

Getting It Straight (Time): Overtime and Other New Rules for Ag Employers in California

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AB 1066

- It was signed into law in 2016 and took effect on 1/1/17.
- It repealed a provision that had exempted agricultural employees from certain Labor Code provisions, including:
 - Meal periods
 - Day of Rest
 - Overtime pay (daily, weekly, and 7th day)
- It added to the Labor Code a chapter phasing in daily and weekly overtime thresholds for agricultural employees starting in 2019.

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Meal Periods

- The exemption's repeal applied the Labor Code's meal period provisions to ag
 - replacing provisions that were in Order 14.
- **Before:** *authorize and permit a meal period after a (**each**) work period of not more than 5 hours*
- **Now:** *provide a meal period after a work period of not more than 5 hours per day*
 - *2nd meal period after a work period of not more than 10 hours per day*

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Day of Rest

- The exemption's repeal applied the Labor Code's day-of-rest provisions to ag employees.
- An employer may not *cause* an employee to work more than 6 days in 7 (workweek basis).
- Employees who know of their right to a day of rest may *choose* to work more than 6 days in 7.
- By providing the required number of days of rest in the same calendar month, an employer may require an employee to work more than 6 days in 7.

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MW Increases and OT Phase In

	Employer with 26 or more employees (large employer)				Employer with 25 or fewer employees (small employer)			
Year	MW (\$/hr.)	Hrs/WD	Hrs/WW	Min. Exempt Ee Salary (\$/mo.)	MW (\$/hr.)	Hrs/WD	Hrs/WW	Min. Exempt Ee Salary (\$/mo.)
2017	10.50	10	N/A	3,640	10	10	N/A	3,467
2018	11	10	N/A	3,814	10.50	10	N/A	3,640
2019	12	9.5	55	4,160	11	10	N/A	3,814
2020	13	9	50	4,507	12	10	N/A	4,160
2021	14	8.5	45	4,854	13	10	N/A	4,507
2022	15	8*	40	5,200	14	9.5	55	4,854
2023	15	8*	40	5,200	15	9.0	50	5,200
2024	15↑	8*	40	5,200↑	15↑	8.5	45	5,200↑
2025	15↑	8*	40	5,200↑	15↑	8*	40	5,200↑

*Double time after 12 hours

Counting Employees

- For MW enforcement, the labor commissioner says the count is **pay period by pay period**.
- *LC: A court or the Labor Commissioner likely would focus on the facts during a pay period in which an alleged underpayment occurred.*
- An employer with 26 or more employees at any time in a pay period is “large” for that pay period.
- As the same wording is used for overtime phase in, it’s highly likely the same approach will also be applied for that purpose.

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Counting Employees

- Who is counted?
 - LC: *Any individual performing any kind of compensable work for the employer who is not a bona fide independent contractor.*
 - Full-time employees
 - Part-time employees
 - Minors
 - New hires
 - Overtime-exempt salaried supervisors
 - LC: *An employer who obtains workers through a ...labor contractor...should aggregate and count such workers...as employees for purposes of determining the applicable minimum wage rate.*

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7th Day Overtime

- AB 1066 applied the Labor Code's 7th day overtime requirements to ag employees.
- **Order 14 and Labor Code:** *1½ times an employee's regular rate of pay for the first 8 hours worked **on the 7th day of work** in a workweek*
- The same provision is in both; no issue.

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7th Day Double Time

- **Order 14:** *double the employee's regular rate of pay for all hours worked over 8 **on the 7th day of work** in the workweek*
- **Labor Code:** *work in excess of 8 hours **on any 7th day** of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of the employee*
- The Labor Code's odd wording **on *any* 7th day of a workweek** might mean employees are due double time for hours worked over 8 on the 7th day of a workweek, *even if they didn't work on any other day of that workweek!*

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7th Day Double Time

- But maybe not:
 - DIR's update of Order 14 continues to say double time is due after 8 hours worked on only the *7th day **of work** in the workweek.*
 - Also: A 1999 labor commissioner memo concluded the legislature must have meant that an employee must work on the first 6 days of a workweek to be eligible for double time after 8 hours on its 7th day.

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7th Day Double Time

- The Division of Labor Standards Enforcement apparently continues to hold that position.
- But the labor commissioner's memo, the DLSE's position, and even the IWC wage order (a regulation) aren't binding on the courts.
- An employer should evaluate exposure and risk based on its business needs and risk tolerance.

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Overtime Exemptions

- Order 14 had overtime exemptions for irrigators, shepherders, fishing boat crew members, immediate family members, certain salaried managers, and drivers whose hours of service are subject to USDOT or CHP regulations.
- Order 14 update dropped exemptions for:
 - Irrigators
 - Shepherders
 - Fishing boat crew members
- Exemptions deleted on 1/1/19 & 1/1/22 for those employees of “large” and “small” employers respectively.

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Thanks for Your Attention!

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