

# Agricultural Workers

## Overtime Pay

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# Overview

- Current law requires agricultural workers to be paid overtime.
- Labor & Industries enforces wage and hour requirements, including overtime.
- We've been asked to address:
  - What are the current requirements?
  - How are they changing?
  - How many complaints have we received?

# Agricultural Workers Right to Overtime Pay

Before  
Nov 5,  
2020

Agricultural workers  
exempt from right to  
overtime pay  
under Minimum Wage  
Act.

Nov 5,  
2020

Supreme Court  
ruling: dairy workers  
in Washington state  
must be  
paid overtime.

Jan 1,  
2022

ESSB 5172 extends  
right of overtime pay  
to all agricultural  
workers (three-year  
phased-in).

# Court Ruling – Overtime for Dairy Workers

- Martinez-Cuevas v. DeRuyter Brothers Dairy
  - The exemption of dairy workers from overtime protections is unconstitutional and violates “a fundamental right for Washington workers to health and safety protections” under the state constitution.
  - The court’s decision affects dairy workers only – not other agricultural workers.
- Dairy workers must now be paid overtime.
- Overtime pay must be at least 1.5 times the worker's regular hourly rate.

# Agricultural & Dairy Workers - Defined

- **Dairy worker:** any individual engaged in dairy-cattle and milk-production activities.
- **Agricultural worker:** a farm employee whose duties include any of the following activities:
  - Cultivating soil and harvesting any agricultural or horticultural commodity.
  - Handling livestock – raising, shearing, feeding, caring for, and management.
  - Farm operations – management, conservation, improvement, or maintenance.
  - Packaging and commercial canning of any agricultural or horticultural commodity.
  - Oysters – cultivating, raising, harvesting, and processing.

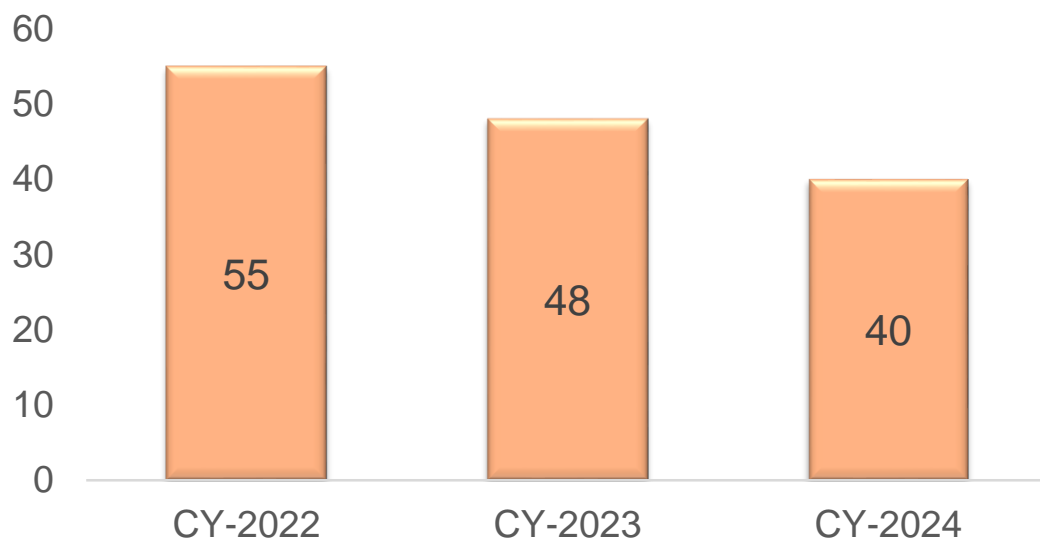
# In 2021, Legislature expanded Overtime Requirement to Agricultural Workers

## ESSB 5172:

- Removed overtime exemption for dairy workers and agricultural workers.
- Maintained dairy workers' entitlement to overtime (over 40 hours worked).
- Required payment of overtime to agricultural workers over a three-year phase-in.

# Hours Threshold for Overtime Pay phased in over three years

Three-Year Threshold Reduction  
(hours worked)



- Beginning Jan 1, 2022, workers must be paid overtime for hours worked over threshold.
- After 2024, the threshold for overtime pay will remain at 40 hours per week.

# Additional Overtime Considerations

- Agricultural workers
  - Not limited to a 40-hour work week.
  - May not waive their right to overtime pay.
  - May be entitled to overtime for work on multiple farms if the farms have shared ownership.
- Employers
  - Not required to offer overtime hours.
  - Can choose employees' scheduled hours.
  - Must pay overtime for hours worked in excess of threshold in law.



# Overtime Complaints and Enforcement

- L&I has received 23 agricultural overtime complaints (since Jan 1, 2022).
  - 8 resolved and paid before citation
  - 7 not accepted
  - 3 citations issued for violations not resolved
  - 3 withdrawn by employee
  - 2 found in compliance

**Questions?**

# Contact

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