



Agricultural Labor Report

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OVERTIME PAY

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- *Overtime wages must be paid after a 40-hour workweek or a 12-hour workday, for most occupations.*
- *Overtime pay shall be a minimum of one and one-half times the regular rate of pay. Regular pay must be at least equal to the minimum wage.*
- *Agricultural employees are exempt from the overtime pay provisions. This exemption should be used only for those workers engaged directly in farm production activities.*

Introduction

The Fair Labor Standards Act serves as the guideline for the individual state minimum wage and overtime laws. Colorado maintains the same standard as the federal government for overtime wages. The agricultural labor force has different standards for enforcement of overtime pay.

Non-agricultural Overtime Requirements

For most occupations overtime wages must be paid after a 40- hour workweek or a 12-hour workday or a 12-hour consecutive shift, whichever yields the highest pay amount. Federal law does not require overtime

pay for work on Saturdays, Sundays, holidays or regular days of rest.

The minimum overtime wage to be paid must be no less than one and one-half times the regular rate of pay and the regular rate must be equal to or greater than the minimum wage. An employer may not average two or more consecutive weeks of work time in order to lessen the amount of overtime to be paid. If an employee performs work in two or more positions at different pay rates for the same employer, the wage shall be computed at the overtime rate based on the regular rate of pay for the position in which the overtime occurs, or at a weighted average of the rates for each position if overtime was incurred in both positions.

Salespersons, parts personnel, and mechanics in the automobile, farm vehicle, aircraft, and recreational vehicle industries are exempt from the overtime laws. Additionally some commissioned sales personnel, ski industry personnel, and medical transportation personnel are exempt from the regulations.

Agricultural Overtime Requirements

Employees who are employed in agriculture (as that term is defined in the Fair Labor Standards Act) are

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exempt from the overtime pay provisions. They do not have to be paid one and one-half time their regular rates of pay for hours worked in excess of forty per week.

It should be noted that agriculture does not include work performed on a farm that is not incidental to or in conjunction with the farmer's agricultural operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are the basis of the work. Any employee that falls under these two sets of circumstances must be paid for overtime when the conditions are met.

Use of Agricultural Exemption

This agricultural exemption of this fair labor standard should be used prudently. There has been significant legal activity surrounding employers who misused the exemption, and findings in those legal cases can be summarized as:

1. It has been argued that only labor devoted strictly to agricultural production operations of a farm is exempt.
2. It has been argued that any work done for an agricultural producer, but not directly related to farm enterprises is not exempt.
3. Specifically, tasks related to administration, value-added processing or work done away from the farm production site are not exempt.

Summary

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for any work in excess of:

1. Forty (40) hours per workweek;
2. Twelve (12) hours per workday;
3. Twelve (12) consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal and break periods) whichever calculation results in the greater payment of wages.

Farmworkers, among employees in other specified industries and circumstances, are exempt from overtime pay.

For more information on Overtime pay, please see the following web sites:

1. <http://www.dol.gov/dol/asp/public/programs/handbook/minwage.htm>—Overtime discussion from the Department of Labor's Small Business handbook
2. <http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdfs23.htm>—Fair Labor Standards information
3. http://www.nolo.com/encyclopedia/articles/emp/ot_pay.html—A comprehensive self-help legal site
4. <http://laborstand.cdle.state.co.us/wageorder.html>—Information from the Colorado Department of Labor and Employment