



# Agribusiness Alert: All Agricultural Workers in the State of Minnesota That Are Paid an Hourly Rate Are Now Entitled to Overtime Pay

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**Introduction.** The Minnesota Court of Appeals recently ruled that all agricultural workers in the State of Minnesota that are paid an hourly rate are subject to the overtime pay requirements of the Minnesota Fair Labor Standards Act (MFLSA). Only salaried agricultural employees are exempt from the overtime pay requirements of the MFLSA.

The ruling in *In the Matter of the Order to Comply: Labor Law Violations of Daley Farms of Lewiston*, imposes greater overtime pay requirements than what is required under the federal Fair Labor Standards Act (FLSA). This alert explains the implications of the Minnesota Court of Appeals decision in Minnesota and compares the Minnesota law to labor laws regarding agricultural workers in other states.

**The Federal Fair Labor Standards Act.** The FLSA mandates that employers pay non-exempt employees overtime pay at the rate of one and half times their regular hourly rate for all hours worked over 40 in a week. The federal law exempts certain agricultural workers from these overtime pay requirements. To fit within the exemption, the employees must perform work in "agriculture." Agriculture is defined specifically as work performed on a farm, and must be incidental to or in conjunction with the farmer's operation. Agricultural employees fall within the federal overtime exemption if they work for a farm in the connection with that farmer's agricultural production.

**The Minnesota Fair Labor Standards Act.** The Minnesota Fair Labor Standards Act (MFLSA) is substantially similar to the federal law but requires overtime pay for non-exempt employees for all hours of work over 48 in a week. Similar to the federal law, the MFLSA exempts employers who employ "agricultural workers." The MFLSA definition of agricultural worker is similar to the federal definition, but as explained by the Court in *Daley Farms*, the employee exemption from overtime requirements is quite different.

**Summary of the Daley Farms Decision.** The federal overtime laws expressly permit states to establish additional regulations that exceed the FLSA's protections for workers.<sup>1</sup> Minnesota, through the MFLSA, has implemented additional regulations that affect employers of hourly agricultural workers.



The MFLSA exempts any agricultural worker "who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage plus 17 hours at 1-1/2 times the state minimum wage per week." Minn. Stat. § 177.23, subd. 7(2). "Salary" is not defined in the MFLSA.

Daley Farms' argued that hourly workers are within the exemption and, because its agricultural workers were consistently paid above the salary line established by the MFLSA, it should be exempt from overtime pay requirements. The Court of Appeals rejected Daley Farms' argument, ruling that hourly employees are not "salary" employees for purposes of the exemption; therefore, Daley Farms was not within the exception and was required to pay overtime to its employees.

The Court's finding was based on the definition of salary established and codified by the Minnesota Department of Labor and Industry (DLI). The DLI rules, established pursuant to Minn. Stat. § 177.28, subd. 1,2 define salary as "not an hourly rate. An employee is paid a salary if the employee, through agreement with an employer, is guaranteed a predetermined wage for each workweek." Minn. R. 5200.0211.

This case establishes that the MFLSA seasonal agricultural worker exemption is based not solely on the rate of pay, but also on whether the worker is receiving a "salary" as defined by DLI in the Minnesota Rules. If the employer fails to pay the agricultural worker a "salary," the employer does not get the benefit of the exemption and is required under Minnesota law to pay overtime.

**Best Practices.** In order to comply with this new decision, agriculture employers should do the following:

(1) Decide Whether to Pay Salary or Hourly. Agriculture employers in Minnesota are now forced to make a decision: pay workers a salary in order to preserve the exemption from overtime requirements, or pay an hourly rate, including overtime. The decision will depend, in large part, on the expected amount of hours worked in a one week period. If paying workers on a salaried basis, employers must pay a set amount for all hours worked in a week, regardless of any overtime. In order to qualify for the exemption under the MFLSA, that weekly salary must be greater than what the worker would have been paid for 48 hours of work at the state minimum wage (currently between \$5.25 and \$6.15 per hour) plus 17 hours at 1-1/2 times this amount. Because the Minnesota minimum wage is lower than the federal minimum wage, the current weekly salary rate of pay must be just over \$400 per employee.

If the employer chooses to compensate workers at an hourly rate, then under Minnesota law workers must be paid overtime at the rate of 1-1/2 times their regular hourly rate for hours worked over 48 in one workweek. The FLSA requires overtime pay to begin for all workers after 40 hours of work in one week, but because hourly agricultural workers are generally exempt under the federal law, the state law will govern employer obligations. This means overtime for hourly agriculture workers does not kick in until the worker has worked over 48 in one week.



(2) Written Offers of Employment. All employers, including those in agriculture, should regularly make offers of employment in writing and specify the rate and method of pay for the job, including whether the pay is a weekly salary or an hourly wage. It also is important to make sure the employee understands the terms offered, and accepts those terms. If hiring workers who have a limited understanding of English, make sure you use an interpreter or write the offer in the applicant's native language. Also be aware that offer letters can sometimes form binding contracts of employment, and legal review of offer letters is highly recommended.

(3) Keep Records. Employers are required under both federal and state laws to maintain records of hours worked for hourly employees. Keeping accurate employment records, including offer letters containing details about wage rates and timesheets, is very important. Documentation is always a critical part of any legal dispute. If there is ever a question about the amount or manner of pay received by workers, the burden of proof is generally on the employer. This means the employer must produce evidence that it has complied with both state and federal wage and hour laws. Defending or responding to government enforcement actions or lawsuits can be very difficult in the absence of good documentation.

**Conclusion.** Even though Daley Farms is unique to Minnesota agriculture employers, all employers in the industry should pay attention to developments related to wage and hour laws. Be sure to seek legal advice in your state to ensure your business practices are in compliance with these complicated laws.

Gray Plant Mooty is a full-service law firm with specialized practices in agribusiness and employment law. Contact Jeff Peterson if you have any questions regarding this alert.

<sup>1</sup> "No provision of this chapter . . . shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter." 29 U.S.C. § 218(a) (2011).

<sup>2</sup> The commissioner is authorized to "adopt rules, including definitions of terms, to carry out the purposes of sections 177.21 to 177.44, to prevent the circumvention or evasion of those sections, and to safeguard the minimum wage and overtime rights established by sections 177.24 and 177.25." Minn. Stat. § 177.28, subd. 1.

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