

● WAGE AND HOUR LAWS (*HOURS AND OVERTIME*)

STATUTORY CITATION: Cal. Lab. Code §§ 1171–1206

RELATED REGULATIONS: Cal. Code Regs. Title 8, §§ 11130 & 11140

GENERAL SUMMARY: Just as it may with respect to wages, the state industrial welfare commission has authority to investigate hours and working conditions in any trade, occupation or industry in California, and to adopt appropriate orders regulating hours of employment whenever existing conditions are found prejudicial to the health or welfare of any segment of the workforce. Employment of any worker for longer hours than those specified in a formally adopted order, or under conditions of labor contrary to such an order, is prohibited.

PROVISIONS APPLICABLE TO AGRICULTURE: The industrial welfare commission has adopted the following provisions governing hours and overtime in agricultural employment:

OVERTIME IN PLANTING, CULTIVATION, AND HARVEST OPERATIONS — In the planting, cultivation and harvest of agricultural crops, and in the preparation of cropland, no one 18 years of age or older (other than certain irrigators) may be employed more than 10 hours in any one day, or more than 6 days in any one workweek, unless the worker is paid 1½ times his or her regular rate of pay for each hour of work after 10 in any one day and for the first 8 hours of work on the seventh day, and 2 times the regular rate of pay for each hour of work after 8 on the seventh day. These same overtime rules apply to workers who are 16 or 17 years old and are not required by law to attend school.

The overtime provision does not apply to workers employed on 7 workdays in a particular week when the worker's total hours that week do not exceed 30 and the worker's hours on any one workday do not exceed 6.

NOTE ON RECENT AMENDMENTS — The overtime protections for workers employed in planting, cultivation and harvest operations were expanded significantly by legislation enacted in September 2016. The new provisions are being phased in, according to the following schedule:

Farms That Employ More Than 25 Workers —

Beginning January 1, 2019 — Planting, cultivation and harvest workers may not be employed for more than 9½ hours a day, or for more than 55 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours.

Beginning January 1, 2020 — Planting, cultivation and harvest workers may not be employed for more than 9 hours a day, or for more than 50 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours.

Beginning January 1, 2021 — Planting, cultivation and harvest workers may not be employed for more than 8½ hours a day, or for more than 45 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours.

Beginning January 1, 2022 — Planting, cultivation and harvest workers may not be employed for more than 8 hours a day, or for more than 40 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours, nor for more than 12 hours in one day unless they receive twice their regular pay rate for all hours over 12.

Farms That Employ 25 Workers or Fewer —

Beginning January 1, 2022 — Planting, cultivation and harvest workers may not be employed for more than 9½ hours a day, or for more than 55 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours.

Beginning January 1, 2023 — Planting, cultivation and harvest workers may not be employed for more than 9 hours a day, or for more than 50 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours.

Beginning January 1, 2024 — Planting, cultivation and harvest workers may not be employed for more than 8½ hours a day, or for more than 45 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours.

Beginning January 1, 2025 — Planting, cultivation and harvest workers may not be employed for more than 8 hours a day, or for more than 40 hours a week, unless they receive at least 1½ times their regular rate of pay for the excess hours, nor for more than 12 hours in one day unless they receive twice their regular pay rate for all hours over 12.

OVERTIME IN ON-FARM PREPARATION OF CROPS FOR MARKET — In general, no worker 18 years old or over may be employed in on-farm packing operations for more than 40 hours in any workweek, unless the worker receives 1½ times the regular rate of pay for all hours worked in excess of 40 that week. Workers are also entitled to time-and-a-half for up to 4 hours after the first 8 hours of work on any day, and for the first 8 hours of work on the seventh day of the workweek. Employers must pay *double* time for all hours in excess of 12 in any one day, and in excess of 8 on the seventh day.

MEAL PERIODS — Except when a work period of 6 hours or less will complete the day's work, all farm employers must permit their employees to take a meal break of at least 30 minutes after each work period of not more than 5 hours. If the employer requires a worker to remain on duty during a meal period, the arrangement must be in writing and the meal period must be counted as paid work time.

REST PERIODS — All farmworkers who are on the job for at least 3½ hours on a given day are entitled to 10 minutes of rest for every 4 hours of work time that day. The rest period counts as paid work time.

COMP TIME IN LIEU OF TIME-AND-A-HALF — The provision elsewhere in the state labor laws that permits employers to grant time off in lieu of paying overtime pay **does not apply** to workers employed in planting, cultivation and harvest operations, or employed in on-farm preparation of crops for market.

SPECIAL NOTES OR ADVISORIES

PIECE-RATE WORKERS — In accordance with a provision in the state wage payment laws, employees who are paid on a piece-rate basis must be paid for rest periods and other non-productive time separate from their piece-rate compensation. The required pay statement must show the total number of hours of rest periods and other non-productive time, the pay rate for those hours, and the amount of pay for those hours. In general, the pay rate for rest periods cannot be less than (1) the average hourly rate determined by dividing the total amount of non-overtime pay for the workweek by the total hours worked not counting rest periods, or (2) the applicable minimum wage, whichever is higher.

RETALIATION — A person may not discharge an employee, or discriminate or retaliate in any manner against an employee, because the employee has filed a complaint, participated in a proceeding, or exercised any other right afforded by these provisions.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Division of Labor Standards Enforcement, California Department of Industrial Relations, Oakland, California 94612 (510-285-2118)*. Representatives of this agency are expressly authorized to investigate employees' hours and working conditions, and to supervise the payment of unpaid overtime compensation owed any employee under these provisions. With the consent of the employee or employees involved in a claim, the Department may take civil court action to recover unpaid overtime compensation. Violation of a wage or hour order is a misdemeanor, punishable by a fine, jail term or both.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None*.

PRIVATE CIVIL ACTION — Any employee who receives less than the legal overtime compensation applicable to his or her employment may take action to recover the unpaid earnings in a private civil suit. However, a worker's acceptance of payment of any sums found to be due on demand of the enforcement agency constitutes a waiver on the worker's part of the private right to sue.