



The Agricultural Exemption from Federal Wage and Hour Laws

Must you pay your agricultural workers minimum wage and overtime?

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As a general matter, the Fair Labor Standards Act requires that an employer pay an employee the federal minimum wage plus one-and-a-half times the employee's standard pay rate for time worked over 40 hours in a work week. The Act also creates an "agricultural exemption" from this general rule. Although the agricultural exemption sounds simple, legislators, bureaucrats, judges and commentators have written thousands of pages explaining, interpreting and applying it. Below, are some key concepts and questions to get you started on figuring out if your employees working in and around agriculture come within the agricultural exemption.

IS IT "AGRICULTURE?"

The Act defines "agriculture" broadly to mean "farming in all its branches." Agriculture includes specific farming practices such as the growing and harvesting of commodities, dairying, forestry, lumbering, as well as the raising of livestock, bees, and poultry. Agriculture also includes performing work which itself is not farming. If non-farming work is performed by a farmer or on a farm, and that work is incidental to or in conjunction with farming operations, then the work may come within the definition of agriculture. But, other factors may ultimately determine if the exemption applies, such as whether a farmer is working on his own farm, or whether a farmer's employee is performing work on a different farmer's commodities.

EXEMPT FROM ONE OR BOTH REQUIREMENTS?

The requirement to pay minimum wage is separate from the requirement to pay overtime. An employee may be exempt from one or both requirements. For example, the law exempts immediate family members, workers employed on certain sized farms, some piece meal workers and livestock rangers from both requirements. In contrast, some workers performing agricultural work may only be exempt from the overtime requirement.

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IT'S "ALL OR NOTHING" FOR OVERTIME.

Whether a worker is exempt from the overtime pay requirement in a given week is an all-or-nothing proposition. This means that if the worker spends some of his work week performing labor which is not exempt, the employer may not claim an overtime exemption for any work performed by the employee in that week. In some cases, the non-exempt work may be so minor that it does not destroy the exemption.

LOOK AT OTHER POTENTIAL EXEMPTIONS.

The agricultural exemption is one of many exemptions in the Fair Labor Standards Act. Your employment and labor attorney can help you identify other potential exemptions which may apply to your situation. For example, although certain drivers who transport farm commodities do not come within the agricultural exemption, nevertheless the drivers may come within the "motor carrier exemption" to the overtime rules.

The federal government imposes significant fines and penalties for mistakenly treating employees as exempt. If you have any questions about whether your employees are exempt under the Fair Labor Standards Act, please contact Karl Butterer at kbutterer@fosterswift.com or 616-726-2212.