

Agricultural Overtime FAQ

Prepared by Lesley Tamura
for Columbia Gorge Fruit Growers

DISCLAIMER: This document was NOT completed by an attorney and is intended for informational purposes only. For additional information or questions, please consult an employment attorney or BOLI.

Sources: U.S. Department of Labor, Oregon Bureau of Labor & Industries (BOLI), Oregon Farm Bureau, FEELDS Program, Oregon Revised Statutes, Oregon Department of Revenue

**** Note:** Many of the following questions reference a 40-hour overtime threshold. Please see the transition schedule in FAQ #1 for the correct overtime threshold each year until the permanent 40-hour threshold begins.

Overtime Wage Law

1. When am I required to pay overtime?

The overtime threshold decreases over a transition period. Starting January 1, 2023, employers must pay overtime for all hours above 55. Beginning January 1, 2027 the overtime threshold will be permanently set at 40 hours.

Year (Beginning January 1 st)	Overtime must be paid after ____ hours per week
2023	55
2024	55
2025	48
2026	48
2027+	40

2. How much do I pay for overtime hours?

Overtime pay is 1.5x the regular rate of pay.

“Regular rate of pay” is the hourly rate an employee is paid for all non-overtime hours worked in a workweek, and includes regular hourly wages, bonuses (nondiscretionary), commissions, piece rate pay, varying hourly rates of pay within a workweek, and any other forms of compensation.

3. Overtime pay is based on a weekly schedule. How do I determine the weekly schedule?

The “workweek” can begin on any day or hour the employer chooses as long as it remains the same each week. An employer may change the beginning of an agricultural worker’s workweek if the change is intended to be permanent and is not designed to evade overtime requirements.

You CAN have different workweek schedules for different employee classifications; for example, your supervisors may be on a workweek schedule that begins on Monday and ends on Sunday of each week, while your non-supervisors may be on a workweek schedule that begins on Friday and ends on Thursday of each week. However you set your workweeks for each classification of employees, it must be consistent.

4. My employees get paid every 2 weeks. Can they work 80 hours in 2 weeks with no overtime pay?

No. Regardless of how long your pay periods are, overtime is calculated based on the “workweek”, which is a regularly occurring period of seven consecutive days.

5. Do I need to document my operation's overtime rules?

Yes. It is critical for employers to have a written policy for overtime rules and expectations. If you have an employee manual, it should be updated to include overtime rules; if not, you should still document overtime rules and share with employees. If there is a conflict in the future regarding overtime hours and wages, having written policy will be important if an employee files a complaint.

This documentation should include:

- Employees can only work overtime with advanced permission from a supervisor or employer
- What the consequences are for working unauthorized overtime (suspension from work, not being offered voluntary overtime hours for a period of time, loss of employment, etc.)
- Once an employee accepts an offer of voluntary overtime, it becomes mandatory for them to attend

Oregon Farm Bureau's FEELDS program also recommends that employers maintain employee time records that show the start/stop time of the workday, paid rest breaks, and the unpaid lunch period. It is recommended that these time records should be signed by the employee as being true and accurate.

6. If an employee works unauthorized overtime, do I have to pay it?

Yes. You can discipline your employee for violating your work policy by working overtime without the required authorization, including terminating employment. However, wage and hour laws require that employees are compensated for all hours they work with or without the employer's knowledge or authorization.

Employers who are found to violate the overtime pay requirements may owe regular pay, back pay, and civil money penalties.

While terminating employment for unauthorized overtime is legally allowed, Oregon Farm Bureau's FEELDS program recommends that any agricultural operations that **DO NOT** have a written overtime policy should be very careful about disciplining unauthorized overtime. The reason for this is that when rules are subjective (decided by the employer without official policy) rather than objective (in writing plainly for all employees to see and understand), then holding an employee to a subjective rule and disciplining the employee for failure to follow the rule may bring legal issues.

7. Can I require my employees to work overtime?

Yes. An employer may dictate an employee's work schedule and hours. It is advisable to give employees as much advance notice of overtime requirements as is practical. Employers may discipline employees who refuse to work scheduled overtime.

For employee morale and employee retention, it is encouraged that employers ask for volunteers for any overtime hours needed rather than assign it. Legally, once an employee signs up to work overtime hours, it then becomes mandatory for them to attend. It is important that all eligible employees have equal access to overtime opportunities; for example, always choosing the same employees to work voluntary overtime while others do not get the opportunity can lead to employee complaints (and potential legal problems).

Having written policy in place detailing overtime rules, expectations and opportunities is critical.

8. Can I limit an employee's hours within the workweek to keep them under the overtime pay threshold?

Yes. Employers can limit hours to avoid paying overtime rates. For example, if an employee works 9 hours per day for four days, they may be scheduled for only 4 hours on the fifth day to avoid overtime.

9. Do agricultural workers who work in Oregon AND perform some of their work in another state receive overtime?

Whether the hours worked in another state count toward the overtime threshold in Oregon depends on several factors. First, it would depend on how an employer's business is set up. The answer may differ if the employer is a farm labor contractor or has different business entities.

Here are some of the questions BOLI will consider:

- Where was the employment agreement made?
- Where is the employer's main location?
- Does the employer have multiple work sites?
- How much of the work is performed in Oregon?
- Where are payments made to workers?
- Who is supervising the workers?

Since Oregon law, another state's law, and federal law may apply, an employer will want to see which law will pay the employee the most and follow that calculation. Paying the highest amount among the three laws will ensure that the strictest potential legal requirement is being met.

10. Do H-2A employees receive overtime?

Yes, H-2A employees are eligible for overtime pay.

While BOLI does not have any jurisdiction over the H-2A program, the federal wage laws in the Fair Labor Standards Act (FLSA) apply to guest workers in the same manner as any other worker. Any states that have enacted laws that require overtime pay for agricultural workers apply to H-2A guest workers as well, since they are doing the same jobs with the same requirements as non-guest workers.

For more information on H-2A wage laws, see:

<https://www.dol.gov/agencies/whd/fact-sheets/26f-wage-requirements-H-2A>

11. Are labor contractors included in the overtime pay law?

Yes. Any agricultural employee, whether employed directly by you or employed through a labor contractor, is eligible for overtime pay.

Wage and hour law recognizes that sometimes work benefits two or more employers simultaneously, such as when a labor contractor provides a crew for specific agricultural tasks. In such joint employment situations, both parties may share responsibility for ensuring compliance with wage and hour laws and both can be held responsible for any violations of wage and hour laws.

Calculating Overtime Pay Rates

12. How do I calculate the overtime pay rate?

If an employee is paid strictly by hourly wage (no additional bonuses, piecework pay, salary, etc.), then you calculate the employee's overtime wage by multiplying the regular rate of pay by 1.5

Example: An employee works 45 hours at \$18.00 per hour.

40 hours x \$18.00 per hour = \$720

5 hours x \$27.00 per hour = \$135

Total earned = \$720 + \$135 = \$855

Note: Another method is to pay ALL hours at the regular rate of pay and the overtime hours at an additional 0.5 rate.

45 hours x \$18.00 per hour = \$810.00

5 hours x \$9.00 per hour = \$45.00

Total earned = \$810 + \$45 = \$855

While the gross wages will be the same, **the problem with this method is that it will result in reporting more hours than were actually worked.** The employee worked 45 hours, but with this method 50 hours are reported. Payroll taxes, specifically Workers Benefit Fund (workman's comp) will be charged to both employer and employee for 50 hours when only 45 were worked.

If you use a payroll system that allows you to adjust the Workers Benefit Fund (workman's comp) hours and you are comfortable making these adjustments, the alternate method of paying all hours at the regular rate and then the 0.5 overtime rate as a separate line item can be used. Please consult your payroll clerk/specialist or CPA for additional information.

****** Another reason to consider keeping overtime wages as a separate line item is that overtime wages (in excess of straight time pay) are to be **EXCLUDED** when completing your **SAIF payroll report**, which determines your SAIF insurance premium. If you plan to apply for the **tax credit** through the state, you will also be required to submit how many overtime hours were worked and overtime wages paid to individual employees during the year.

13. How is overtime calculated when an employee works at different rates of pay in the same workweek?

Employers must calculate the average of all rates of pay and use that average to determine overtime pay.

Example: If an employee worked 16 hours at \$18.00 per hour and 30 hours at \$20.00 per hour, they earned a total of \$888.00. That amount is divided by the total hours worked, and the average hourly rate is \$19.30

16 hours x \$18.00 per hour = \$288.00

30 hours x \$20.00 per hour = \$600.00

Total earned = \$888.00

\$888.00 ÷ 46 hours = \$19.30 average hourly rate

Use this average hourly rate to calculate the additional overtime pay. Since you already paid the regular 1x rate for all hours worked at \$18.00 and \$20.00 per hour, only an additional .5 times is due for the 6 overtime hours.

0.5 x \$19.30 = \$9.65

\$9.65 x 6 overtime hours = \$57.90

The employee is due to be paid for the following:

16 hours at \$18.00

30 hours at \$20.00

6 overtime hours at \$9.65

14. Do bonus payments increase overtime pay?

Yes. Federal law requires that all compensation be included in the regular rate when calculating overtime, including nondiscretionary bonuses. Any nondiscretionary bonuses must be included when calculating the regular rate of pay. However, discretionary bonuses generally are not included in regular rate of pay and therefore do not impact overtime wages.

Nondiscretionary Bonus: A bonus awarded that is expected by the employee. The employer predetermines the specific criteria that are required to receive a bonus, and employees expect to earn the bonus if they meet the criteria.

Examples of Nondiscretionary Bonuses:

- Incentive pay for exceeding performance or productivity goals, or for working a certain period of time (for example, offering additional pay if employees work throughout the entire harvest season)
- Seasonal or annual bonuses that are expected by the employee

Discretionary Bonus: A bonus awarded at the sole discretion of the employer at or near the end of the period that is not expected by employees. A discretionary bonus is a form of variable pay: the amount, requirements, timing and announcement of the bonus is not disclosed in advance, as this may appear to be a motivator or incentive implying that meeting certain levels would guarantee a bonus. The bonus is not made according to any prior contract, agreement, or promise causing an employee to expect such payments regularly. The employer determines after the fact that there is a reason for awarding a bonus (such as reaching company and/or financial goals), or chooses to reward an individual employee after exceptional performance.

15. How do I calculate the regular rate of pay to include bonuses?

If you pay nondiscretionary bonuses, you need to determine the time period the bonus covers, calculate the weekly amount, and then include it when figuring the overtime wage rate.

This **DOES NOT** change the regular rate of pay the employee will earn, it will only change the additional overtime rate.

Example:	Annual Bonus
	Employee A works 50 hours at \$15.00 per hour and receives an annual bonus of \$5,000 paid at the end of the calendar year
	Bonus: $\$5,000 \div 52 \text{ weeks} = \$96.15 \text{ per week for the bonus}$
	$\$96.15 \div 50 \text{ hours} = \1.92 per hour
	$\$15.00 \text{ per hour} + \$1.92 \text{ bonus pay per hour} = \$16.92 \text{ per hour used to calculate overtime pay}$
	When calculating overtime pay, use \$16.92 per hour as the “regular rate of pay.” Although you pay the bonus as a lump sum at the end of the year, you have to include it when calculating overtime pay.
	$\$16.92 \times 0.5 \text{ overtime rate} = \$8.46 \text{ additional overtime pay rate}$
	$\$15.00 \times 50 \text{ hours} = \$750 \text{ regular hourly pay}$
	$\$8.46 \times 10 \text{ overtime hours} = \$84.60 \text{ additional overtime pay}$
	$\$750 + \$84.60 = \$834.60 \text{ total wages paid to employee including regular wages and bonus}$

16. Is sick leave or vacation time pay included in overtime pay?

No. The required overtime pay is 1.5 times the hourly rate for hours worked in excess of 40 in a workweek. Overtime is calculated based on hours actually worked. Unless a policy, contract, or collective bargaining agreement states otherwise, you do not count sick leave, vacation time, or paid holidays.

17. Are reimbursements for business expenses included in overtime pay?

No. Reimbursement of the expenses an employee incurs may be excluded from the regular rate of pay. This includes, but is not limited to: business supplies/materials/tools, cell phone plans, membership dues in a professional organization, and travel expenses.

18. Are profit-sharing plans included in overtime pay?

No. Payments made to a profit-sharing plan or trust may be excluded from the regular rate of pay.

19. Are employer contributions to benefit plans included in overtime pay?

No. Employers may exclude from the regular rate of pay any contributions made by an employer to a trustee or third person as part of a plan for death, disability, advanced age, retirement, illness, medical expenses, hospitalization, accident, unemployment, legal services, or other events that could cause significant financial hardship in the future.

20. Can I charge rent for employer-provided housing?

Under OR-OSHA agricultural labor housing rules: YES, employers can charge rent for labor housing, but please consult a lawyer before doing so.

However, there are additional laws under BOLI and Oregon Revised Statutes (ORS) regarding labor housing. BOLI requires that any rent deductions from an employee's payroll cannot reduce the employee's wage below state-mandated minimum wage. It is also possible that by charging rent, you are entering into a landlord-tenant relationship with your employee, which grants them tenant's rights. This will be determined by the nature of the rental agreement.

See ORS Chapters 90 - 91 for Oregon property rights and tenancy laws; specifically, ORS 90.110 (7) notes that occupancy by an employee whose occupancy is conditional upon employment is excluded from the Residential Landlord and Tenant laws in ORS Chapter 90.

If you plan to charge rent for ag labor housing for any reason, **it is important that you consult with a lawyer to ensure you are following all employment laws, including wage and hour laws.**

21. Is piece rate pay included in the overtime law?

Yes. Employees paid on a piece rate basis are generally entitled to an additional one-half times their regular rate of pay for each hour over 40 in a given workweek, **plus** their full piecework earnings. Employers will need to track both hours worked and pieces completed.

22. What hours are considered “work hours” for employees paid piece-rate?

Wage and hour laws define “work time” (time that must be paid) as the time an employee is required to give to the employer. This includes all time that an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed workplace and all time the employee is required to work.

Work hours also include preparatory and concluding activities, if those activities are an integral part of a principal activity. For example, a worker setting up, maintaining, or repairing equipment which is needed to complete work tasks; or a worker cleaning, evaluating, or storing equipment at the end of the day.

Waiting time is also paid time, if the time is an integral part of the job. If the time spent waiting is controlled by the employer and the employee is unable to use the time for their own purposes, then it considered work time. Examples include:

- A worker needs to wait for a truck to arrive to empty picking buckets into bins.
- A worker needs to wait for directions from a supervisor before proceeding with work.
- A worker needs to wait for replacement equipment or materials to complete work tasks.

If employees are completely relieved from duty for periods long enough to use the time for their own purposes, this is not considered work time does not need to be paid.

Travel time may also be paid work time, if travel between multiple worksites within a single day is necessary.

23. If I require employees (hourly or piece-rate) to report to work before a scheduled shift in order to facilitate a smooth transition, does that time need to be paid as “work time”?

Yes. The requirement to report to work benefits the employer and is necessary for the smooth operation of the business.

24. How do I calculate piece rate overtime pay?

Calculating overtime pay for employees paid by piece rate requires employers to track both hours worked and pieces completed (bins of pears/apples, buckets of cherries, number of trees pruned, etc.). You then will calculate each employee's average hourly wage and overtime rate.

Example: Calculating piece rate overtime for Employee A and Employee B (based on a 40-hour overtime threshold)	
Employee A works 50 hours in the workweek and picks 37 bins.	Employee B works 50 hours in the workweek and picks 45 bins.
$37 \text{ bins} \times \$29.00 \text{ per bin} = \1073.00	$45 \text{ bins} \times \$29.00 \text{ per bin} = \1305.00
$\$1073 \div 50 \text{ hours} = \21.46 per hour	$\$1305 \div 50 \text{ hours} = \26.10 per hour
$\$21.46 \times 0.5 = \$10.73 \text{ Employee A's overtime rate}$	$\$26.10 \times 0.5 = \$13.05 \text{ Employee B's overtime rate}$
$10 \text{ hours overtime} \times \$10.73 = \$107.30$	$10 \text{ hours overtime} \times \$13.05 = \$130.50$
$\$1073.00 \text{ piece rate wages} + \$107.30 \text{ overtime wages} =$ $\$1180.30 \text{ total to be paid to Employee A}$	$\$1305.00 \text{ piece rate wages} + \$130.50 \text{ overtime wages} =$ $\$1435.50 \text{ total to be paid to Employee B}$

25. How is overtime calculated for agricultural workers who work both hourly and for piece-rate pay?

Employers must calculate the total wages earned during the workweek in piece-rate and hourly pay, then divide by the total hours worked during the workweek. The overtime rate will be an additional 0.5 of this new hourly rate of pay.

Example: An employee earns \$500.00 in piece-rate pay for 25 hours of work. The employee also worked 35 hours at a \$15.00 hourly rate during the same workweek.	
Calculate total wages earned during the workweek: $\$500.00 \text{ piece rate pay} + \$525.00 \text{ hourly rate pay} = \$1025.00 \text{ total wages earned during the workweek}$	
Divide total wages by total hours worked: $\$1025.00 \div 60 \text{ hours total worked} = \17.08 per hour	
Calculate overtime rate of 0.5: $\$17.08 \times 0.5 = \$8.54 \text{ overtime pay rate}$	
Calculate overtime hours worked: $60 \text{ hours worked} - 40 \text{ hours overtime threshold} = 20 \text{ overtime hours worked}$ $20 \text{ hours overtime} \times \$8.54 \text{ overtime pay rate} = \170.80	
The employee is due to be paid for the following:	$\$500.00 \text{ piece-rate pay}$ $35 \text{ hours at } \$15.00 \text{ per hour} = \525.00 $20 \text{ overtime hours at } \$8.54 \text{ per hour} = \170.80 TOTAL: $\\$500 + \\$525 + \\$170.80 = \\1195.80

26. Are salaried employees exempt from overtime pay?

Short Answer:

NO. Any agricultural employee engaged in physical work/manual labor cannot be exempt from receiving overtime pay, regardless of being paid a salary. Only those engaged in office work AND meeting certain salary and job duties requirements can be exempt from overtime pay.

Longer Answer:

Receiving a salary DOES NOT automatically exempt an employee from being eligible for overtime pay. Instead, employers must determine if the employee is “exempt” or “non-exempt.” This is based on how the government classifies the type of work an employee does.

- Exempt employees do not earn overtime pay, no matter how many hours they work in a week. These employees receive the same amount of pay per pay period, even if they put in additional hours.
- Non-exempt employees are eligible to be paid minimum wage and overtime for work in excess of the overtime threshold, whether they are paid salary, hourly, piece rate, or commission.

Exempt status can only be granted to “white-collar” employees who meet the salary and duties tests set by the Department of Labor. **The exemptions do not apply to manual laborers or other “blue-collar” workers who perform work involving repetitive operations with their hands, physical skill and energy.**

For an employee to be exempt from receiving overtime pay, they must meet the following requirements:

Salary Basis Test: The employee must be paid a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work performed.

Salary Level Test: The amount of annual salary paid must meet a minimum of \$35,568, or \$684 per week.

Duties Test: The employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the Department of Labor. Employee must pass every criteria of one of the Department of Labor’s tests.

Executive Test:

- Employee must primarily manage a department, team, or subdivision
- Employee must regularly direct work to at least 2+ other full-time employees
- Employee must have the authority to hire and fire other employees (or their suggestions and recommendations as to hiring, firing, or changing the status of other employees must be given particular weight)

Administration Test:

- Employee must primarily perform non-manual or office work directly related to the management or general business operations of the employer
- Employee’s primary duties include decision-making authority and independent judgment with respect to matters of significance

Professional Test:

- Employee must perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, or must specialize in a few other similarly, highly specialized fields, such as teaching, computer analytics, and engineering.

Highly Compensated Employees (HCEs) are also exempt from receiving overtime pay. Highly Compensated Employees (HCEs) must meet ALL of the following requirements:

1. Receives total annual compensation of at least \$107,432.
 - Non-discretionary bonuses and incentive payments that are paid at least annually can be used to satisfy up to 10% of the minimum salary requirement.
2. The employee's primary duty includes performing office or non-manual work.
3. The employee regularly performs at least one of the exempt duties in the executive, administrative, or professional duties (see below). An HCE who performs exempt duties on an occasional basis will not satisfy this minimal duties requirement.
 - For example, an employee may qualify as an HCE if he/she regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption.

FLSA-covered, non-management laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

27. How do I calculate overtime pay for salaried employees?

The regular rate of pay for an employee paid by salary is calculated by first determining the weekly pay, then dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the salary.

When paying by salary, the regular rate of pay should never be less than the state-mandated minimum wage

Step 1: Calculate the weekly salary

- If a salary is paid other than a weekly basis, the weekly pay must be determined in order to calculate the regular rate and overtime pay. To do this, determine the annual salary and then divide by 52 weeks to calculate weekly pay.

Step 2: Calculate the regular rate of pay based on the hours worked for the week

Step 3: Calculate overtime pay rate

	Employee A	Employee B
Step 1	Salary Paid Monthly: Employee A is paid a salary of \$4000 per month $\$4000 \text{ per month} \times 12 \text{ months} = \$48,000 \text{ per year}$ $\$48,000 \div 52 \text{ weeks} = \$923.08 \text{ weekly pay}$	Salary Paid 2x Per Month: Employee B is paid \$1800 twice per month $\$1800 \times 2 \text{ times per month} = \3600 per month $\$3600 \text{ per month} \times 12 \text{ months} = \$43,200 \text{ per year}$ $\$43,200 \div 52 \text{ weeks} = \$830.77 \text{ weekly pay}$
Step 2	Employee A receives \$923.08 weekly and worked 48 hours during the week $\$923.08 \div 48 \text{ hours} = \$19.23 \text{ per hour regular rate of pay}$	Employee B receives \$830.77 weekly and worked 54 hours during the week $\$830.77 \div 54 \text{ hours} = \$15.38 \text{ per hour regular rate of pay}$
Step 3	$\$19.23 \times 0.5 = \$9.62 \text{ additional overtime pay rate}$ $8 \text{ overtime hours} \times \$9.62 = \$76.96$ \$76.96 additional overtime pay is due for this week when Employee A is paid their monthly salary	$\$15.38 \times 0.5 = \$7.69 \text{ additional overtime pay rate}$ $14 \text{ overtime hours} \times \$7.69 = \$107.66$ \$107.66 additional overtime pay is due for this week when Employee B is paid their monthly salary

28. What if an employee receives a salary based on a set number of hours per week?

If a worker is employed on a salary for a consistent workweek schedule, the regular rate of pay is determined by dividing the salary by the number of hours agreed to be worked. For all hours in excess of 40, overtime must be paid regardless of the agreed-upon work schedule.

<p>Employee A receives a weekly salary of \$525 and it is understood that this salary is compensation for a regular workweek of 35 hours.</p> <p>$\\$525 \div 35 \text{ hours} = \\$15 \text{ per hour regular rate of pay}$</p> <p>This regular rate of \$15.00 per hour will be paid up to 40 hours worked, even though 40 hours is more than the agreed-upon weekly schedule. After 40 hours, the overtime rate must be paid.</p>	<p>Employee B receives a weekly salary of \$720 and it is understood that that this salary is compensation for a regular workweek of 45 hours.</p> <p>$\\$720 \div 45 \text{ hours} = \\$16 \text{ per hour regular rate of pay}$</p> <p>This regular rate of \$16.00 per hour will be paid for all hours worked; after 40 hours, the overtime rate must be paid in addition.</p> <p>$\\$16.00 \times 0.5 = \\$8.00 \text{ overtime pay}$ $5 \text{ hours overtime} \times \\$8 = \\$40$</p> <p>The overtime rate must be paid for the 5 additional hours worked each week even though it is part of the agreed-upon work schedule. Employee B will receive their weekly salary of \$720 + \$40 overtime pay.</p>
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29. What if a salaried employee works a variable number of hours each week?

If a salaried employee works a variable number of hours each week, then the regular rate of pay will vary from week to week and therefore the overtime rate of pay will vary as well.

Example: Employee A earns a monthly salary of \$3000. The weekly pay is \$692.31

Week 1: Employee A worked 48 hours

$\$692.31 \div 48 \text{ hours} = \$14.42 \text{ per hour regular rate of pay}$
 $\$14.42 \times 0.5 = \$7.21 \text{ overtime rate}$
 $8 \text{ overtime hours} \times \$7.21 = \$57.68 \text{ overtime pay for Week 1}$

Week 2: Employee A worked 40 hours

No overtime pay due for this week

Week 3: Employee A worked 43 hours

$\$692.31 \div 43 \text{ hours} = \$16.10 \text{ per hour regular rate of pay}$
 $\$16.10 \times 0.5 = \$8.05 \text{ overtime rate}$
 $3 \text{ overtime hours} \times \$8.05 = \$24.15 \text{ overtime pay for Week 3}$

Week 4: Employee A worked 50 hours

$\$692.31 \div 50 \text{ hours} = \$13.85 \text{ per hour regular rate of pay}$
 $\$13.85 \times 0.5 = \$6.93 \text{ overtime rate}$
 $10 \text{ overtime hours} \times \$6.93 = \$69.30 \text{ overtime pay for Week 4}$

Total Overtime Pay: $\$57.68 + \$24.15 + \$69.30 = \151.13

Employee A should be paid their regular salary of \$3000 for the month + total overtime pay of \$151.13

30. Are employees on small farms exempt from overtime?

Both federal and state laws provide minimum wage and overtime exemptions for “small” farms, but the criteria are different for each. Employers in small farming operations must ensure they are exempt under each law before deciding not to pay minimum wage/overtime. The requirements for exemption eligibility will not usually apply to most full time agricultural operations.

Federal Criteria under the Fair Labor Standards Act (FLSA): If the employer did not employ more than 500 man-days of agricultural labor in any calendar quarter of the preceding year, the minimum wage and overtime exemption applies for all agricultural employees the following year. Federal laws do not require employers to pay overtime to employees who work 100% of their workweek in agriculture under this exemption.

State Criteria under Oregon Revised Statutes (ORS 653.020): If the employer did not employ more than 500 piece-rate workdays 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. If this requirement is met, the hand harvesters and pruning laborers would also be exempt from any overtime payments.

Man-Day:

A “man-day” is any day on which a person does at least one hour of agricultural work. Each person who works is counted as a separate man-day. For example, if 3 employees work for one hour each on the same day, the farm has 3 man-days. If 3 employees work for 8 hours each on the same day, the farm still has 3 man-days. As long as the person worked at least one hour, it doesn’t matter how long they worked that day.

The spouse, children and other members of the employer’s immediate family are not counted when calculating man-days. 500 man-days roughly equates to 5-6 full-time employees, considering many farms employ workers 6-7 days per week.

Calculate how many man-days are in each quarter of the year (January – March, April – June, July – September, October – December). If there are less than 500 man-days in each quarter, the farm may be eligible for minimum wage/overtime exemption for the following calendar year.

This man-day exemption applies only to agricultural labor; if an employee spends any time working on something that is not deemed agricultural, the exemption does not apply to all work that employee does during the workweek. If a farm employee spends even one hour of time on a non-agricultural task, the employee must be paid according to minimum wage/overtime rules for all hours worked in that week and not just for the non-agricultural hours worked.

Agricultural labor is defined as the growing and harvesting of crops, raising of livestock or poultry, and preparing unmanufactured farm products for market and delivery to market. Agricultural labor includes work done on a farm in connection to farming operations. Most, if not all work done off-farm is not agricultural labor. Selling at farmers’ markets, making value-added products, organizing on-farm agri-tourism events, and packing products from another farm are NOT considered agricultural labor under this definition.

31. Are an employer’s family members exempt from overtime?

Yes. Under the Immediate Family Member Exemption (ORS 653.020(1)(b)), there is an exemption from minimum wage and overtime pay if an individual is the parent, spouse, child, or other member of the employer’s immediate family. This exemption is commonly used by Oregon farms that have multiple members of the immediate family working on the farm.

32. Are employees exempt if they commute to work?

Yes, but only if they have been employed in agricultural labor less than 13 weeks during the preceding calendar year.

Under the Commuters Exemption (ORS 653.020 (1c)), this applies to a person who is:

- a. Employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation that has typically paid on a piece-rate basis
- b. Commutes daily from a permanent residence to the farm on which the individual is employed; and
- c. Has been employed in agricultural labor less than 13 weeks during the preceding calendar year

It is the burden of the employer to prove the employee meets these limits in order to take the exemption. Simply having an employee sign a form at the time of hire certifying they worked less than 13 weeks in agriculture last year is **not sufficient** verification.

Many piece-rate workers are migrant workers who move from farm to farm, and do not live locally throughout the year and therefore do not commute from a permanent residence.

33. Are minors exempt from overtime?

Under the Minor Hand Harvesters Exemption (ORS 653.020(1c)), if a migrant hand harvest worker 16 years of age and younger is employed on the same farm as their parent (or person standing in place of the parent), is paid on a piece-rate basis in traditionally piece-rated occupations, and is paid the same piece rate as those over 16, then they are exempt from minimum wage laws (including overtime).

34. Are administrative employees exempt from overtime? (see FAQ #17 for more information)

This depends on the job duties and pay of the office staff. Some office staff may qualify for an exemption from overtime as “salaried executive or administrative employees.” Under the FLSA “White Collar” definitions, then administrative employees would be exempt as long as they meet certain requirements.

This exemption will likely cover the salaried, exempt, professional employees who perform exclusively administrative, executive or professional duties and who are paid on a salary basis. This does not apply to any employees engaged in physical/manual labor.

If the responsibilities of the office staff are limited to duties integral to the farming operations of their employer, but they do not meet the requirements for “salaried exempt” employees, then they are owed overtime.

35. Does overtime apply to transporting or delivering agricultural products?

If the person transporting/delivering is employed by the farm, then YES – overtime laws would apply to this employee. However, delivery by an independent contractor for the farmer would NOT be eligible for overtime.

“Delivering products to storage or to market or to carriers for transportation to market” is considered part of agriculture under Oregon’s legal definition of agriculture. The term “market” means the farmer’s market, which can include the wholesaler, processor, or distributing agency to which the farmer delivers products. When a delivery involves travel off the farm (which would normally be the case), the delivery must be performed by the employees employed by the farmer in order to constitute an agricultural practice. Such employees would be eligible for overtime under the agricultural overtime law. However, delivery by an independent contractor for the farmer would not be included in overtime.

Other overtime rule and/or exemptions outside of agriculture may exist for transportation and/or delivery of goods; for more information, see the Motor Carrier Exemption fact sheet at:

<https://www.dol.gov/agencies/whd/fact-sheets/19-flsa-motor-carrier>

36. Is there any financial assistance available for this additional labor expense?

Yes, there is a temporary tax credit program that employers can apply for to offset a percentage of your overtime costs.

These tax credits are refundable (meaning your operation does not need to make a profit for them to apply). A refundable tax credit can be used to generate a tax refund larger than the amount of tax paid throughout the year. For example, if an individual has a tax bill of \$100, but is eligible for a refundable tax credit of \$150, then instead of paying \$100 in tax, you receive a tax refund of \$50.

The tax credit only applies to additional wages paid for overtime. For example, a small-sized farm that paid \$3,000 in overtime wages during 2023 may be eligible to receive a tax credit worth up to 90% of that amount.

Farms can apply for the tax credit through Oregon Revenue Online. Applications are due by January 31st following the tax year. Late applications will NOT be accepted. Approval letters with the allowed credit amount will be mailed by June 1. All applicants will receive an automatic filing extension for their income tax return.

Year	Large-Sized Farms 50+ FTE employees	Medium-Sized Farms 25 – 49 FTE employees	Small-Sized Farms 24 or less FTE employees	Dairy Operations 24 or less FTE employees
2023	60%	75%	`	100%
2024	60%	60%	80%	100%
2025	45%	60%	80%	100%
2026	30%	50%	60%	100%
2027	15%	50%	60%	100%
2028	15%	50%	60%	100%

The tax credits are capped at \$55 million for each calendar year. If agricultural operations in Oregon apply for tax credits exceeding \$55 million per year, the tax credit given to each operation will be reduced proportionally for all taxpayers applying. While these tax credits are currently planned to continue through 2028, they are not completely guaranteed; it is possible that future legislatures can withdraw them. The legislation includes language directing future legislatures to adjust the tax credit based on future reports.

The legislature also provided a one-time allocation of \$10 million to establish a loan program to provide financial assistance to employers to mitigate the costs associated with overtime pay.

Senate Bill 1524 was also amended to allow personal and corporate taxpayers who operate under NAICS codes 111 (crop production) and 112 (animal production and aquaculture) to carryback net operating losses to three previous tax years to provide an immediate cash infusion to farmers. This provision was part of the CARES Act in 2020, but has been extended to assist cash-strapped farmers who will now be required to pay agricultural overtime and are currently losing money. **Please consult with your tax professional for further information.**

For additional questions about the tax credit program, the Oregon Department of Revenue has an email address specifically for agricultural overtime questions: Ag.Overtime@dor.oregon.gov

You can also find more information on their website:

<https://www.oregon.gov/dor/programs/businesses/pages/ag-overtime.aspx>

37. How do I calculate how many employees I have?

Number of employees is **NOT** based on “head count”, but rather FTE (“full time equivalent”). FTE means an employee or a combination of employees that perform at least **2,080** hours of work for an employer in a calendar year.

Example: 28 employees work a combined total of 50,000 hours in a calendar year at your operation

50,000 hours ÷ 2080 FTE hours = 24.04

This means that you have 24 FTE for the year and qualify as a “small-sized farm” for tax credit purposes

38. Which employees should be included when calculating FTE?

When calculating FTE, all hours worked by all employees (exempt or non-exempt) should be included; this includes all permanent, seasonal, temporary, and contracted workers. According to the Oregon Department of Revenue, if an employee is issued a W-2, their work hours should be included in the FTE calculation. Oregon Department of Revenue has stated that any employees that work for your operation via a labor contractor should be counted as well.

**** Immediate Family Members:** Although immediate family members can be exempt from receiving overtime pay, they **should be counted** when calculating FTE for tax credit purposes.

39. What documentation is required to claim the tax credit?

Employers are required to submit an application via Oregon Revenue Online during January 1 – 31 of the following year. You must have an Oregon Revenue Online account set up to complete the tax credit application. Even if you file your taxes based on a fiscal year, you will report on information for the last calendar year.

The following information is required:

- Business name, address and tax identification number
- NAICS code(s) and percentage of employees’ hours worked for each business activity
- Farm Labor Contractor (FLC) contracts and license number, if applicable
- Overtime hours worked and overtime wages paid, on an hourly basis, to each agricultural worker employed
- Total number of employees who received Form W-2 from you, including all in-state and out-of-state employees
- Total regular hours worked by all employees
- Total overtime hours worked by all employees
- Payroll records for the year:
 - Total wages paid for all hours, including overtime
 - Total Oregon overtime portion of wages paid for hours worked over the threshold
 - Overtime wages paid to exempt employees and out-of-state employees

40. Are labor contractors eligible for this tax credit?

A labor contractor may **NOT** claim a tax credit. An eligible employer may claim a credit under this section for wages paid to workers recruited, solicited, supplied or employed by a labor contractor on behalf of the eligible employer with required documentation. Each agricultural employer’s share of the overtime paid for actual hours worked will be determined between the employer and the farm labor contractor (FLC). Employers applying for the tax credit will need information from the labor contractor, including number of employees, total hours worked, overtime hours worked, and amount of overtime wages paid.

41. If I pay my agricultural employees’ overtime after a 40-hour workweek, can I claim all paid overtime over 40 hours for the tax credit?

No, you are only allowed to claim hours above the threshold for the year. When applying for the tax credit for the 2024 calendar year, you can claim all overtime hours above 55 per workweek.