

● FAIR LABOR STANDARDS ACT OF 1938

STATUTORY CITATION: 29 USC §§ 201 – 219

RELATED REGULATIONS: 29 CFR Parts 516, 531, and 780

GENERAL SUMMARY: In addition to child labor restrictions, overtime pay requirements, and other workplace protections, the Fair Labor Standards Act establishes a nationwide minimum wage, currently \$7.25 per hour. With some exceptions, employers must pay the federal minimum wage to any of their employees who, in any workweek, are engaged in commerce or in the production of goods for commerce.

Employers subject to the minimum wage provision must also maintain and preserve records regarding the identity of their employees, pay rates, hours worked, earnings, deductions, and dates of payment.

PROVISIONS APPLICABLE TO AGRICULTURE

MINIMUM WAGE — A farm operator or other agricultural establishment that used more than 500 worker-days of agricultural labor during any calendar quarter of the preceding calendar year (for example, 50 workers employed for 10 days, 20 workers employed for 25 days, or any other such combination) is required to pay no less than the federal minimum wage to each employee during the current year, unless the employee is statutorily excluded from coverage. The federal minimum wage, applicable in all 50 states and in Puerto Rico, is currently \$7.25 per hour.

COVERAGE EXCLUSIONS — The following categories of farm employees are *not covered* by the minimum wage provision:

- (1) Any parent, spouse, child or other immediate family member of the employer.
- (2) Any person who is employed as a hand harvest worker, is paid on a piece-rate basis in an operation customarily paid by piece rate in the region of employment, commutes daily from his or her permanent residence to the farm where employed, and was employed in agriculture less than 13 weeks the preceding year.
- (3) Any person 16 years of age or under who is employed as a hand-harvest worker, is paid on a piece-rate basis in an operation generally recognized as a piece-rate job in the local area, is employed on the same farm as his or her parent (or person standing in the place of the parent), and is paid the same piece rate as employees over age 16 on the same farm.
- (4) Any person principally engaged in the range production of livestock.

VALUATION OF NON-CASH COMPENSATION — Agricultural employers who are required to pay the federal minimum wage may generally count as part of an employee's wages the reasonable cost of furnishing the worker with food, lodging or other facilities, as long as the employer customarily provides such benefits to all other employees. The U.S. Department of Labor has determined that "reasonable cost" does not include a profit to the employer or the employer's agents, and that the imputed value may not exceed the actual cost to the employer of the food, lodging or other facilities furnished the employee. Any facilities provided employees primarily for the benefit or convenience of the employer may not be counted as wages. Records documenting the cost of furnishing such benefits in lieu of cash wages must be maintained and preserved by the employer.

RECORDKEEPING REQUIREMENTS — Agricultural employers who reasonably anticipate using more than the requisite 500 worker-days of farm labor in any calendar quarter of the current year must keep a record of each employee's name, address, sex and occupation, as well as the number of worker-days of labor employed per week or per month. Those farm employers who actually used more than 500 worker-days of farm labor in any quarter of the preceding year must follow these same recordkeeping requirements for the entire current year, but must also record for each worker the date the employee's workweek begins, the wage rate involved, the number of hours worked per day or per week, total earnings per day or per week, deductions, net wages paid, and dates of payment. An employer who makes deductions from wages for board, lodging or other facilities furnished to the worker by the employer or the employer's designee must maintain and preserve records substantiating the cost of furnishing each type of service or facility.

SPECIAL NOTES OR ADVISORIES

LIABILITY OF CREW LEADERS AND LABOR CONTRACTORS — The question of who, if anyone, is liable for payment of the minimum wage in cases where workers are represented, supplied, or supervised by a crew leader or labor contractor depends substantially on the balance of control exercised by the crew leader and the farmer over the workers and the work performed. A crew leader who merely assembles a crew of farmworkers and brings them to the farm to be supervised and paid directly by the farm operator, and who does the same work and receives the same pay as crew members, is an employee of the farmer. In such circumstances, it is the farmer's worker-day count — including the labor of the both the crew leader and crew members — that determines whether or not the minimum wage applies; if so, it is the farmer and not the crew leader who is responsible for paying it.

On the other hand, where the farmer only establishes the general manner for the work to be done, and where the contractor or crew leader makes day-to-day decisions regarding the work and has the opportunity for profit through supervision of the crew and its output (especially through the authority to hire, fire and direct the workers, set pay rates, and resolve complaints), the contractor or crew leader is the employer of the workers. To the extent that the contractor or crew leader employs more than the required worker-day volume of labor in a calendar quarter, the contractor is obligated to pay the federal minimum wage.

Whether or not the crew leader is found to be a bona fide independent contractor, however, the workers are

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considered jointly employed by the crew leader and the farmer who is using their labor if the farmer has the power to direct, control or supervise the work or to determine pay rates or the method of payment. Both the farmer and the crew leader are equally responsible for compliance with the Fair Labor Standards Act, including payment of the minimum wage (if applicable) and recordkeeping.

RETALIATION — An employer may not discharge or discriminate 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 — *Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202-693-0072)*. The Wage and Hour Division is authorized to investigate complaints of unpaid or sub-minimum wages and, where violations are found to have occurred, to impose civil penalties. In exercising these functions, the agency has authority to enter workplaces, interview employers and employees, and inspect and copy employment records.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None*.

PRIVATE CIVIL ACTION — As an alternative to administrative enforcement, the Act also permits employees claiming unpaid minimum wages to file suit in federal court for back pay and related damages, using a private attorney or public legal service provider. An employer found by the court to have violated the Act's minimum wage requirements is liable to the worker in the amount of the unpaid wages and an additional equal amount as liquidated damages. The court may also award reasonable attorney's fees and court costs.