their businesses.

Oregon has long required companies employing workers in a manufacturing establishment to pay overtime for employees working over ten hours per day or forty hours in a week, whichever is greater. Those employees are also strictly limited to working a maximum of thirteen hours per day. However, recent changes from the legislature and a subsequent round of rulemaking from Oregon’s Bureau of Labor and Industries (BOLI) mean new rules for employers effective January 1, 2018. We explained the details of the law’s new provisions in our July [alert](#) and highlighted that the law limits manufacturing establishment employees to working a maximum of 55 hours in a workweek and requires a ten-hour rest period between shifts. There are only a few exceptions to this 55-hour workweek cap, including obtaining employees’ written consent to work up to 60 hours in a workweek or qualifying for the limited undue hardship exemption for businesses that process perishable products.

The problem employers now face is determining whether their employees fall under these special overtime rules as the scope of which employers the law covers is less than clear. The [law](#) states that “no person shall be employed in any mill, factory or manufacturing establishment in this state more than 10 hours in any one day.” The law also broadly defines a manufacturing establishment as an establishment engaged in “the process of using machinery to transform materials, substances or components into new products.” BOLI has explained that this definition is broad enough to capture commercial bakeries and breweries, but does not include restaurants.

A new provision in the law exempts employees who are not “engaged in the direct processing of goods.” However, BOLI’s latest [draft rules](#) define the direct processing of goods as “the use of machinery in the production of manufactured goods.” If this seems like a circular definition to you, that’s because it is. While BOLI may be attempting to clarify the new provisions in Oregon’s manufacturing establishment overtime laws, unfortunately, most employers are left wondering whether the law even applies to them. We encourage employers to contact BOLI with their concerns as soon as possible, as the last day to offer comment on the proposed rules is November 24, 2017.

For questions on how the manufacturing overtime rules may affect your workplace and how to prepare for the January 1, 2018 enforcement date, contact Nicole Elgin at Barran Liebman: [nelgin@barran.com](mailto:nelgin@barran.com) or (503) 276-2109.