

September 2001

ALR 01-01



# Agricultural Labor Report

Colorado  
State  
University

Extension

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<http://dare.colostate.edu/pubs>

## FEDERAL MINIMUM WAGE

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- *Since 1978, the minimum wage has been the same for most agricultural and non-agricultural employees.*
- *Farmworkers are exempt from overtime provisions.*
- *Most agricultural employers, agricultural associations, and farm labor contractors are subject to the Migrant and Seasonal Agricultural Workers Protection Act.*

### Introduction

The Fair Labor Standards Act (FLSA) established minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers. The initial law covered only employees engaged in interstate commerce or those in the production of goods used for interstate commerce. The number of occupations included in the minimum wage laws has steadily increased until, at present, the majority of jobs in the United States are included.

### Minimum Wage Law of 1997

On September 1, 1997 the minimum wage for most occupations in the United States was increased from

\$4.75 per hour to \$5.15 per hour. This minimum wage increase included agricultural labor.

A new element to the law was the enactment of an introductory wage for employees under the age of twenty in the first 90 calendar days of employment with an employer. This rate called for an hourly minimum wage of \$4.25 for the employee during this time.

Other exceptions to the law were granted for some full-time college students, student learners and apprentices, and workers with disabilities. For jobs that rely on “tips” to provide a significant proportion of the income, an employer is required to pay a minimum wage of \$2.13 per hour. However, if the employer contribution combined with the “tips” falls short of the minimum wage standard, the employer must increase their payment to the employee to make up the difference.

Municipalities, counties and states may have wage standards exceeding those mandated by federal law. Currently, Colorado law requires the same standards required by federal law.

Overtime pay must be at least one and one-half times the employee’s normal wage. The overtime pay will

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commence when the employee exceeds a 12-hour workday or a 40-hour workweek. (See fact sheet ALR-02 on Overtime pay).

### **Agriculture**

From the initial enactment of the minimum wage law in 1938 until 1967, there was no minimum wage standard for agricultural workers. When agriculture was included in the law on February 1, 1967 the minimum wage rate was the same as it was for any other occupation considered under the law. This existed until February 1, 1969, when the law was changed to increase the non-farm minimum wage, but not the agricultural minimum wage. In 1978, agricultural wages were increased to meet the standards of other industries.

Even though agricultural employers fall under the minimum wage guidelines there are important exceptions for the industry. The most important are:

1. Employees in the agriculture industry are exempt from the overtime requirements.
2. Any employer who does not use more than 500 “man days” of farm labor during any calendar quarter of the preceding calendar year is exempt from paying the minimum wage. *A “man day” is when an employee performs at least 1 hour of work.*
3. Agricultural employees who are members of the immediate family of the employer are not covered by the standard.
4. Those principally employed on the range for production livestock are exempt from the minimum wage standard.
5. Local hand harvest laborers who commute daily from their permanent residence and are paid on a piece rate basis in traditional piece-rated occupations, and who were engaged in agriculture less than 13 weeks during the preceding calendar year, are exempt from the minimum wage standard.
6. Non-local minors under the age of 16, who are hand harvesters and paid on a piece rate basis in traditional piece-rated occupations, employed on the same farm as their parents, and paid the same rate as those over the age of 16 are exempt from the minimum wage requirement.

It is important to note that the definition of agricultural employment does not include work performed on a farm that is not incidental to or in conjunction with the farmer’s operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are being worked.

### **Summary**

The current federal minimum wage standard is \$5.15 per hour for most occupations, with a \$4.25 per hour for employees under the age of 20, who are in the first 90 calendar days of initial employment. Agricultural employment has the same minimum wage standards as does non-agricultural employment, but agriculture has additional exemptions from the standard. There are exemptions for employers that utilize less than 500 man- days in a quarter, immediate family members, livestock production, and certain piece rate employees.

Given many employers’ concerns about managing labor-related risk, it is important to understand if an operation’s employees are truly exempt. In short, the employer should assume that any labor demand directly related to production tasks is exempt. However, those tasks that are more similar to a typical small business (bookkeeping, routine maintenance of buildings and machinery, processing and marketing of products) are less likely to be exempt from the overtime pay provisions.

For further information on minimum wage laws see the following web sites:

1. <http://www.dol.gov/dol/esa/public/minwage/chart.htm#2> - History of minimum wage
2. <http://www.dol.gov/dol/esa/public/minwage/main.htm> - Department of Labor answer page
3. <http://laborstand.cdle.state.co.us/wageposter.html> - Colorado Minimum Wage Poster
4. <http://laborstand.cdle.state.co.us/> - Colorado Department of Labor and Employment Frequently Asked Questions
5. <http://cdle.state.co.us/default.asp> - Colorado Department of Labor and Employment home page
6. [http://www.nolo.com/encyclopedia/articles/emp\\_min\\_wage.html](http://www.nolo.com/encyclopedia/articles/emp_min_wage.html) - A comprehensive self-help legal site with good information for employers
7. <http://www.dol.gov/dol/esa/public/regs/compliance/whd/hrg.htm> - Handy reference guide to the Fair Labor Standards Act