



SUMMARY OF AGRICULTURAL EMPLOYMENT REGULATIONS AND FARM LABOR CONTRACTOR REQUIREMENTS

This document is intended as a summary of employment laws relating to the agricultural industry. For more specific information, contact any Department of Labor & Industries (L&I) office and ask to speak to an Industrial Relations Agent. Differences between state and federal laws are noted, and in such instances, the more stringent law applies.

1. Payment of Wages: For agricultural employees 16 years of age and older, the rate of pay must be equal to minimum wage for all hours worked regardless of the payment method. Employees under 16 years of age may be paid 85% of the adult minimum wage.

Minimum wage changes each January 1. Payment methods may include:

- | | | | | |
|-----------|------------|-------------|------------------------|-----------|
| > Hourly | > Salary | > Piecerate | > Per Pound | > Per Box |
| > Per Bin | > Per Sack | > Per Flat | > Combination of rates | > Other |

Neither state nor federal minimum wage is required for individuals who meet the following requirements:

- > Are employed as hand harvest laborers, and
- > Are paid on a piece work basis where piece work is a common payment in the region of employment, and
- > They commute back and forth daily from own residence to farm on which employed, and
- > They have been employed in agriculture less than 13 weeks during the preceding calendar year. This exemption is not intended for agricultural workers who earn their livelihood by performing agricultural work on one or more farms per year.

Overtime pay is not required for employees employed on the farm or for employees employed by businesses that that pack, package, grade, store or deliver to storage or to market or to a carrier for transportation to market agricultural or horticultural products. Overtime pay is also not required for employees employed in commercial canning, commercial freezing, or any other commercial processing.

2. Record Keeping: Records of dates and hours worked must be kept on a daily and weekly basis showing time in and time out, and show and it is recommended to have employees record when meal periods are taken on their time records. Employers may use any timekeeping method as long as it is accurate and complete. Typical records include:

- | | | | |
|--|---|--------------------------------|---------------------|
| > Time clock | > Sign-in sheet | > Written time cards or sheets | > Daily record book |
| > Attendance rosters if used as time sheet | > Calendar with employee name and hours written on it | | |

Time records may be kept by employees or by owner or supervisors/crew leaders. (L&I recommends, but does not require, allowing employees to keep their own records of days and hours worked.) If employees work as a family unit, each employee must have his/her own time and payroll records. To avoid potential issues during or after employment, L&I recommends that the terms for wage and/or bonus agreements are in writing and provided to employees in a language they understand. State record keeping regulations and federal MSPA (Migrant and Seasonal Agricultural Worker Protection Act) requires that time and payroll records must be kept for three years and must contain the following information regardless of record keeping and payment methods:

- | | | |
|--------------------------------------|------------------------|-------------------------------|
| > Name | > Address | > Occupation |
| > Dates of employment | > Rate or rates of pay | > Amount paid each pay period |
| > Total hours worked each pay period | | |

3. Payment Interval: Wages must be paid at no longer than monthly intervals on established regular payday, unless federal law requires more frequent pay intervals (MSPA requires payment no less often than every two weeks, or semi-monthly). When an employee is fired, laid off or quits voluntarily, final wages are due on the regularly established payday after termination. No advance notice by employee or employer is required for termination.

4. Pay Statements: Pay statements must be provided to each employee at the time wages are paid. If employees work as a family unit, each employee must have his/her own pay statement. The following information must be included on each pay statement:

- | | |
|------------------------|--|
| > Name of employee | > Number of piece work units earned if paid on piece work basis |
| > Rate or rates of pay | > Number of hours worked or the number of days worked based on an 8-hr day |
| > Gross pay | > All deductions and the purpose for each deduction |
| > Pay period dates | > Employer's name, address, and telephone number |

Under WA law, employee social security numbers are not required on the pay statement. The pay statement must be separate from paycheck (not just written on the face of the check). Federal MSPA requires the employer's IRS ID number on the pay statement.

5. Meal and Rest Periods: Both adult and minor agricultural employees are entitled to meal and rest breaks. Employees may waive meal breaks. If employees waive their meal breaks, they must be paid for the meal period and L&I strongly recommends obtaining a written statement from the employee that it is his/her choice to waive the meal period. Employers are not required to allow employees to waive their meal breaks. Employees may not waive their right to rest periods.

- > **Meal Breaks:** If working more than 5 hours, employees shall receive at least a 30-minute unpaid meal period; if they work more than 11 hours in a day, they must be allowed at least one additional 30-minute meal period.
- > **Rest Breaks:** Employees shall be allowed at least a 10-minute paid rest period in each 4-hour period of employment. If paid on a piecework basis, the rest period time must be included in the number of hours for which the minimum wage must be paid.

6. Employment of Workers Under Age 18 (Minors): When employing any person under age 18, the employer must file an application for a Minor Work Permit with L&I within 3 days of employing the minor. The process is through the Master Business License section of the Dept. of Licensing. The employer must obtain and complete the "Parent/School Authorization" form for each minor employee, which is to be kept with employment records for three years. Specific laws regarding hours of work and allowable or prohibited occupations must be followed that are specific to age groups of 12/13, 14/15, and 16/17 years of age.

For more specific information and forms, check L&I's publication 'Young Workers in Agriculture' (form #F700-096-909 (3/03), the L&I website at www.lni.wa.gov/WorkplaceRights, or contact the nearest L&I office.

7. Farm Labor Contracting Law: If an agricultural employer uses the services of a Farm Labor Contractor (FLC) for a fee to recruit, employ, solicit, supply, or transport agricultural employees to perform agricultural work on a farm, the FLC must have a valid farm labor contractor license from L&I.

Definition of agricultural employer: Any person engaged in agricultural activity including growing, producing, harvesting of farm/nursery products, or engaged in forestation or reforestation of lands, which includes but is not limited to planting, transplanting, tubing, precommercial thinning, thinning of trees and seedlings, clearing, piling and disposal of brush and slash, harvest of Christmas trees, and other related activities.

Definition of agricultural employee: any person who renders personal services to, or under the direction of an agricultural employer in connection with the employer's agricultural activity.

L&I advice to agricultural employers is: **Know Your Contractor!** Be sure the FLC:

- > has a valid FLC license
- > has a bond sufficient for the number of workers employed
- > is registered with and is current for industrial insurance premiums
- > is paying at least the minimum wage and is keeping time records

The FLC law requires that either the FLC or user of his/her services keeps records of names of workers, rate or rates of pay, number of piecework units if paid by piecework, number of hours worked, total pay period earnings, deductions identified and listed separately, and net pay. The FLC is required to provide a copy of these records to the user—the agricultural business. The farm owner is responsible to have records prepared for every worker who is on the farm property. If the FLC defaults or is unlicensed, the agricultural employer may be held responsible for paying premiums for industrial insurance and wages due to employees, and they may file crop liens against the agricultural employer. If an agricultural business *knowingly* uses the services of an unlicensed FLC, potential liability could include payment of taxes, wages, and a Notice of Violation, including penalties.

To verify whether the FLC has a valid farm labor contractor license and is registered and up-to-date for payment of industrial insurance premiums, check L&I websites: FLC license at www.lni.wa.gov/WorkplaceRights.

To verify Industrial Insurance, go to www.lni.wa.gov/ClaimsIns/ (in middle box to the right of the screen).

Link to U.S. Dept of Labor Migrant & Seasonal Workers fact sheet #49: <http://www.dol.gov/esa/regs/compliance/whd/whdfs49.htm>

Link to U.S. Dept of Labor Agricultural Employers fact sheet #12: <http://www.dol.gov/esa/regs/compliance/whd/whdfs12.htm>