

# Agricultural Employment Compliance Guide



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## Wage & Hour » Overtime Requirements

### Overtime Requirements

- Agricultural employers must comply with both federal and state overtime laws
- Federal law = Fair Labor Standards Act (FLSA)
- Michigan law = Michigan Minimum Wage Law of 1964.
- Michigan overtime law mirrors the federal overtime law but every state is different.
- Non-exempt employee who works more than 40 hours during one work week must be paid at time-and-one-half regular rate for each hour over 40
- Unless employee qualifies for a specific exemption, employee is non-exempt

### Overtime Exemptions

#### Exemptions for Executives, Administrative Staff, and Other Professionals

- Not specific to agriculture and apply to all employees
- Rarely apply in the agricultural setting
- Employee's job duties must meet certain criteria AND
- Employee is paid by salary that exceeds minimum amount  
**CAUTION:** Salary alone does not determine status. Also, job title does not determine exempt status. Employee must be salaried and have duties that meet the Department of Labor criteria regardless of employee's title.
- Generally do not apply to farm employees. However, more information can be found at:
  - US DOL Fact Sheet # 17B – Executive Exemption
  - US DOL Fact Sheet # 17C – Administrative Exemption
  - US DOL Fact Sheet # 17D – Professional Exemption
  - US DOL Fact Sheet #17G – Salary Exemption

#### Agricultural Exemption from Overtime

- Employee's activities must be agricultural activities --either "primary agricultural activities" or "secondary agricultural activities"

#### Primary Agricultural Activities

- Employee engaging in primary agricultural activities is exempt from overtime regardless of why or where the work is performed
  - Primary activities ("farming and all of its branches") include:
    - Cultivating/tillage of soil
    - Cultivating, growing, and harvesting of horticultural commodities
    - Raising of livestock, bees, fur-bearing animals, poultry

#### Secondary Agricultural Activities

- Secondary agricultural activities are "any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations"
  - Secondary activities include:
    - Delivering farmer-employer's own fruit to market, storage, or carriers
    - Assembling, ripening, cleaning, grading, sorting, drying, preserving, packing, and storing farmer-employer's own fruits or vegetables

- Transportation of workers, equipment to and from fields
- Office, maintenance, protective work subordinate to farm operations
- Must relate to operations of farmer-employer's own farm
- Activities that would not be considered secondary include:
  - Weighing/transporting fruit for other farmers
  - Packing/distributing fruit for other farmers
  - Repairing farm equipment of other farms
  - Storing products for other farmers

#### **Additional Exemptions**

- Those principally engaged on the range in production of livestock
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than 13 weeks during the preceding calendar year
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16

#### **Overtime Calculations**

- Overtime = 1.5 times employee's regular hourly rate
- To determine proper overtime rate, regular rate must be determined:
  - Simple calculation if employee is paid consistent hourly rate  
Example: \$10.00 per hour x 1.5 = \$15.00 per hour overtime rate  
Each hour worked in excess of 40 in a work week must be paid at \$15.00 per hour

#### **Overtime in Piece Rate Context**

- Piece rate basis: "regular rate" = total earnings for workweek dividing that sum by number of hours worked in workweek by employee
  - Example: Workweek piece rate earnings = \$400 / 40 hours  
Workweek hourly rate earnings = \$80 / 10 hours  
Regular rate = \$480/50 = \$9.60  
Overtime rate = \$9.60 x 1.5 = \$14.40/hour OR additional \$4.80/hour for hours worked over 40

#### **Amounts Excluded from Overtime Calculation**

- Amounts not included in calculation of regular rate but rare in agriculture
  - Truly "discretionary" bonuses
  - Gifts
  - Vacation, holiday, or sick leave pay
  - Bona fide fringe benefits
  - Premium overtime pay (i.e., Sunday "double time")
  - Holiday time-and-a-half premium pay

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