

Agricultural Overtime Workgroup

Oregon Wage and Hour Overview



Wage and Hour Requirements for Agricultural Employees



General Rule

- Agricultural employees are owed at least the applicable Oregon minimum wage for all hours worked unless an exemption exists.
- Employees are exempt from overtime pay unless:
 - Employee performs both agricultural and non-agricultural work in the same week
 - Employee processes product from another farm in addition to product from the employer's farm



Piece Rate Employees

- Employers need to keep accurate time records for piece rate employees
- Employee's total earnings must equal or exceed the minimum wage for all hours worked



Piece Rate Employees – Example #1

- Employee works in Gervais, Oregon. Employee is paid \$2 per bushel. Employee works 40 hours in the workweek and pulls 250 bushels. Piece rate compensation is \$500.
- Employee's average hourly rate is \$12.50 (\$500 piece rate compensation divided by 40 hours).
- Employee must make at least \$480 to be paid minimum wage (\$12.00 minimum wage rate times 40 hours)
- No additional pay is required



Piece Rate Employees – Example #2

- Same employee, but employee works 50 hours in the workweek. Piece rate compensation is still \$500 (\$2/bushel times 250 bushels).
- Employee's average hourly rate is now \$10.00 (\$500 piece rate compensation divided by 50 hours).
- Employee must be paid at least \$600 to be paid minimum wage (\$12.00 minimum wage rate times 50 hours)
- Employee is due an additional \$100 to be paid at least minimum wage



Piece Rate Employees – Overtime Calculation

- To calculate overtime for employees who are paid on a piece rate basis, divide the employee's total earnings for the week by the actual hours worked to compute the regular hourly rate for the workweek.
- These piece rate earnings represent the employee's straight time earnings for all hours worked.
- The employer will also need to pay each hour worked over 40 in the workweek at a rate that is one-half time the regular rate.



Piece Rate Employees – Overtime Example

- Employee works in Gervais, Oregon. Employee is paid \$2 per widget. Employee works 50 hours in the workweek and assembles 500 widgets. Piece rate compensation is \$1000.
- The employee's average hourly wage is \$20 (\$1000 divided by 50 hours worked). This is the straight time pay amount and is above minimum wage.
- The overtime earnings are \$100 ($0.5 \times \20×10 overtime hours)
- Total compensation due to the employee is \$1100.



Minimum Wage Exemptions for Agricultural Employees

Employees who are exempt from both minimum wage and overtime requirements



Family Member Exemption

- The parent, spouse, child, or other immediate family member of an agricultural employer is exempt from both minimum wage and overtime.



Small Farm Exemption

- Requirements:
 - Employed as a hand harvest or pruning laborers and paid on a piece-rate basis.
 - Employed by an employer did not employ more than 500 piece-rate work days in any calendar quarter within the preceding calendar year.
- Piece-Rate Work Day: Any day where an employee performs any agricultural labor on a piece rate basis for not less than one hour
- Piece-Rate Work Day Calculation Example: Employer employs 5 individuals in agricultural labor on a piece rate basis. All 5 individuals work at least one hour each day in a 120-day calendar quarter. Employer will have 600 piece-rate work days (5 individuals times 120 days). This exemption will not apply to this employer.



Minor Hand Harvesters or Pruning Laborers

- Applies to minors 16 years of age or younger employed as hand harvesters or pruning laborers and paid on a piece rate basis
- Exempt these employees from minimum wage and overtime if the piece rate they are paid is the same as the piece rate paid to other workers on the same farm



Commuter Exemption

- Applies to hand harvesters or pruning laborers who commute daily from their permanent residence and are paid on a piece-rate basis are exempt from minimum wage
- Only applies if they have been employed in agriculture less than 13 weeks in the previous calendar year
- The 13 weeks requirements considers all agricultural employment, even if work was performed for multiple farmers



Range Production of Livestock Exemption

- Applies to workers who spend more than 50% of their time in the range production of livestock are exempt
- Requirements that the worker must be paid on a salary basis, which is defined as 2,080 hours times the current minimum wage for that region, then divided by 12.
- Example: An employee working in Baker county must be paid a salary of \$1994 per month through June 30 of this year to meet this exemption.



Cannery, Drying and Packing Plant Employees

Special Overtime Requirements



Daily and Weekly Overtime

- All hours worked over 10 hours per day is subject to overtime at one and one-half times the regular rate of pay.
- All hours worked in excess of 40 hours in a week is subject to overtime
- Employer must calculate both the daily and weekly overtime amounts, and pay the greater of the two amounts.



Daily and Weekly Overtime Calculation Examples

- Example 1: Employee works three 12-hour shifts in the workweek.
 - Employee would have 6 hours of daily overtime and zero hours of weekly overtime.
 - Employer would pay the employee for 30 hours at straight time and 6 hours at the overtime rate.
- Example 2: Employee works five 10-hour shifts in the workweek.
 - Employee would have zero hours of daily overtime and 10 hours of weekly overtime.
 - Employer would pay the employee for 40 hours at straight time and 10 hours at the overtime rate.



Limitations on Maximum Hours Worked

- No daily limitation on number of hours worked, but limited to a maximum of 55 hours worked in one workweek
- Employees may consent or request in writing to work up to 60 hours in a workweek
- Undue Hardship Exemption for employers who process perishable products



Exception for Establishments on Farms

- Cannery, drying, and packing plant establishments located on a farm and which primarily process products produced on such farms are excluded.
- “Primarily process products” is interpreted to mean more than 50% of the quantity processed is produced on the farm
- Overtime Pay is Due:
 - If the establishment does not primarily process products produced on the farm, then daily and weekly overtime pay requirements apply.
 - If the establishment processes any products from another farm, then weekly overtime pay requirements apply – Cannery, drying, and packing activities are no longer secondary agriculture.



Farm Labor Contractors



Farm Labor Contractor Numbers*

○ Type of License:

- Farm Only: 145 Licensed Farm Labor Contractors
- Farm/Forest: 298 Licensed Farm/Forest Labor Contractors

○ Number of Employees:

- Employ 20 or fewer employees: 109 Licenses
- Employ 21 or more employees: 334 Licenses

*As of May 4, 2021



Who is a Farm Labor Contractor

- Anyone who receives compensation for recruiting, soliciting, supplying, or employing workers to perform agricultural or reforestation work for another.
- If the Farm Labor Contractor employs the workers, then the Farm Labor Contractor is generally considered the employer of record.
- If the Farm Labor Contractor only supplies the workers to the farmer, but does not employ them, then the farmer will be the employer of record.



Requirements of Farm Labor Contractors

- Obtain a bond or deposit to cover unpaid wages owed (bond amount depends on number of employees)
- Provide Proof of Workers' Compensation Insurance
- Provide a list of vehicles to be used to transport workers
- Pass an exam on farm/forest labor contracting requirements
- Submit Certified Payroll Reports on a routine basis to BOLI
- Enter into written worker agreements with employees



Liability of Person Using Services of Unlicensed Labor Contractor

- Any person who knowingly uses the services of an unlicensed labor contractor is personally, jointly and severally liable with the person acting as an unlicensed contractor for any unpaid wages and other damages.
- Any person using the services of an unlicensed labor contractor may be assessed civil penalties of up to \$2,000 per violation.



Joint Employment Relationship

- A joint employment relationship exists when two associated employers share control of an employee where one employer acts directly or indirectly in the interest of the other employer with respect to the employee.
- If the farmer has the power to direct, control or supervise the work, to determine the pay rates or method of payment, then the employees of the labor contractor will likely be considered jointly employed.
- Joint employers are responsible, both individually and jointly, for compliance with all applicable provisions of Oregon's wage and hour laws.
- The employer who actually pays the employees will be considered primarily responsible for maintaining and preserving the records of hours worked and employees' earnings.



What is Agriculture Employment

Primary, Secondary, and Non-Agriculture



Primary Agriculture

- Farming in all of its branches
- Examples:
 - Cultivation and tillage of the soil
 - Dairying
 - Production, cultivation, growing, and harvesting of any agricultural or horticultural commodities
 - Raising of livestock, bees, fur-bearing animals or poultry
- An employee engaged in any of these activities is engaged in agriculture regardless of whether he is employed by a farmer or on a farm



Secondary Agriculture

- Any practices, whether or not they are themselves farming practices, which are performed either by a farmer or on a farm as an incident to or in conjunction with such farming operations.
- Examples:
 - Preparation for market
 - Delivery to storage or to market or to carriers for transportation to market
 - Office work and maintenance and protective work if their work is part of the agricultural activity and is subordinate to the farming operations
- All practices performed on products for which the exemption is claimed must be performed only on products produced or raised by the particular farm on the particular farm.



Non-Agricultural Work

- Any work where the employee handles products of another farming operation
- Any work where the practices are not performed by a farmer
- Any work where the practices are not performed on a farm



Penalties

Penalty Wages and Civil Penalties



Penalty Wages

- ORS 652.140: Specifies when final payment of all wages earned and unpaid are due to a worker at time of separation.
- ORS 652.145: Specifies when final payment of all wages earned and unpaid are due to a Seasonal Farmworker at time of separation.
- ORS 652.150: Penalty wages for failure to pay wages upon termination – Penalty wages equal to 8 hours of pay at hourly rate up to 30 days with some exceptions.
- ORS 653.055(1)(b): Penalties paid to an employee as prescribed in ORS 652.150 for failure to pay at least minimum wage to an employee.



Civil Penalties

- ORS 653.256: Potential Civil Penalty up to \$1,000 per violation for failing to pay minimum wage.
- ORS 658.453(1)(f): Potential Civil Penalty up to \$2,000 per violation for using an unlicensed labor contractor.

