

2022 Legal Update

Washington Growers League Labor Conference

February 3, 2022

Agenda

1. Overtime comes to Washington Agriculture
 - Overtime exemption basics
 - Calculating overtime with piece rate pay
2. New wage statement (paystub) requirements
3. Wage lien statute
4. Farm Labor Contractor Act – Compliance with notice requirements

Agricultural exemption phase-out; Overtime phase-in

Effective Date	Overtime pay required for weekly hours exceeding this number
January 1, 2022	55 hours
January 1, 2023	48 hours
January 1, 2024	40 hours

Duties-based exemptions

Duties Test AND	Salary Basis Test
Executive	\$52,743.60 (increasing to ~\$85,020 by 2028)
Administrative	Same
Professional	Same
Computer Professional	Same, or \$50.72/hour (increasing)
Outside Sales	Guaranteed salary, commission, or fee basis. No minimum.
Highly Compensated Employees	\$107,432 (2021)

2022 Salary thresholds

- Small businesses: \$1,014.30/week (\$52,743.60/year)
- Large businesses: \$1,014.30/week (\$52,743.60/year)

When the rule takes effect		July 1, 2020	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026	Jan. 1, 2027	Jan. 1, 2028
For employers with 1-50 employees	Multiply minimum wage by ...	1.25x	1.5x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100)	\$821.40 (\$42,712)	\$1,014.30 (\$52,743.60)	\$1,041* (\$54,132)	\$1,210* (\$62,920)	\$1,233* (\$64,116)	\$1,414* (\$73,528)	\$1,443* (\$75,036)	\$1,635* (\$85,020)
For employers with 51 or more employees	Multiply minimum wage by ...	1.25x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100)	\$958.30 (\$49,831)	\$1,014.30 (\$52,743.60)	\$1,189* (\$61,828)	\$1,210* (\$62,920)	\$1,387* (\$72,124)	\$1,414* (\$73,528)	\$1,603* (\$83,356)	\$1,635* (\$85,020)

Note 1: Salary thresholds after 2022 are projections based on forecasted changes in the Consumer Price Index. These projections have been updated from previous versions.

Note 2: This table does not apply to computer professionals paid by the hour who have higher minimum wage multipliers.

“Salary basis”

Salary = employee regularly receives a preset amount of money for each pay period, **not subject to deductions** because of variations in the quality or quantity of work performed.

Unauthorized reductions in pay destroy the salary basis.

Authorized deductions

- One or more full day absence for personal reasons other than sickness or disability
- One or more full day absence for sickness or disability, if made under bona fide sick leave plan
- Offset jury or witness fees or for military pay
- Penalties imposed in good faith for infractions of safety rules of major significance
- Unpaid disciplinary suspensions imposed in good faith for workplace conduct rule infractions
- First of last week of employment if the full week is not worked
- Full weeks of unpaid FMLA leave

For more information, see ES.A.9.1, Salary Basis Q&A and DOL Fact Sheet #17, Salary Basis Requirement

Tips for duties-based exemptions

1. Remember the individual must satisfy **both** the duties test and the salary basis test to qualify for the exemption
2. Consider secondary effects of making someone a manager. Making someone your agent creates risk of liability for their actions.
3. If you think you found a simple solution, think again.

Calculating Overtime for Agricultural Workers

- Overtime pay = Overtime hours x 1.5 x Regular Rate of Pay
- Regular rate = total compensation for the workweek divided by total number of hours for which the compensation was paid.
 - Hourly paid worker: Regular rate = Hourly rate
 - Piece-rate paid worker:
 - Gross compensation for the workweek (including piece rate, hourly wages, and non-discretionary bonuses),
 - divided by the total number of hours of active work during the workweek, excluding rest breaks and meal breaks.
 - Worker paid combination of rates/methods:
 - same

Overtime pay example

EXAMPLE 12-1 (Employee's regular rate of pay is *more than* minimum wage):

Note: The employer has promised to pay 55 cents for every pound (unit) of strawberries picked and applicable minimum wage of \$14.49 per hour for piece-rate down time.

	Sun. June 7	Mon. June 8	Tues. June 9	Wed. June 10	Thurs. June 11	Fri. June 12	Sat. June 13	Totals
Units (bins/trees/pounds/et c.)	0	253	249	210	19 5	183	35 0	1440 total units
Total Hours of Work (include rest periods)	0	11	11. 5	10	9.5	10	8	60 total hours
Subtract Rest Periods	0	20 min. (10 x 2)	20 min. (10 x 2)	20 min. (10 x 2)	20 min. (10 x 2)	20 min. (10 x 2)	20 min. (10 x 2)	120 minutes (2.0 hours)
Piece-Rate Active Time	0	9 hours 40 min.	9 hours 40 min.	8 hours 40 min.	8 hours 40 min.	8 hours 40 min.	6 hours 40 min.	52 hours
Piece-Rate Down Time	0	1 hour	1 hour 30 min.	1 hour	30 min.	1 hour	1 hour	6 hours

Overtime pay example

1. Calculate Gross Weekly Wages, Before Overtime

- Calculate piece-rate active time pay: 1440 units x \$.55 per unit = **\$792.00** [1440 x \$.55 = \$792.00]
- Calculate piece-rate down time pay: 6 hours piece-rate down time x \$14.49 per hour = **\$86.94** [6 x \$14.49 = \$86.94]
- Combine to calculate total weekly pay not including paid rest breaks: [**\$792.00** + **\$86.94** = **\$878.94**]
- Calculate regular rate of pay & round up if less than minimum wage: **\$878.94** ÷ 58 working hours (includes piece-rate active time and piece-rate down time) = **\$15.15** per hour. This regular rate of pay is more than minimum wage (\$14.49 in 2022). [**\$878.94** ÷ 58 = **\$15.15**] [**\$15.15** > \$14.49]
- Calculate rest period pay: **\$15.15** per hour (regular rate of pay) x 2 hours (rest period total) = **\$30.30** (total rest period pay). The employee must be paid this additional amount to compensate for rest periods during piece-rate time. [**\$15.15** x 2 = **\$30.30**]
- **\$878.94** (total weekly pay not including paid rest period) + **\$30.30** (total rest period pay) = **\$909.24**. The employee must be paid \$909.24 in gross wages (excluding overtime) for the workweek. [**\$878.94** + **\$30.30** = **\$909.24**]

Overtime pay example

2. Calculate Overtime Pay

- Calculate gross wages for the workweek, excluding overtime: **\$909.24**
- Calculate regular rate of pay: **\$909.24** ÷ 60 working hours (including rest breaks) = **\$15.15** (regular rate of pay) [$\$909.24 \div 60 = \15.15]
- Calculate overtime rate owed: Divide regular rate in half (multiply by .5): $\$15.15 \times 0.5$ (half time rate owed for overtime hours) = **\$7.58** [$\$15.15 \times 0.5 = \7.58]
- Calculate overtime for the workweek: **\$7.58** x 5 hours (overtime hours above the 2022 overtime hours threshold (55)) = **\$37.90** (overtime pay for the workweek) [$\$7.58 \times 5 = \37.90]

3. Calculate Total Wages for the Workweek

- Combine gross wages before overtime with overtime pay: **\$909.24** (total weekly pay including paid rest periods) + **\$37.90** (total overtime pay) = **\$947.14**.

Pay Stubs

- Pay basis in hours or days worked;
- Applicable rate or rates of pay;
 - Piece-rate active time;
 - Piece-rate down time;
 - Hourly rates;
 - Overtime rates;
 - Rest periods;
- Gross pay;
- All deductions from the pay for the respective pay period.



Pay Stubs

- **WAC 296-131-015**
- identify the employee
- show the number of hours worked or the number of days worked based on an eight-hour day,
- the rate or rates of pay
- the number of piece work units earned if paid on a piece work basis
- the pay period,
- employer's name, address, and telephone number.

Direct deposit

- No cost to worker
- Can be distributed electronically



Other- Paid Sick Leave

- Paid sick leave accruals each month
- Paid sick leave reductions each month



NEW

Wage Recovery Act

- Employees can file a lien on property for wages
- “Employer”
 - Individual
 - Partnership/Associations/Corporations
 - Any person or group of persons acting directly or indirectly in the interest of an employer
 - staffing agency
 - subcontractors
 - joint employers
 - officer/principal/agent – unknown

Steps to take

Will a wage lien cause a default in your loan?

Do you have adequate time to clear a lien?

Regularly audit your wage practices

Be on the lookout for lien notice



Washington Farm Labor Contractor Act (FLCA)

- Most demanding farm labor contracting statute in all 50 states
- Penalties minimum of \$500 per violation or actual damages, whichever is higher

FLCA

- Farm Labor Contractor: “any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity.” RCW 19.30.010(5).
- Farm Labor Contracting Activity: “recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.” RCW 19.30.010(4).

FLC Obligations: RCW 19.30.110

- Carry and exhibit a current FLC license
- Disclose amount of bond and claims against bond
- File correct change of address with post office and notify director within ten days of change of address
- Promptly pay/distribute money and things of value entrusted to contractor by third persons when due
- Comply with all legal and valid agreements and contracts
- File detailed information regarding work offers with the nearest employment services office

What does it mean to “exhibit?”

- Post it on a website?
- Carry around a card?
- Who do you show it to?

FLC Required Disclosures: RCW 19.30.110(7)

“On a form prescribed by the director, **furnish** to each worker, at the time of **hiring, recruiting, soliciting, or supplying, whichever occurs first**, a written statement in English and any other language common to workers who are not fluent or literate in English that contains a description of...”

Rethink what it means to “furnish”:

- QR code
- Text/WhatsApp message
- Sandwich board
- Poster
- Be creative

Questions?



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