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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BLI 5-2020

CHAPTER 839

BUREAU OF LABOR AND INDUSTRIES

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ARCHIVES DIVISION
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& LEGISLATIVE COUNSEL

FILING CAPTION: Emergency Exemption to Maximum Working Hours in Certain Manufacturing Establishments

EFFECTIVE DATE: 03/27/2020 THROUGH 09/22/2020

AGENCY APPROVED DATE: 03/27/2020

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Rules Coordinator

NEED FOR THE RULE(S):

As a result of the statewide public health emergency and global pandemic of COVID-19, there is a critical demand for non-perishable products that are necessary for the preservation of life and property. However, current law that sets maximum hours for workers employed in manufacturing limits the ability of manufacturers to respond to the critical demand during this statewide public health emergency and global pandemic.

Existing law (ORS 652.020(6)(d)) allows for individual removal of overtime limitations in the instance of an emergency where life or property is in imminent danger. The statewide public health emergency and global pandemic of COVID-19 creates such a situation. Therefore, the Bureau of Labor and Industries needs temporary rules to provide a timely, orderly, and consistent framework to keep vital manufacturing moving while maintaining worker protections.

JUSTIFICATION OF TEMPORARY FILING:

The consequences of failing to adopt these rules would result in the reduction, if not the temporary stoppage, of production of non-perishable goods that are necessary for the preservation of life and property. Subsequently, Oregonians throughout the state will experience the effects of critical shortages of essential goods.

The temporary rules will allow for the necessary increase in production of critical non-perishable goods during this statewide public health emergency and global pandemic, while maintaining worker protections.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Executive Order No. 20-03

ADOPT: 839-001-0126

RULE TITLE: Emergency Exemption to Maximum Working Hours in Certain Manufacturing Establishments

RULE SUMMARY: Emergency exemption to maximum working hours in certain manufacturing establishments

RULE TEXT:

(1) This rule interprets ORS 652.020(6)(d), OAR 839-001-0125(1)(f), and OAR 839-001-0125(2) which provide an exemption for maximum hours in certain manufacturing establishments as defined in ORS 652.020(1)(c) in which an employee is engaged in making necessary repairs or in the case of emergency where life or property is in imminent danger.

(2) As used in ORS 652.020(6)(d), an "emergency where life and property are in imminent danger" includes a statewide public health emergency declared by a public health official, including but not limited to the global pandemic of coronavirus.

(3) Employers involved in manufacturing products which reasonably result in the preservation of life and property may seek to claim an exemption for emergencies where life and property are in imminent danger. Employers involved in manufacturing seeking exemption for emergencies must abide by the following process:

(a) To claim an exemption for emergencies where life and property are in imminent danger, an employer must provide notice of the emergency situation to the Commissioner of the Bureau of Labor and Industries and obtain written consent from each employee whom the employer will request to work more than 55 hours in any workweek during the emergency exemption period.

(b) The notice the employer sends to the commissioner under paragraph (a) of this subsection must include a description of the reasons for the emergency exemption period, the start and expected end dates of the emergency exemption period, a copy of the employer's social distancing protocols as required by Executive Order 20-12, and any other information required by the commissioner.

(c) An employer must provide notice of the emergency exemption period to the Bureau of Labor and Industries within seven calendar days of permitting employees to work more than 55 hours in one workweek.

(d) The employee's written consent shall be in a form prescribed by the commissioner by rule and include:

(i) A description of the employer's reasons for the emergency exemption period;

(ii) The start and expected end dates of the emergency exemption period;

(iii) A statement that the employer may request the employee to work overtime in excess of the hours prescribed by ORS 652.020, but not more than 13 hours per day and 91 hours per week, during the emergency exemption period;

(iv) A statement that the employer will continue to pay employees overtime at the rate of one and one-half times the regular rate of pay for hours worked in excess of 40 hours of work in one workweek as required by ORS 653.261(1)(a);

(v) A statement that the employee consents to working overtime in excess of the hours prescribed by ORS 652.020 during the emergency exemption period;

(vi) A copy of the employer's social distancing protocols as required by Executive Order No. 20-12;

(vii) Contact information for the Bureau of Labor and Industries, Wage and Hour Division; and

(viii) Any other information required by the commissioner.

(4) Notice as required by this section must be submitted to the following: Bureau of Labor and Industries, Wage and Hour Division, 800 NE Oregon, Suite 1045, Portland, Oregon 97232.

(5) Employers claiming an emergency exemption under ORS 652.020(6)(d) must not coerce employees into consenting to work more than 55 hours in one workweek. Employees may revoke their consent at any time.

(6) Employers claiming an emergency exemption under ORS 652.020(6)(d) must not allow employees to work more than 13 hours in one workday, and 91 hours in one workweek.

(7) Employers claiming an emergency exemption under ORS 652.020(6)(d) are required to pay employees overtime at the rate of one and one-half times the regular rate of pay for hours worked in excess of 40 hours of work in one workweek as required by ORS 653.261(1)(a).

(8) Employers claiming an emergency exemption under ORS 652.020(6)(d) must still provide employees with adequate time to consume a meal, rest, and use the restroom as provided for by ORS 653.261 and OAR 839-020-0050.

(9) Pursuant to ORS 652.900, in addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who violates this rule.

STATUTORY/OTHER AUTHORITY: ORS 652.020, ORS 651.040(4), Chapter 652, ORS 653.261

STATUTES/OTHER IMPLEMENTED: