

Minimum Wage And Overtime In Agriculture

Technical Assistance: FAQs

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](#).

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 or Christmas trees. See *29 CFR §780.115*. "Agricultural employment" is employment in "agriculture" as so defined. *OAR 839-20-004(3)*

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, farm employees who perform non-agricultural work involving products not grown by their own employer must be paid overtime. This includes workers who sell gift items in a retail shop operated by a nursery, or who pack fruit grown by a neighboring farmer, must be paid overtime if they work more than 40 hours in the same workweek.

Q. Does the overtime exemption apply to the office staff or 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.

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 is 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 pruners 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 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, 2008, the Oregon minimum wage increases to \$7.95, so the required salary will be \$7.95 times 2,080 hours divided by 12 months = \$1,378.00. 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(10)*.

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.

The Technical Assistance for Employers unit offers employer seminars, handbooks, and other materials covering a number of topics. For additional information, visit our website at www.oregon.gov/boli/ta or call our Employer Assistance line.

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