

Oregon

Lawmakers resolve sick pay confusion

Farmers can pay minimum wage to piece-rate workers who are ill

By MATEUSZ PERKOWSKI
Capital Press

SALEM — Farmers can pay the minimum wage to piece-rate employees who miss work due to illness under a bill Oregon lawmakers passed last week.

Senate Bill 299, approved by the House 38-21 after earlier passing the Senate unanimously, resolves some of the confusion that's dogged Oregon's paid sick time law since 2015.

As interpreted by the state Bureau of Labor and Industries, the statute required growers to calculate a "regular rate of pay" to compensate piece-



Eric Mortenson/Capital Press File

A picker displays a handful of strawberries near Cornelius, Ore. State lawmakers have clarified that farmers must pay the state minimum wage to piece-rate employees who miss work because of illness.

rate workers for sick time.

The problem is workers are often paid varying rates per pound for different crops, which means their hourly wage changes over time.

This fluctuation created a

conundrum for farmers, who were uncertain when the "regular rate of pay" was established.

Should a worker be paid based on the previous week's earnings, during the harvest of

a higher-value crop?

Or is the "regular rate of pay" based on average rates earned by other workers when the sick employee was missing, when a lower-value crop was picked?

Although BOLI recommended basing sick time wages on the previous week's earnings, farmers could still face lawsuits from workers who disagreed with that interpretation.

SB 299 clarifies that sick piece-rate employees can be paid the minimum wage unless they have a predetermined hourly, weekly or monthly wage.

Provisions in the bill also help distinguish between farms that must pay workers for sick time and those that can provide it without pay.

Throughout much of the state, 40 hours of sick time must be paid by employers with 10 workers or more, while

those with a smaller workforce must still provide those 40 hours but without compensation. In Portland, that threshold is six employees.

Business owners and their family members weren't supposed to contribute to this employee count, but BOLI determined that they still count as workers if they fill out a federal "W-2" form for tax purposes.

The newly passed bill exempts business owners — those who have at least 15 percent ownership in a company — and their spouses and children from the employee count.

The provision is important to multi-generational farms that have family members working on them, said Jenny Dresler, state public policy director for the Oregon Farm Bureau, which supports SB 299.

"They don't necessarily

consider themselves employees, but rather managers of the farm," said Dresler.

Setting the ownership threshold at 15 percent was necessary to overcome objections from the bill's critics, who feared that companies would list employees as owners to circumvent the sick pay requirement, she said.

"That was probably one of the most contentious pieces," Dresler said.

Uncertainty over growers who participate in seasonal farmers' markets in Portland is also relieved by SB 299.

The worry was that farmers who normally operate outside Portland but regularly sell produce within its borders would become subject to the city's lower six-employee sick time threshold.

The bill makes clear that such temporary locations don't count as Portland businesses.

Landowner challenges Oregon county's aerial spray prohibition

Ordinance would allow 'direct action' to enforce aerial spray ban

By MATEUSZ PERKOWSKI
Capital Press

A forestland owner is challenging a prohibition against aerial pesticide spraying in Oregon's Lincoln County that was recently approved by voters.

Rex Capri has filed a complaint against the county seeking to overturn the ordinance because it's pre-empted by state laws and violates the Oregon Constitution.

Lincoln County will respond to the lawsuit but it's still reviewing whether to actively defend the ban, said Bill Hall, a county commissioner.

However, the county does agree with Capri that an injunction should be issued against a provision in the ordinance allowing "direct action" against aerial spraying, Hall said.

The ballot initiative, narrowly approved with 50.2 percent of the vote during a May 16 special election, allows citizens to enforce the law through "direct action" if the county government or court fail to uphold the ordinance.

The provision would free "direct action" enforcers from facing criminal or civil liability



Associated Press File

A helicopter prepares to apply pesticides. A lawsuit is challenging a ban on aerial pesticide spraying in Oregon's Lincoln County.

ty for their activities.

Due to the possibility that "direct action" may result in property damage or physical violence, the county believes the provision should be blocked, Hall said.

Lincoln County Circuit Judge Sheryl Bachart has agreed to enjoin the "direct action" provision at the parties' request.

Proponents of the ordinance claim the concerns over "direct action" vigilantism are overblown.

The provision would only become effective once it becomes clear the county government and courts won't enforce the ordinance, which would not take place immediately, said Kai Huschke, Northwest organizer for the

Community Environmental Legal Defense Fund, which helped draft the measure.

It's unlikely the extreme scenarios envisioned by the initiative's opponents would ever transpire, he said. "You can create fear out of anything if you want."

Lincoln County's commissioners opposed the ballot initiative so it would be unsurprising if they decided against defending the ordinance, Huschke said.

The CELDF has proposed representing local ordinance supporters as intervenors in the case without charge, but proponents have yet to accept that offer, he said.

Although Oregon law pre-empts local restrictions on pesticide usage, Huschke said

it undermines constitutional protections for citizens.

"The courts have gotten it wrong," he said.

While it's clear ordinances such as Lincoln County's are pre-empted, a court challenge is still necessary — particularly in light of the "direct action" provision that could lead to vandalism, said Scott Dahlman, policy director of the Oregonians for Food and Shelter agribusiness group.

"That's very risky for an applicator," Dahlman said.

Opponents of the ballot initiative argued that existing regulations disallow pesticide drift and impose other restrictions on aerial spraying, while the ordinance would effectively let people take the law into their own hands.

Strawberry cultivars take center stage

By ERIC MORTENSON
Capital Press

AURORA, ORE. — No one will ever mistake Oregon's minuscule strawberry production for California's \$1.8 billion crop, but for a couple weeks in early summer the state's berries take center stage to bask in the lore of their supreme flavor.

Hoods, anyone? Case closed, strawberry purists would argue. No hard, white-centered, flavorless pretenders from out of state allowed.

At a strawberry field day earlier this month, growers got a glimpse of some new cultivars that could provide options in what USDA's National Agricultural Statistics Service estimates is a \$9 million annual agricultural niche in Oregon.

Chad Finn, a USDA berry breeder who works closely with Oregon State University in Corvallis, said Charm and Sweet Sunrise are early, high-quality, June-bearing berries that will be good for processing.

Charm is sweet enough that it could be used in ice cream like Hoods, which have been around since 1965. "It's got that kind of quality," Finn said.

It has a tender skin and Finn said he's always described it as a processing berry, but at farmers' markets in Corvallis it's been one of the predominant varieties brought in for sale, he said.

Charm also is a tough, vigorous plant and produces a thick canopy, Finn said. There was concern the canopy was so thick that pickers wouldn't be able to get at berries efficiently, but anecdotal feedback from picking crew bosses indicate it hasn't been a problem, he said.

Because of its vigorous

nature and reliably high yield, Finn said Charm might be suited for organic production. "If I was an organic guy I would start experimenting," he said.

Sweet Sunrise, meanwhile, is a full flavor berry, one of the best, Finn said. It's a bit tart, but a little sugar allows the flavor to come through, he said. It's a more open plant than Charm, making it easy to pick.

Both cultivars appear to be ones that will hold up longer in the field, providing three years of harvest compared to two years or even one for Tillamook, Totem or Hood strawberries, Finn said.

Another relatively new cultivar, Mary's Peak, also is a June-bearing berry, with a big canopy and large fruit, he said.

Bringing new strawberry cultivars to commercial production is a slow motion process. Sweet Sunrise was selected in 2000 and Charm in 2001 from crosses made two years earlier in each case. Years of trials and testing are necessary, then the plants have to be reproduced in large numbers by commercial nurseries, which can slow down the process, Finn said. U.S. plant patent applications are pending on both.

Beyond size, flavor and plant vigor, another key factor in strawberry production is the availability of labor. If berries ripen too early in the season, professional picking crews may not be on hand to harvest them, Finn said. If they are too late, crews may have moved on to blueberries, which are easier to pick.

Of Oregon's strawberry production, roughly one-third goes into ice cream, one-third is sold fresh market, and perhaps one-third is flash frozen and bagged for store sale, Finn estimated.

Zumwalt Prairie ranch sells development rights to nonprofit

By KATY NESBITT
For the Capital Press

ENTERPRISE, Ore. — The owners of a 12,000-acre ranch on northeastern Oregon's prime bunch grass prairie signed an agreement this spring relinquishing specific development rights into perpetuity while retaining the ability to raise livestock.

The Probert family, with Dan and Suzy Probert as managers of Lightning Creek Ranch, gave up their rights to wind, mineral and housing development as well as tilled agriculture across their entire Zumwalt Prairie ranch in exchange for \$2.6 million, making it the largest conservation easement completed by The Nature Conservancy in Oregon.

Dan Probert, whose family moved to Willowa County in 1967, said he was running his Malheur County ranch when, at the urging of friends, he looked into buying Zumwalt Prairie ranch land. The price was high, so Probert said he started conversations with Nature Conservancy staff about entering into a conservation easement.

"We couldn't have swung the land purchase without it," Probert said.

The Nature Conservancy has long had a vested interest in the prairie. In the 2000s



Katy Nesbitt/For the Capital Press

Jeff Fields and Derek Johnson of The Nature Conservancy visit with Dan and Suzy Probert on their Lightning Creek Ranch. The nonprofit organization and the Proberts entered into a conservation easement this spring on the entire 12,000-acre ranch.

it bought 33,000 acres, now known at the Zumwalt Prairie Preserve — a multi-use land leased for cattle grazing, hunting and hiking as well as research. When the 38,000-acre Buckhorn Ranch on the prairie came up for sale, the organization looked into buying it, too.

"They were interested in the prairie because it's so well taken care of," Probert said.

Eventually the Buckhorn Ranch was sold off in several large chunks and the Proberts bought approximately one-third in 2014. Knowing it would take a few years to complete the easement, Probert said they secured a bridge loan

in order to purchase the ranch while they worked out the details of the agreement.

"That's where I think Dan was really savvy," Jeff Fields, Nature Conservancy's Zum-

walt Prairie Preserve manager, said. "The property rights that he didn't want could be turned into a cash payment allowing him to buy the ranch and manage it for agriculture."

The USDA Natural Resource Conservation Service contributed half the price of the easement. Other contributors were Climate Trust, Doris Duke Charitable Trust, The Nature Conservancy and the Proberts donated back a portion of the appraised value.

Because the land was already in farm deferral, Probert said, the tax revenue to the county remained the same.

While the Lightning Creek Ranch gave up a list of rights, it retained flexibility within its management plan designed with neighboring ranchers and The Nature Conservancy. It will be reviewed annually, Probert said, with a major look every five years.



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