

FARM LABOR

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) is the federal law which sets minimum wage, overtime, recordkeeping, and child labor standards.

Since 2009, the federal minimum wage has been \$7.25 per hour. If the minimum wage requirements apply, this is the least an employer can pay for an hour of covered work. If a farm laborer is paid a piece rate and does not produce enough to earn \$7.25 per hour, the employer must make up the difference.

Employees who work more than 40 hours in a week must be paid one and one-half times the regular rate for the overtime. Agricultural employees are exempt from the overtime provisions of the FLSA. However, employers still must pay overtime to employees whose jobs do not meet the definition of agriculture contained in the FLSA, such as selling products at a roadside stand. In addition, Christmas tree farming is considered forestry rather than agriculture and is subject to the overtime provisions of the FLSA.

Any agricultural employer who did not use more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour. Agricultural employees who are immediate family members of their employer are also exempt from minimum wage and overtime provisions.

Every agricultural employee must receive information about the working terms and conditions of the job.

Agricultural employers who utilize the services of a farm labor contractor are often in a situation of joint employment with the contractor in regard to the employees. Joint employment means that both the contractor and the farmer are responsible for complying with the minimum wage, overtime, recordkeeping, and youth employment provisions of the law. If either party fails to comply with the law, both parties may be held liable.

Tax Withholding and Eligibility to Work

All employers with employees other than their own children under age 18 should obtain an Employer Identification Number (EIN) from the IRS. The easiest way to obtain an EIN is online, at www.irs.gov. The person applying for an EIN must have a valid Taxpayer Identification Number, such as a Social Security Number, in order to apply.

The employer should be sure that each employee is legally eligible to work in the United States. The employee should fill out IRS Form I-9, Employment Eligibility Verification. The employee should have a social security number that is entered on Form W-2, which is a wage and tax statement the employer must file with the IRS for each employee.

The employee fills out a Form W-4, Employee's Withholding Allowance Certificate, which will show how much income tax to withhold from an employee's wages. IRS Publication 15 (Circular E), Employer's Tax Guide, gives detailed information about tax withholding, including different rules for family members.

Employees vs. Contractors

In determining whether to treat farm laborers as employees or as contractors, the IRS has a list of 20 factors it considers related to how much control the employer has over the laborer. Examples of these factors include the right to tell the worker when, where, and how to work, and provision of tools and materials. There are reporting and tax consequences when a laborer is determined to be an employee, so farmers may be tempted to treat laborers as contractors. However, it is important to use the correct designation to comply with the law and avoid IRS penalties. If a farmer has previously treated a laborer as a contractor and wants to change to the correct designation of employee, the IRS has a Voluntary Classification Settlement Program (VCSP), which will allow the farmer to make the transition to the employee designation with a very low penalty.

Migrant and Seasonal Agricultural Workers

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. The MSPA also requires farm labor contractors to register with the U.S. Department of Labor (DOL). The DOL has a yellow MSPA poster, which all employers of migrant and seasonal agricultural workers must display in a conspicuous place at the worksite. This poster describes the rights and protections employers must provide to workers.

The MSPA also requires employers to:

- pay workers the wages owed when due
- comply with federal and state safety and health standards if they provide housing for migrant workers
- ensure that vehicles that they use to transport workers are properly insured, operated by licensed drivers and meet federal and state safety standards
- provide written disclosure of the terms and conditions of employment

Specifically, each employer or contractor must provide the following information to migrant and seasonal workers, in writing if requested:

- the place of employment (with specifics such as the name and address of the employer)
- the wage rate (whether hourly or piece rate) to be paid
- the crops and kinds of activities involved in the employment
- the period of employment
- transportation, housing, and any other employee benefits to be provided, if any, and any costs to be charged for each
- whether state workers' compensation or state unemployment insurance is provided

North Carolina has a union that represents migrant farm workers called the Farm Labor Organizing Committee (FLOC). If a farmer employs H2-A workers (H2-A is a visa for temporary agricultural workers) through the North Carolina Growers Association (NCGA), the farmer must withhold union dues of 2.5% from migrant workers who join the union. Farmers who hire such workers must allow union officials to inspect the farm and if a conflict arises, must submit to the grievance procedures negotiated by the NCGA and the FLOC.

Recordkeeping

Agricultural employers must keep and maintain records of the names and permanent addresses of temporary agricultural employees, dates of birth of minors under age 19, and hours worked, including by employees being paid on a piece rate basis.

Employers must keep accurate records of all employees' work time, and must pay employees the correct wages for all hours that they work. The employer must keep a record of each employee's actual hours of work every day. In addition to their primary job responsibilities, employees' work time may also include things like waiting for equipment to be repaired, travelling between fields, and breaks when the employee is not free from his or her job duties.

Employers must provide a paystub to each employee on each pay day. This is required regardless of the basis of pay. Paystubs must include:

- hourly rate, or piece rate and the number of units earned, for each activity
- correct number of hours worked
- total earnings for the pay period
- amount and purpose of any deductions, such as for taxes, rent or meals
- net pay
- employer's name, address, and identification number
- worker's name, address, and social security number

Employers must keep accurate and complete payroll records. There is no required form for these records, but they must include:

- employee's full name, as used for Social Security purposes, and address
- birth date, if younger than 19
- gender
- occupation
- hours worked each day and total hours worked each workweek
- basis of employee's wages (how much per hour or piece)
- regular hourly pay rate
- total daily or weekly straight-time earnings
- total overtime earnings for the workweek
- all additions to and deductions from the employee's wages and the purpose of each
- total wages paid each pay period
- date of payment and the pay period covered by the payment

Payroll records must be kept for at least three years. Records used for computing wages, such as time sheets or field tally totals, must be kept for at least two years.

In addition to the above, the farmer's records should include:

- total laborers hired each year
- number of "man-days" the laborers work per year (a man-day is one laborer working for at least one hour of one day)
- total amount paid for labor per year
- how farm laborers are compensated – with cash, or in-kind (non-cash wages such as crops), and/or room and board/housing

Child Labor

Under the federal Fair Labor Standards Act (FLSA), the minimum age for working in agriculture is 16 if the work is considered hazardous by the Secretary of Labor or is performed during school hours. The minimum age is 14 if the work is not considered hazardous and is not performed during school hours. The minimum age is 12 if one or both parents also works on the farm and has given written consent. Children under 12 may be employed outside of school hours with parental consent on a farm where employees are exempt from the minimum wage provisions. There is no minimum age for work performed by children on a farm owned and operated by one or both parents.

Minor employees must still be paid the minimum wage. There are exceptions available for student learners and apprentices, and employees under age 20 may be paid a minimum of \$4.25/hour for their first 90 consecutive calendar days of employment.

Worker Safety

Employers are responsible for ensuring a safe environment for every worker. OSHA (the Occupational Safety and Health Administration) sets standards for employers to provide a safe and healthful workplace. OSHA has some standards specific to agriculture, such as those related to tractor rollovers, and some “general industry” standards that apply to all forms of industry including agriculture. OSHA also prohibits employers from retaliating against employees for raising a health concern or filing a complaint.

Most farm injuries and deaths are related to tractors, including overturns, runovers, and unintended contact with tractors or their attachments. A roll-over protective structure (ROPS) such as a roll bar or cage frame, when used with a seat belt, greatly reduces the chance that the operator will be seriously injured or killed by a tractor rollover. OSHA requires that, for tractors manufactured after October 25, 1976 with over 20 horsepower, the employer provide an ROPS and a seatbelt for each tractor operated by an employee (29 CFR 1928.51(b)(1)). Employers must ensure that tractor operators receive initial and annual training on seatbelt use and safe operation of the tractor, such as avoiding ditches and steep slopes and reducing speed on embankments and slippery surfaces (29 CFR 1928.51(d)).



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About the Land Loss Prevention Project The Land Loss Prevention Project is a non-profit law firm that offers legal representation of clients, community education, and professional outreach in the effort to promote wealth, land preservation, and rural livelihoods www.landloss.org

About the W.K. Kellogg Foundation - The W.K. Kellogg Foundation (WKKF), founded in 1930 as an independent, private foundation by breakfast cereal pioneer, Will Keith Kellogg, is among the largest philanthropic foundations in the United States. Guided by the belief that all children should have an equal opportunity to thrive, WKKF works with communities to create conditions for vulnerable children so they can realize their full potential in school, work, and life.

The Kellogg Foundation is based in Battle Creek, Michigan, and works throughout the United States and internationally, as well as with sovereign tribes. Special emphasis is paid to priority places where there are high concentrations of poverty and where children face significant barriers to success. WKKF priority places in the U.S. are in Michigan, Mississippi, New Mexico, and New Orleans; and internationally, are in Mexico and Haiti. For more information, visit www.wkkf.org.

About the Local Food Promotion Program The Local Food Promotion Program (LFPP) of the Agricultural Marketing Service, USDA, offers grant funds with a 25% match to support the development and expansion of local and regional food business enterprises to increase domestic consumption of, and access to, locally and regionally produced agricultural products, and to develop new market opportunities for farm and ranch operations serving local markets. For more information, visit <https://www.ams.usda.gov/services/grants/lfpp>