2017 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers: Minimum Wage (Fair Labor Standards Act) [Federal]

Fritz Roka, Michael Olexa, Carol Fountain, and Jessica Fernandez

Purpose
To provide federal minimum hourly wage standards to workers and covered employees.

Who Must Comply
Any farmer using more than 500 "man-days" of labor during any calendar quarter of the preceding calendar year (the equivalent of about seven full-time employees working five days a week).

If the employer did not employ more than 500 man-days of agricultural labor in any quarter of the preceding calendar year, his/her agricultural employees are exempt from the minimum wage provisions of the FLSA for the entire following calendar year. Conversely, if the employer used more than 500 man-days of farm labor in any calendar quarter of a year, coverage extends to the entire following calendar year even if the employer does not use 500 man-days of labor in any quarter of the second year.

Employees are excluded from the minimum wage and overtime requirements of the law as well as the 500 man-day test if such employee is the parent, spouse, child, or other member of the employer's immediate family.

The following employees are also exempt from the minimum wage and overtime requirements of the law, but their man-days of work must be counted toward the 500 man-day test:

- Employees who are paid on a piece-rate basis, AND were employed in agriculture as hand-harvest laborers fewer than thirteen weeks in the previous year AND commute to work daily (non-migrants).

---

1. This is EDIS document FE407, a publication of the Department of Food and Resource Economics, UF/IFAS Extension. Published 2003, revised 2009 and 2017. This handbook is produced and distributed by the UF/IFAS Center for Agricultural and Natural Resource Law. Originally published by Leo Polopolus. Visit the EDIS website at http://edis.ifas.ufl.edu.

2. Fritz Roka, associate professor, Food and Resource Economics Department, UF/IFAS Extension, Southwest Florida Research and Education Center, Immokalee, FL. Michael Olexa, professor, Food and Resource Economics Department, and director, Center for Agricultural and Natural Resource Law UF/IFAS Extension, Gainesville, FL. Carol Fountain, editor, Food and Resource Economics Department, UF/IFAS Extension, Gainesville, FL. Jessica Fernandez, graduate student, Levin College of Law, University of Florida, Gainesville, FL.

This document is designed to provide accurate, current, and authoritative information on the subject. However, since the laws, administrative rulings, and court decisions on which it is based are subject to constant revision, portions of this publication could become outdated at any time. This publication is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this publication.

The Institute of Food and Agricultural Sciences (IFAS) is an Equal Opportunity Institution authorized to provide research, educational information and other services only to individuals and institutions that function with non-discrimination with respect to race, creed, color, religion, age, disability, sex, sexual orientation, marital status, national origin, political opinions or affiliations. For more information on obtaining other UF/IFAS Extension publications, contact your county's UF/IFAS Extension office. U.S. Department of Agriculture, UF/IFAS Extension Service, University of Florida, IFAS, Florida A & M University Cooperative Extension Program, and Boards of County Commissioners Cooperating. Nick T. Place, dean for UF/IFAS Extension.
• An employee in agriculture whose employer did not, during any calendar quarter of the preceding calendar year, use more than 500 man-days of agricultural labor.

• Any agricultural employee sixteen-years-old or younger who is employed as a hand-harvest laborer; paid on piece-rate basis in an operation recognized as a piece-rate employer in the region; employed on the same farm as the child's family; or paid at the same piece rate as employees over age sixteen on the same farm.

• Employees principally engaged in livestock range production who must be available at all hours to care for such livestock. The judicial application of this exemption does not turn on the characteristics of land use for grazing but on conditions under which the employees perform their duties. The exemption is applicable only if the method of operation is such that the computation of hours worked caring for the stock would be extremely difficult.

### Minimum Wage

Employers must, if covered, pay at least the minimum wage to all covered employees. In cases where an employee is subject to different state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

### Opportunity Wage

Employers may pay entry wages of not less than $4.25 an hour to workers less than twenty years of age, but only for the first ninety consecutive calendar days (not days of work). Employers, however, cannot take action to displace regular employees to hire workers under age twenty at the opportunity wage.

### Recordkeeping

Payroll records must be maintained for at least three years for each employee, including family members of employees.

This three-year requirement for records preservation includes any contracts, agreements, or memoranda concerning employment, and any collective bargaining agreements. In addition, sales and purchase records are to be maintained for three years.

The following records must be retained for two years:

- Basic employment and earnings records such as time cards or time sheets.
- Wage rate tables or schedules.
- Order, shipping, and billing records.
- Itemized support for additions or deductions in wages.

These records should include

- Full name of employee (same name as used for Social Security purposes).
- Complete home address, including zip code.
- Sex and occupation in which employed.
- Identification of employees who are members of an employer’s immediate family.
- Identification of employees who are hand-harvest workers paid on a piece-rate basis.
- Identification of employees who are employees principally engaged in range livestock production.
- The number of man-days worked each week or month (a man-day is any day during which an employee does agricultural work for one hour or more).
- Time of day and day of week on which workweek begins.
- Basis on which wages are paid (i.e., rate per hour, rate per day, or rate per piece work).
- Hours worked each workday and total hours worked each workweek.
- Total daily or weekly earnings, depending on the applicable pay period.
- Total additions to or deductions from wages with an explanation of each.
- Total wages paid each pay period together with proof of payment to individual workers, including cash advances or other deductions.
- Date of payment and pay period covered by payment.

Have on file a statement from each exempt piece-rate employee showing the number of weeks employed in agriculture during the preceding year.

Have on file the date of birth and the parents’ names for each exempt minor (under age sixteen) paid on a piece-rate basis.

Maintain a file showing the full name, present and permanent address, and date of birth of any minor under age eighteen who works when school is in session or works in a hazardous occupation.

Note: Minors under the age of eighteen are not allowed to handle nor apply agricultural pesticides (See EDIS document FE422, Worker Protection Standard-EPA [Federal] for pesticide regulations).
Display the official poster *Notice to Employees* where employees can see it. This poster contains basic information on minimum wages. Visit https://www.dol.gov/whd/ag/ag_flsa.htm for more information.

**Overtime Exemption**

Employees employed in agriculture as defined by the FLSA are exempt from overtime. In general, under the primary definition of agriculture, employees engaged in cultivating the soil; or growing or harvesting crops; or raising livestock, bees, fur-bearing animals, or poultry are exempt from overtime. Under the secondary definition of agriculture, any practices performed (other than those listed under the primary definition) such as office work, shipping, warehousing, transporting, or sales are exempt only if performed by employees of the farmer with respect to products grown by their employer or, if performed on a farm, as an incident to and in conjunction with products grown on the particular farm on which they are working. Performance in a week of any work that is non-exempt under the primary or secondary definition will cause the employees to be subject to overtime for that week.

Workers (not employed by the farmer on whose farm they are working) who work solely on a farm where their work relates only to fruits, vegetables, or nursery products grown on that farm are exempt from overtime.

Citrus grove caretakers who have full responsibility for growing citrus in groves owned by others are considered to be farmers with respect to the crop they are growing.

For employees of Florida agricultural employers outside the definition of agriculture as outlined above, the employer should seek professional legal counsel or advice from the local United States Department of Labor, Wage, and Hour office concerning specifics of the overtime exemption.

**Certain Deductions Possible**

Employers may deduct the cost of certain items from farm worker wages. However, care should be exercised because deductions of certain items cannot reduce wages below the minimum wage.

Deductions that *may* lawfully reduce wage level below the current minimum wage are:

- Taxes required by law (e.g., Social Security, Medicare, and withholding tax).
- *Third Party* deductions authorized by the employee (e.g., union dues, savings bonds, merchant accounts, insurance premiums, churches, and charitable organizations) so long as the employer receives no profit or benefit directly or indirectly.
- Salary advances exclusive of interest charges. Receipts must be obtained and retained.
- Housing and meals not exceeding the lesser of actual costs or fair rental value and meeting a number of specified conditions dealing with profit and rate of return on investment (29 C.F.R., Part 531). Housing facilities must be maintained for the benefit of employees, occupancy must not be mandatory, and costs cannot include depreciation when the facilities have been fully depreciated. Recent rulings by the Department of Labor indicate some migrant housing may have no fair rental value. If you provide and charge farm workers for housing that can only be used by migrant workers and, thus, has no fair rental value, this rental charge cannot reduce their wages below the current minimum wage.

A deduction that may not lawfully reduce wage level below the current minimum wage *is transportation advances*. This policy applies where agricultural employers provide daily transportation to assure a sufficient number of workers. However, when the following factors are all present, agricultural employers may deduct from workers’ wages the lesser of reasonable costs or fair value of such transportation regardless of whether such deductions will decrease workers’ wages below the minimum wage:

- The workers must know the location of their work site.
- Alternative transportation sources must be readily available.
- The workers are not required to use the employer’s transportation.
- Charges for contractor’s (crew leader) services.

**Overtime Exemption for Agricultural Transportation**

The overtime exemption is available for any employee engaged in the transportation or preparation for transportation of fruits and vegetables to the first place of processing or first marketing within the same state, but not for mechanics and office workers of a harvester or purchaser.

This overtime exemption also applies to any employee transporting farm workers to be employed in the harvesting of fruits or vegetables between any place in the same state and the farm (whether or not performed by the farmer).
• Charges for *Tools of the Trade and Other Materials Incidental to Carrying on the Employer’s Business.*

**Retaliation Policy**

The minimum wage law forbids any person to discharge or in *any other manner* discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this law.

**Posting Requirements**

The U.S. Department of Labor official poster, *Notice to Employees*, must be securely affixed in a place where employees can clearly see it. The following notation may be added: *Overtime provisions not applicable to employees employed in agriculture.*

Failure to post is considered a violation of the minimum wage law.

**Enforcement**

United States Department of Labor’s Wage and Hour Division enforces minimum wage law (Fair Labor Standards Act).

Following an inspection by the United States Department of Labor, an employer can be ordered to pay back wages and liquidated damages. Civil money penalties for violations of minimum wage law include

- Civil money penalties up to $1,100 per violation, per employee for willful or repeated violations of minimum wage and/or overtime pay requirements.
- Civil lawsuits by the United States Department of Labor.
- Civil lawsuits by employees.
- Criminal indictments and penalties for violations under the FLSA by the United States Department of Labor.

**Responsible Agency**

United States Department of Labor
ESA Wage and Hour Regional Office
61 Forsyth Street, Room 6M12
Atlanta, GA 30303
(404) 302-5300
http://www.doleta.gov/regions/reg03

(See EDIS document FE392, *Child Labor [Federal and State]*.)