
The intricacies in ag overtime

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Agricultural employers face challenges not encountered by many nonagricultural employers, not the least of which is a sometimes convoluted overtime scheme that can have them dealing with multiple state Industrial Welfare Commission (IWC) orders as well as federal law, all of which are inconsistent with each other.

Nonagricultural employers have to worry about complying with state overtime law, based upon the IWC order that applies to them, and with the federal Fair Labor Standards Act (FLSA). The nonagricultural IWC orders and the FLSA, however, each contain the same weekly overtime requirement: time-and-a-half after 40 hours of work in a workweek.

Further, the nonagricultural IWC orders have the same daily overtime requirement: time-and-a-half after eight hours of work in a workday, and double-time after 12 hours of work in a workday. They also require the payment of overtime on the 7th day of work in a workweek.

Several IWC orders can apply to agriculturally related work, however. One of those, IWC Order 14, which applies to agricultural operations, does not require overtime until after 10 hours of work in a workday or six days of work in a workweek.

Different duties have different overtime requirements

Many agricultural employees switch duties during the workweek, and even during the workday. This can bring them under the different overtime requirements of the various IWC orders and the FLSA. To keep the requirements straight, one must carefully examine what work was performed and when it was performed, and then decide which overtime requirement applies.

Take, for example, a farmer with both field crops and a packinghouse on his farm. Field work is scheduled for 10 hours a day, six days a week. Packinghouse work is scheduled for eight hours a day, five days a week. The field work falls under IWC Order 14. An employee who performs field work for no more than 10 hours on a weekday and on no more than six workdays in a workweek is not entitled to overtime. In contrast, the packinghouse work falls under either

IWC Order 8 (if crops grown by other farmers are packed there) or IWC Order 13 (if crops grown by only that farmer are packed there). No matter which of those two IWC orders applies, an employee working in the packinghouse is not entitled to overtime as long as he works no more than eight hours on a workday, no more than 40 hours in a workweek, on no more than six workdays in a workweek.

Switching duties from field to packinghouse

Problems can arise, however, when an employee switches from the field to the packinghouse, or vice versa, during either the same workweek or the same workday. California's Labor Commissioner has stated that an employee who switches during a workday from work covered by one IWC order to another must be paid overtime if the order under which he is working requires it be paid for that part of the workday.

This can produce some strange results. Take, for example, an employee who starts a workday by working five hours in the packinghouse. He ends his workday with five hours of field work—a total of 10 hours for the workday. He is not entitled to any daily overtime because his ninth and tenth hours of work were under IWC Order 14, which does not require overtime until after 10 hours of work in a workday. The result changes if the assignments are reversed, with the employee's first five hours of work in a workday in the field and final five hours in the packinghouse. In that case, he would be entitled to two hours of overtime under either IWC Order 8 or 13, both of which provide daily overtime after eight hours of work, because his ninth and tenth hours of work fell under one of those orders.

FLSA requirements further complicate matters

Another wrinkle is added by the injection of the FLSA into the analysis. As noted above, the FLSA requires overtime after 40 hours per workweek, but it specifically excludes agricultural work from its coverage. However, the FLSA also provides that an employee who performs any amount of nonagricultural work during a workweek is entitled to overtime after 40 hours worked, even if he performs mostly agricultural work during that workweek.

The field work described above is agricultural work under the FLSA. Further, packinghouse work that involves the handling of crops produced by only the employee's employer is also considered agricultural work under the FLSA. An employee who performs only agricultural work during a workweek is not entitled to FLSA overtime.

Packinghouse work that involves the handling of crops grown by other farmers is not agricultural work under the FLSA, however. An employee who switches between the packinghouse and the fields during the workweek is deemed a nonagricultural employee under the FLSA for the entire workweek and entitled to overtime after 40 hours worked, with both his packinghouse and field work counted toward that limit and beyond.

While such an employee is entitled to FLSA overtime for working more than 40 hours of mixed agricultural and nonagricultural work in a workweek, he might not be entitled to overtime under either IWC Order 8 or 14. That's because hours worked under Order 14 are not counted toward the 40-hour weekly overtime limit of IWC Order 8.

Take, for example, an employee who works six 10-hour days in a workweek. He works the first six hours each workday in an Order 8 packinghouse and ends each workday with four hours of field work. He is not entitled to weekly overtime under Order 8 because he worked only 36 hours under it; the 24 hours of Order 14 field work is ignored for that purpose. The employee would, however, be entitled to 20 hours of FLSA overtime because he is considered under that law as a nonagricultural employee for the entire workweek, with all of his hours worked taken in account for determining overtime pay due him.

Assess carefully

As many variables exist in the overtime analysis for agricultural employment, it is important to thoroughly assess each situation. Failure to do so could result in potential overtime liability.

NOTE:

The above information illustrates the application of current labor and employment law and is not legal advice.
