

# Changes to Agricultural Overtime Eligibility

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## Purpose

The information in this presentation is to help keep the agricultural community up to date on the new agricultural overtime eligibility regulations.

The Employment Standards Program is committed to helping educate the public about workplace requirements and helping employers stay in compliance.



## Presentation overview

- Minimum Wage Act protections
  - Minimum wage
  - Paid sick leave
  - Overtime
  - Exemptions for “white collar” workers
- History and changes
- Overview of ESSB 5172
- Overtime phase-in schedule
- Frequently asked questions
- L&I’s law implementation plan
- Other agricultural workplace regulations
- Retaliation
- Overview of the farm labor contracting unit
- Employment Standards public webinars
- Contacts and resources
- Q&A



## Minimum Wage Act

The Minimum Wage Act (Chapter 49.46 RCW) provides protections to workers that include:

- Minimum wage
- Tips and service charges
- Paid sick leave
- Overtime (time and a half) for hours worked over 40 per workweek
- Protection from retaliation for exercising the above rights

Applies to most employees, except those who are specifically exempt from the law.

**More info:** [L&I Administrative Policy ES.A.8.1 Minimum Wage Act Applicability](#)



## Minimum Wage

- Employers must pay most employees at least minimum wage for every hour worked.
  - \$14.49 beginning in 2022; under 16 years old may be paid 85% of minimum wage.
- Employees who are paid piece-rate wages (based on the worker's productivity) must earn at least minimum wage for all hours worked and rest breaks.
- Employers must pay workers an agreed wage or the minimum wage, whichever is greater.

**More info:** [ini.wa.gov/workers-rights/wages/minimum-wage](https://ini.wa.gov/workers-rights/wages/minimum-wage)





## Paid sick leave

- Most employees are entitled to one hour of paid sick leave for every 40 hours worked.
  - Includes part-time and temporary employees
  - May not be required for certain employees exempt from the Minimum Wage Act
  - Sick leave accrual begins immediately on hire
- Employees may begin using earned paid sick leave 90 calendar days after their first day of work with their employer
- Employees may use this leave to care for themselves or a family member, child's school or daycare health-related closures, or absences related to domestic violence

**More info:** [ini.wa.gov/agency/outreach/paid-sick-leave-and-coronavirus-covid-19-common-questions](https://ini.wa.gov/agency/outreach/paid-sick-leave-and-coronavirus-covid-19-common-questions)



## Paid sick leave

- Employers must provide employees with:
  - Notification upon hire of paid sick leave rights
  - Regular statements, at least monthly, including:
    - Amount of paid sick leave accrued
    - Amount used
    - Balance remaining for use
- Employees may carry over up to 40 hours of unused paid sick leave into the following year
- Employers do not have to pay out unused leave at termination but must reinstate balance if the employee is rehired within a year



**More info:** [lni.wa.gov/workers-rights/leave/paid-sick-leave/](https://lni.wa.gov/workers-rights/leave/paid-sick-leave/)

**L&I Paid Sick Leave Specialist: Nick Burrow** – 360-902-6768, [buni235@lni.wa.gov](mailto:buni235@lni.wa.gov)



## Employment Standards Retaliation Unit

An employer cannot retaliate or take any adverse actions against an employee for exercising a protected right, filing or intending to file a complaint, or discussing potential violations of the employee's protected rights in regards to protected rights under the Minimum Wage Act, including:

- Minimum wage
- Overtime
- Tips and gratuities
- Accrual and use of paid sick leave

**More info:** [lni.wa.gov/workers-rights/workplace-policies/termination-retaliation](http://lni.wa.gov/workers-rights/workplace-policies/termination-retaliation)

**L&I Retaliation Specialist: Reagan Morey** – 360-902-5360, [Reagan.Morey@lni.wa.gov](mailto:Reagan.Morey@lni.wa.gov)





## Overtime

Most employees are entitled to overtime pay (1.5x hourly wage for hours worked over 40 per workweek) unless they meet a specific exemption in the law, such as:

- “White collar” executive, administrative, professional, computer professional or outside sales employees
  - *This exemption does not include agricultural workers who mainly perform manual work in the field or farm (e.g. picking, planting, harvesting, etc.)*
- Individuals who do not meet the definition of “employee” under the Minimum Wage Act (e.g. unpaid volunteers, casual laborers, etc.)





## Exemptions for “white-collar workers”

Generally, executive, administrative, professional, computer professional, and outside sales employees can be exempt from overtime and other Minimum Wage Act protections if they meet the following criteria:

- **Salary basis test:** paid a predetermined, fixed salary
- **Salary level test:** their salary meets or exceeds a minimum specified amount
- **Duties test:** their job duties primarily involve executive, administrative, or professional duties as defined by the regulations.

*Please note: Agricultural workers who mainly perform manual work in the field or farm (e.g. picking, planting, harvesting, etc.) generally will **not** meet these exemptions requirements.*

**More info:** [lni.wa.gov/workers-rights/wages/overtime/changes-to-overtime-rules](http://lni.wa.gov/workers-rights/wages/overtime/changes-to-overtime-rules)



# Calculating overtime

There are two steps to calculate overtime:

1

Determine an employee's regular hourly rate

2

Multiply the regular hourly rate by 1.5 for every hour worked over 40 hours

An employee's "regular hourly rate" is calculated by:

- Adding together their weekly compensation (not including overtime premiums)
- Dividing by the total number of hours worked during the week
- Multiply this amount by 1.5 for every hour worked over 40

**More info:** [L&I Administrative Policy ES.A.8.2 "How to Calculate Overtime"](#)



## Calculating overtime for piece-rate workers

L&I is currently developing policies to provide more guidance on calculations for piece-rate workers.



## History and changes

- Agricultural employees have historically been exempt from receiving overtime pay under the State Minimum Wage Act.
- In November 2020, the Supreme Court issued a decision in *Martinez-Cuevas vs. DeRuyter Brothers* State Supreme Court decision, which found dairy workers in the state eligible for overtime.
- ESSB 5172 extends that right to overtime to all agricultural workers in Washington.





## Overview of ESSB 5172



Dairy employees are now entitled to receive overtime pay after working 40 hours per workweek.



**Effective Jan. 1, 2022:**  
Agricultural employees will be entitled to receive overtime pay with a phase-in schedule that will last three years.



## Agricultural overtime phase-in schedule

Each year, the phase-in schedule gradually reduces the number of hours employees need to work in a workweek to receive overtime pay:

Agricultural overtime phase-in schedule	
Beginning Jan. 1, 2022	Receive overtime pay for hours worked in excess of <u>55 hours</u> per week
Beginning Jan. 1, 2023	Receive overtime pay for hours worked in excess of <u>48 hours</u> per week
Beginning Jan. 1, 2024	Receive overtime pay for hours worked in excess of <u>40 hours</u> per week



## FAQ

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Q: Does a worker have to be paid overtime even if they make more than minimum wage?

A: Yes.

Employers must pay workers for all overtime hours they are entitled to regardless of how much they make.



## FAQ

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Q: Are agricultural employees prohibited from working over 40 hours per workweek?

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A: No.

But employees must be paid the overtime rate for hours worked above 55 in 2022, 48 in 2023, and 40 starting in 2024.



## FAQ

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Q: How much should workers be paid if they have earned overtime?

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A: Workers must be paid at least 1.5x their regular rate of pay for each overtime hour worked.

Employees cannot waive their right to overtime pay.





## FAQ

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Q: Can employers limit an employee's hours to 40 per workweek to avoid paying overtime?

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A: Yes.

Employers can choose the number of hours employees are scheduled to work and are not required to offer overtime hours.



## FAQ

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Q: If an employer does not authorize an employee to work overtime but they do it anyway, does the employer need to pay them the overtime?

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A: Yes.

If the work is performed, it must be paid. Again, employees cannot waive their right to overtime pay.



## FAQ

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**Q:** If an agricultural worker works on multiple farms and their total weekly hours are above the overtime threshold, are they entitled to overtime?

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**A:** Maybe.

It depends on if the farms have the same or joint ownership connections.




# L&I's law implementation plan

- Administrative policy updates
  - Remove references to agricultural overtime exemption
  - Provide guidance on how to calculate overtime for agricultural workers, including piece-rate workers
  
- Extensive outreach
  - Website updates
  - Fact sheets and publications
  - Webinars
  - Meet with employers and employees

## Agricultural Worker Overtime

*Understanding the Changes in the Law*



Here are the highlights of changes coming to agricultural overtime eligibility since passage of a new law, and what these changes mean for agricultural workers and agricultural employers. The changes are expected to impact tens of thousands of agricultural workers and thousands of agricultural operations in Washington. The law, Engrossed Substitute Senate Bill 5172, took effect on July 25, 2021.

**Key elements of the changes**

- Dairy workers are entitled to overtime for hours worked over 40 in a workweek.
- Makes all agricultural workers eligible to earn overtime beginning Jan. 1, 2022.
- Under ESSB 5172, dairy workers cannot file claims for overtime hours worked prior to Nov. 5, 2020. However, dairy workers can do so if they feel they earned overtime pay after Nov. 5, 2020, but did not receive it.

**Outreach and education**

- The Employment Standards Program is holding a series of webinars and presentations for workers and employers. They are listed on L&I's "Workshops and Training Center" web page ([www.Lni.wa.gov/Training](http://www.Lni.wa.gov/Training)). Look for them in the "Event Title" pulldown menu.

**What you should also know**

- The new law does not prohibit agricultural employees from working over 40 hours per workweek. It just determines when they need to be paid overtime.
- Employers can limit an employee's hours to 40 per workweek to avoid paying overtime.
- Overtime pay must be at least 1.5 times the employee's regular rate. Employees cannot waive their right to overtime pay.

**L&I enforcement**

- If agricultural or dairy employees do not receive the overtime pay they are entitled to under the new law, they can file a worker rights complaint with L&I.
- The Employment Standards Program of the Washington State Department of Labor & Industries investigates all complaints.

**Resources**


For more information on the changes in the overtime law, go to L&I's new web page on agriculture overtime at [www.Lni.wa.gov/AgriculturalOvertime](http://www.Lni.wa.gov/AgriculturalOvertime).

**Questions?**

Contact L&I's Employment Standards program at:

- Phone: 1-866-218-7321 (toll free)
- Email: [ESFarmLabor@lni.wa.gov](mailto:ESFarmLabor@lni.wa.gov)

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Washington State Department of  
Labor & Industries

Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 711. L&I is an equal opportunity employer.



## Other agricultural workplace regulations

Employees have the right to file a worker's right complaint against their employer for the following reasons:

- Unpaid overtime
- Minimum wage not paid
- Unpaid final wages
- Paid sick leave violations
- Unlawful or unauthorized deductions during ongoing employment
- Unlawful or unauthorized deductions from final paycheck
- Willful failure to pay agreed wage or rebate of wages (including NSF checks as willful) or failure to pay wage obligated by ordinance
- Meal and rest periods not given
- Recordkeeping violations
- Failure to provide pay statements





## Overview of the Farm Labor Unit

- Enforces the Farm Labor Contractor Act (FLCA)
- Administers the statewide farm labor contractor licensing system
  - Washington
  - Out-of-state
  - International
- Conducts onsite compliance reviews
  - Regularly scheduled
  - Complaint-based
- Determinations: Notice of Violations



# Employment Standards Educational Webinars

Each webinar is a presentation by the Employment Standards outreach team or a program specialist.

- **EAP Overtime Exemptions**
- **Employer Guide to Workers Rights (available in Spanish)**
- **Know Your Worker Rights (available in Spanish)**
- **Equal Pay and Opportunities Act**
- **Isolated Worker Protections**
- **Understanding the Changes in Agricultural Overtime Laws**

[Register](#) for a webinar on the L&I Workshops and Training page.



## Contacts & resources

### L&I Agricultural Employment Specialist: Cristina Rodriguez

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### L&I Farm Labor Contracting unit

**Email:** [ESFarmLabor@Lni.wa.gov](mailto:ESFarmLabor@Lni.wa.gov)

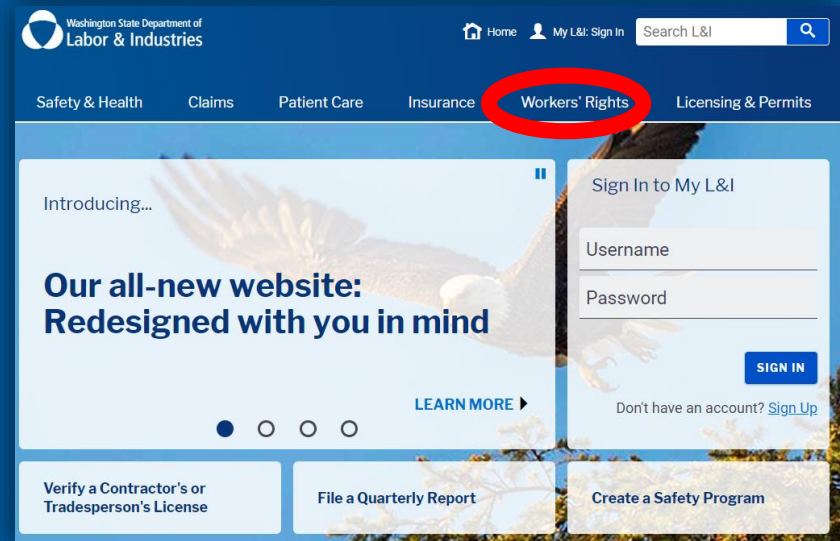
### L&I Employment Standards Customer Service

**Phone:** 1-866-219-7321

**Email:** [ESGeneral@Lni.wa.gov](mailto:ESGeneral@Lni.wa.gov)

### L&I Webpages

- [Agricultural Overtime](#)
- [Agricultural Overtime FAQs](#)



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