

Technical Assistance for Employers

Department

Minimum Wage and Overtime in Agriculture

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Minimum Wage And Overtime In Agriculture

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Employers are not required to pay overtime to employees performing work that meets the definition of "agriculture". In some cases they may also be exempt from paying [minimum wage](#).

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How does Oregon law define agriculture? "Agriculture" includes farming in all its branches. Among other things, agriculture includes cultivating and tilling the soil, dairying, producing, cultivating, growing, and harvesting any agricultural or horticultural commodities, raising livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer on a farm as an incident to or in conjunction with such farming operations, including preparing for market, delivering products to storage or to market or to carriers for transportation to market. "Agriculture" generally does not include forest products and the harvesting of timber; however, effective January 17, 2009, the federal regulation (which Oregon will follow) addressing nursery activities was amended to include the production of Christmas trees within those activities considered to be "agriculture" under the law. As a result, workers engaged in the planting, pruning, and harvesting of Christmas trees are considered to be agricultural employees who are not required to receive overtime compensation for hours worked beyond 40 in a week. See 29 CFR §780.115 and §780.205. "Agricultural employment" is employment in "agriculture" as so defined. OAR 839-020-0004(4)

OVERTIME

Q. Is it ever necessary to pay overtime to farm workers?

A. Yes. Only workers engaged in agricultural employment for 100 percent of the workweek are exempt from overtime. However, some employees of agricultural employers handle or otherwise work on products not grown by their own employer, or do not work within the definition of agriculture as outlined above and are due overtime after 40 hours. An employee who processes or handles ANY AMOUNT of another farmer's crop is entitled to overtime under both state and federal law. An employer should seek independent legal advice regarding their overtime obligations.

Q. Does the overtime exemption apply to the office staff of farmers?

A. As long as the responsibilities of the office staff are limited to duties integral to the farming operations of their employer, they are also exempt.

Q. Do agricultural processors have to pay daily overtime?

A. Oregon law requires the payment of overtime to employees who work more than 10 hours per day in canneries, driers and packing plants, excluding those that are located on farms which primarily process products produced on such farms. (ORS 653.265). While this daily overtime requirement does not apply to establishments located on farms and that primarily process products produced on such farms, employees of such establishments may still be owed overtime after 40 hours worked in a week. If an employee handles or processes ANY AMOUNT of another farmer's crop, that employee is owed overtime after 40 hours under both state and federal law. An employer should seek independent legal advice regarding their overtime obligations.

The Bureau has interpreted "primarily process products produced on such farms" to mean the volume of product processed and not the value.

Agricultural employers should also note that the provisions of ORS 652.020 may also require the payment of daily overtime (after 10 hours in a day) and impose a maximum limit to hours worked each day (of 13 hours) when operations of the establishment constitute "manufacturing." Manufacturing is defined as "the process of making goods or any material produced by machinery; anything made from raw materials by machinery; the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, by the use of machinery." OAR 839-001-0100(11)(a).

MINIMUM WAGE

Q. Are employees on small farms exempt from minimum wage?

A. Both federal and state laws provide minimum wage exemptions for "small" farms, however, the criteria are different for each. Employers in small farming operations must take care to be sure that they are exempt under each law before deciding not to pay minimum wage.

Federal criteria: If the employer did not employ more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year, the minimum wage exemption applies for all agricultural employees for the entire following year. A man-day is any day during which an employee performs agricultural labor for at least one hour.

State criteria: If the employer did not employ more than 500 piece rate work days in any calendar quarter of the preceding calendar year, the employer's hand harvesters and pruning laborers who are paid on a piece rate basis are exempt from minimum wage for the entire following year.

Q. Is it necessary to pay minimum wage to minors in agriculture?

A. Oregon law provides a minimum wage exemption for all hand harvesters who are 16 years old and younger, as long as they are paid on the same piece rate basis as older workers. Federal law requires that the parent or person standing in place of the parent also be employed on the same farm.

Q. What is the "commuter" exemption?

A. Hand harvesters who commute daily from their permanent residence, regardless of age, are exempt from minimum wage if they are paid on a piece rate basis and if they have been employed in agriculture less than 13 weeks in the previous calendar year.

Q. Are there any limitations on the payment of "piece rates"?

A. For the purposes of the minimum wage exemptions the payment of piece rates must be "in an operation generally recognized as piecework in the region of production."

Q. Are there any exemptions for ranchers?

A. Yes. Workers who spend more than 50 percent of their time in the range production of livestock are exempt from minimum wage. To be exempt, Oregon workers must be paid on a salary basis, which is defined as 2,080 hours times the current minimum wage, then divided by 12. (Example: effective January 1, 2015, the Oregon minimum wage increases to \$9.25, so the required salary will be \$9.25 times 2,080 hours divided by 12 months = \$1,603.33. The salary will change annually with minimum wage adjustments pursuant to Ballot Measure 25, passed in November 2002.) ORS 653.020(1)(e) and ORS 653.010(9).

FURTHER READING

Agricultural Employment Under the Fair Labor Standards Act - WH Publication 1288

Child Labor Requirements in Agriculture Under the Fair Labor Standards Act (Child Labor Bulletin No. 102) - WH Publication 1295

Contact USDOL - (503) 326-3057 for either publication.

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DISCLAIMER

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