

# Electronic Alert

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## New Temporary Exemptions From Maximum Working Hour Requirements

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The Oregon Bureau of Labor and Industries (“BOLI”) has issued a new rule that permits certain manufacturers to claim a temporary emergency exemption from maximum working hour requirements. Recognizing the critical demand for products as a result of the global pandemic of COVID-19, BOLI will permit employers to temporarily allow certain employees to work up to 13 hours per day or 91 hours per workweek during the emergency exemption period. Currently, the emergency exemption period ends on September 22, 2020, but BOLI may alter the emergency exemption period as it deems fit.

### **Eligibility for the Emergency Exemption**

Employers who manufacture products that “result in the preservation of life and property” may claim this exemption “where life and property are in imminent danger.” Although BOLI has not provided an exhaustive list of manufacturing operations that are eligible, manufacturing operations that contribute to the supply of food, medical equipment, and personal protective equipment would likely qualify.

Manufacturers of perishable products may also seek an exemption from the maximum hour requirements through the existing undue hardship process.

### **Claiming the Emergency Exemption**

To claim the new exemption, employers must:

1. Provide notice to BOLI by filling out [this form](#) and describing the reasons the emergency exemption is needed and the length of the exemption period;
2. Provide a written copy of the employer’s social distancing protocols as required by Oregon Governor Kate Brown’s [Executive Order 20-12](#) to BOLI; and
3. Provide copies of employees’ [written consent](#) to work more than 55 hours a week during the pandemic to BOLI.

Employers seeking the exemption must provide BOLI with the required paperwork within seven calendar days of permitting employees to work more than 55 hours in a workweek. This emergency exemption does not apply to minor employees under the age of 18.

### **Note of Caution**

Employers should take care in approaching employees. Employees' written consent must be given freely and voluntarily, and employees remain free to revoke their consent at any time and for any reason. Employers who may inadvertently pressure employees may run afoul of BOLI's temporary rule. Under the rule, BOLI may assess a civil penalty of up to \$1,000, and the employee may attempt to pursue a cause of action. Employers should also be sure to provide employees with copies of their social distancing protocols along with their written consent form.

### **Amount of Overtime Pay**

Nothing in the temporary rule waives or limits the amount of overtime pay employees should receive. As a reminder, manufacturing establishments must calculate both daily and weekly overtime earned, and pay the greater of the two.

*For questions about this new emergency exemption, contact Josh Goldberg or Amy Angel at 503-228-0500, or at [jgoldberg@barran.com](mailto:jgoldberg@barran.com) or [aangel@barran.com](mailto:aangel@barran.com). For additional content, including other Electronic Alerts, articles, and employer resources, visit [www.barran.com](http://www.barran.com).*