Agricultural Workers
Overtime Pay

Ellen Saline
Senior Policy Manager

Senate Agriculture, Water, Natural Resources & Parks Committee
November 30, 2023
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.
WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES

**Hours Threshold for Overtime Pay phased in over three years**

- 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.

*Three-Year Threshold Reduction (hours worked)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Hours Worked</th>
</tr>
</thead>
<tbody>
<tr>
<td>CY-2022</td>
<td>55</td>
</tr>
<tr>
<td>CY-2023</td>
<td>48</td>
</tr>
<tr>
<td>CY-2024</td>
<td>40</td>
</tr>
</tbody>
</table>
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

Ellen Saline, Senior Policy Manager
Labor & Industries
Ellen Saline@lni.wa.gov

Tammy Fellin, Legislative Director
Labor & Industries
Tammy.fellin@lni.wa.gov