



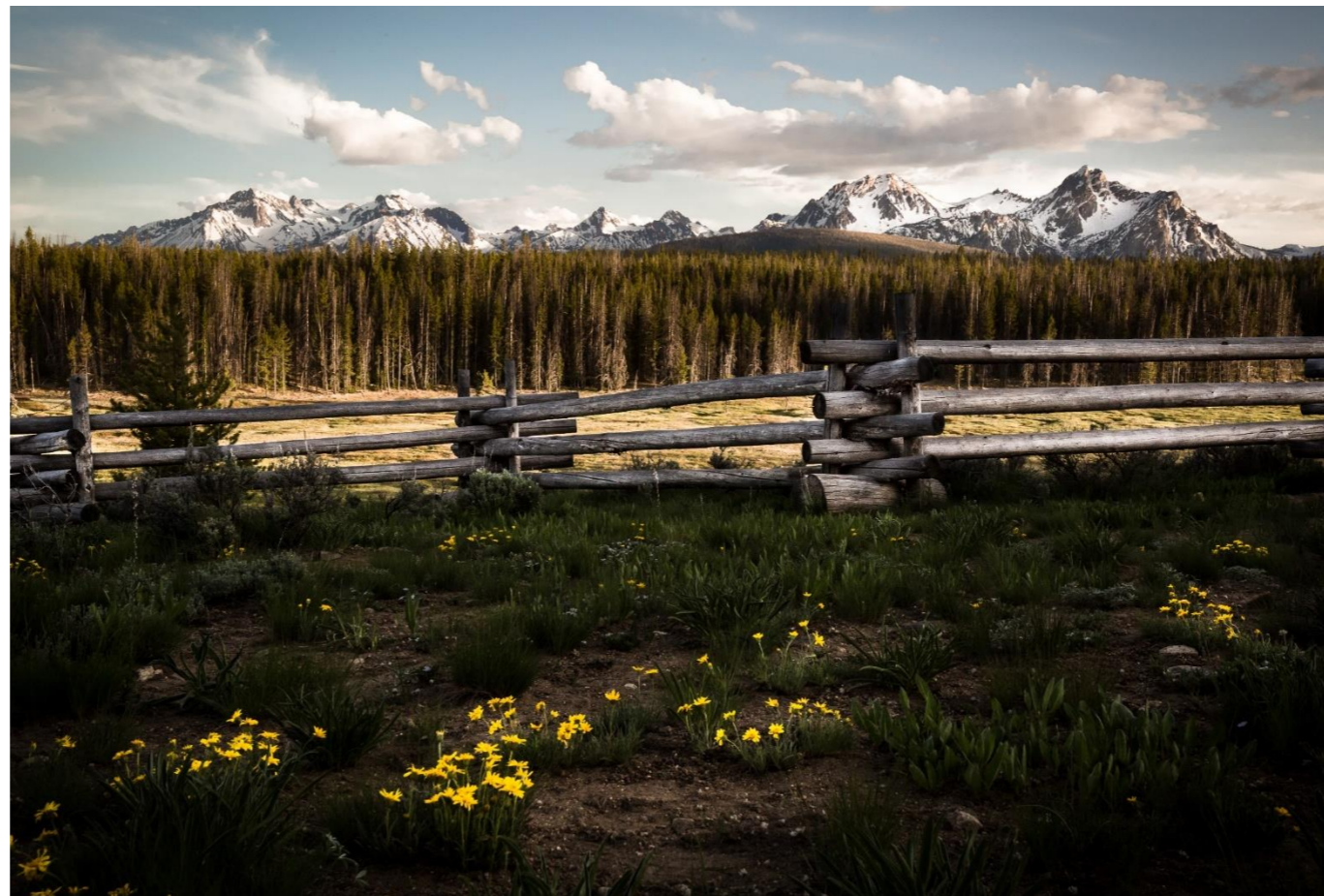
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Agriculture Employment – Overtime Exemption, Employment of Minors

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The Fair Labor Standards Act (FLSA)

- Idaho has a minimum wage law (I.C. 44-1502), but not an overtime pay law. Therefore, the FLSA governs overtime pay in Idaho.
- Establishes the following for private and government workers:
 - Minimum wage;
 - Overtime pay;
 - Recordkeeping; and
 - Child labor standards
- Administered and enforced by the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) with respect to private employment
- There are a number of employment practices which the FLSA does **not** regulate:
 - vacation, holiday, severance, or sick pay;
 - meal or rest periods, holidays off, or vacations;
 - premium pay for weekend or holiday work;
 - pay raises or fringe benefits;
 - a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees;
 - the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

Agricultural Exemption from Overtime Pay

- In general, employees are entitled to overtime pay (time and one-half) when they work more than forty hours in a week. 29 USCS § 207.
- However, there is an exemption for agricultural workers:
 - The provisions of section 7 [29 USCS § 207] shall not apply with respect to—
any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year . . .

29 USCS § 213(b)(12).

- Other exemptions will not be discussed, but include:
 - Executive positions
 - Administrative Positions
 - Professional Positions
 - Computer Employees
 - Outside Salesmen
 - Highly Compensated Employees performing office or non-manual work

Agricultural Exemption from Overtime Pay (continued)

- Statutory Definition of “Agriculture” under the FLSA:
 - Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.
- 29 USCS § 203(f); see also 29 C.F.R. § 780.103.
- This definition “includes farming in both a primary and secondary sense.” *Holly Farms Corp. v. N.L.R.B.*, 517 U.S. 392, 398 (1996); see also 29 C.F.R. § 780.105.
 - Primary farming activities indicated above in blue; secondary farming activities indicated above in red.
 - However, activities that are tied to a separate and distinct business activity, and not to the anterior work of agriculture, do not qualify as exempt agricultural activities. *Holly Farms*, 517 U.S. at 407.

Agricultural Exemption from Overtime Pay (continued)

- What qualifies as secondary agriculture?
- Set forth in 29 C.F.R. § 780.129—Required relationship of practices to farming operations:
 - “To come within this secondary meaning, **a practice must be performed either by a farmer or on a farm**. It must also be performed either in connection with the farmer’s **own farming operations or in connection with farming operations** conducted on the farm where the practice is performed. In addition, the practice must be performed **“as an incident to or in conjunction with”** the farming operations. **No matter how closely related it may be to farming operations, a practice performed neither by a farmer nor on a farm is not within the scope of the “secondary” meaning of “agriculture.”** Thus, **employees employed by commission brokers in the typical activities conducted at their establishments, warehouse employees at the typical tobacco warehouses, shop employees of an employer engaged in the business of servicing machinery and equipment for farmers, plant employees of a company dealing in eggs or poultry produced by others, employees of an irrigation company engaged in the general distribution of water to farmers, and other employees similarly situated do not generally come within the secondary meaning of “agriculture.”** The inclusion of **industrial operations is not within the intent of the definition in section 3(f), nor are processes that are more akin to manufacturing than to agriculture** (see *Bowie v. Gonzales*, 117 F. 2d 11; *Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398; *Maneja v. Waialua*, 349 U.S. 254; *Mitchell v. Budd*, 350 U.S. 473).

Agricultural Exemption from Overtime Pay (continued)

- The courts have interpreted this exemption fairly narrowly when finding in favor of the employer, and tend to grant overtime liberally in favor of the employee. For example:
 - A poultry farm worker that helps raise chicks at a hatchery is considered to be an exempt agricultural employee. However, when those chicks are sent to an independent contractor to be raised, those employees cease to be “farmers” to those chicks. In the case where the hatchery also owns a slaughter house, and a crew goes to the independent contractor to pick up the raised chickens and take them to slaughter, they do not resume their status as farmers because their work is now connected to the processing and slaughtering of the chickens, rather than the farming operation. The forklift operators and truck drivers that take the chickens to the farm’s processing center after they have been raised by the contractor are also not exempt. *Holly Farms*, 517 U.S. at 402-05.
 - The exemption does cover transportation of farm implements, supplies, and workers to and from fields. Workers employed to repair agricultural equipment are also exempt because properly functioning equipment is necessary to a farming operation, but workers employed to maintain a village where agricultural employees live do not have “a close and immediate tie with the process of production” and therefore do not qualify for the exemption. Similarly, a maintenance man at a power plant and a packer in a fertilizer factory are not employed in agriculture, even though their activity is necessary to farmers, because they are “independent productive functions.” See generally *Maneja v. Waialua Agr. Co.*, 349 U.S. 254 (1955); see also 29 C.F.R. § 780.104.
- Moral of the story: some employees on vertically integrated farms may be entitled to overtime pay. Always question whether the work is performed “by a farmer” and whether it is performed “on a farm,” or whether it is tied to a separate and distinct business activity, such as processing or marketing those agricultural products.

Agricultural Exemption from Overtime Pay (continued)

- When an employee performs both exempt and non-exempt work:
 - If an employee does both exempt and nonexempt work in the same week, then the employee loses his exemption and must be paid overtime. 29 C.F.R. § 780.11.
 - However, if the employer can separate the employee's exempt and nonexempt work into separate weeks, then the employer would only have to pay the employee overtime for those weeks the employee performed nonexempt work:

“If in any workweek an employee does only exempt work, he is exempt from the wage and hour provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in 1 workweek and not in the next. But the burden of effecting segregation between exempt and nonexempt work as between particular workweeks is upon the employer.” 29 C.F.R. § 780.10.

Agricultural Exemption from Overtime Pay (continued)

- Monetary Civil Penalties:

Type of Violation	Statutory Citation	CFR Citation	Maximum Civil Monetary Penalty on or before 1/15/2021	Maximum Civil Monetary Penalty on or after 1/16/2021
Minimum Wage and Overtime:	29 USC 216(e)(2)	29 CFR 578.3(a)	\$2,050	\$2,074
Repeated or willful violation of section 206 or 207.				

- Other penalties may include:

- Payment of back wages due to employees;
- Goods may not be shipped or sold because it is a “hot good” that was created in violation of the FLSA;
- Criminal prosecution and fines if violation is willful.

- In a state action, an employer may be liable for the employee’s attorney’s fees to bring the wage claim action, in addition to the greater of the following: unpaid wages plus a maximum \$750.00 penalty; or three times the amount of the unpaid overtime found due. I.C. §§ 45-615, 45-607.

- <https://www.dol.gov/agencies/whd/flsa#cmp>

Employment of Minors – Federal Law (FLSA)

- The FLSA requires that minimum age standards be followed for different agricultural jobs
- (29 CFR 570.2):
 - **Youths ages 16 and above** may work in any farm job at any time.
 - **Youths 14 and 15 years of age** may only work outside school hours in jobs that have not been declared hazardous by the Secretary of Labor. The only way a 14 or 15 year old may work during school hours is if he/she meets one of the following requirements:
 - Has graduated from high school;
 - Has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the requirements of the state school attendance law;
 - Has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for this minor;
 - Is subject to an order of a state or federal court prohibiting him or her from attending school; or
 - Has been permanently expelled from the local public school he or she would normally attend, unless the minor is required, by state or local law or ordinance, or by court order, to attend another school. 29 C.F.R. § 570.35.
 - **Youths 12 and 13 years of age** may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent.
 - **Youths under 12 years of age** may work outside of school hours in non-hazardous jobs with parental consent, but only on farms where none of the employees are subject to the minimum wage requirements of the FLSA.

Employment of Minors – Federal Law (FLSA)

- The following activities have been declared hazardous by the Secretary of Labor. As such, they may not be performed by persons under the age of 16 (29 CFR 570.71):
 - Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor;
 - Operating or working with a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a nongravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or nonwalking-type rotary tiller;
 - Operating or working with a trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band or chain saw;
 - Working in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with a newborn calf (with umbilical cord present);
 - Felling, buckling, skidding, loading, or unloading timber with a butt diameter or more than 6 inches;
 - Working from a ladder or scaffold at a height of over 20 feet;
 - Driving a bus, truck or automobile to transport passengers, or riding on a tractor as a passenger or helper;
 - Working inside: a fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes;
 - Handling or applying toxic agricultural chemical identified by the words "danger," "poison," or "warning," or a skull and crossbones on the label;
 - Handling or using explosives; and
 - Transporting, transferring, or applying anhydrous ammonia.

Employment of Minors – Federal Law (FLSA)

- The prohibition of employment in hazardous occupations does not apply to youths employed on farms owned or operated by their parents.
- In addition, there are some exemptions from the prohibitions:
 - 14 and 15 year old student learners enrolled in vocational agricultural programs are exempt from certain hazardous occupations when certain requirements are met; and
 - Minors aged 14 and 15 who hold certificates of completion of training under a 4-H or vocational agriculture training program may work outside school hours on certain equipment for which they have been trained. 29 CFR 570.72.

Employment of Minors – State Law

- The FLSA **does not** limit the number of hours or times of day, other than outside of school hours, that young **farm** workers may legally work—there are limitations for other occupations.
- However, Idaho does limit the hours that a minor may work and does not provide an exemption for agricultural labor, so Idaho law will govern this issue.
- Idaho law provides that persons under the age of 16 may not be employed **during school hours, before 6:00 AM, or after 9:00 PM.** I.C. §§ 44-1304, 44-1301, 44-1302.
 - Exception for youths under the age of 16 who can read and write and have received schooling in spelling, grammar, geography, and arithmetic—these children can be employed during school hours. I.C. §§ 44-1302.
- Employment may also not exceed more than 54 hours in one week, and may not exceed more than 9 hours in one day. I.C. § 44-1304.
- State law compels parents to require their children to attend school until the age of 16, but there is no duty for them to require their child to graduate, although a minor must gain his/her parent's consent before dropping out. Because a minor is encouraged but not legally obligated to attend school after the age of 16, there are no state restrictions on employing a person between the ages of 16 and 18. I.C. § 33-202

Employment of Minors – Recordkeeping

- If a farm employs a person under 18 years of age, then the farmer is required to maintain the following records (29 C.F.R. § 516.2):
 - Name in full.
 - Place where the minor lives while employed. If the minor's permanent address is elsewhere, both addresses should be recorded (this is required for minor farmworkers—other than those employed by a parent or person standing in place of a parent—who are employed on days when school is in session or on any day when employed in an occupation found to be hazardous by the Secretary of Labor).
 - Date of birth.
 - The written consent of the parent or persons standing in place of the parent of the minor, if written consent is required to employ the minor on a farm.
- These are not the only records that need to be kept; employers must still maintain the records set forth in 29 C.F.R. § 516.2 for employees subject to minimum wage

Employment of Minors – Age Certificates

- A farmer may protect himself from an unintentional violation by requesting an age certificate from the minor proving that the minor is the minimum age for the job. The farmer may keep and file this information. This is not required, but will protect the farmer from a violation if the person was not truthful about his/her age. 29 C.F.R. §§ 570.5-570.7.
- A certificate of age is a special document that must be obtained from the Administrator of the Wage and Hour Division of the U.S. Department of Labor. Idaho does not have a state agency that has the authority to issue these certificates. A driver's license, birth certificate, or other form of identification is not sufficient and does not serve as an official certificate of age.
- If the minor does not wish to obtain an official certificate of age from the Department of Labor, the farmer may review the minor's driver license or birth certificate at his own risk to form a basis of whether the farmer believes the minor is of an appropriate age. However, checking one of these forms of documentation will not protect the farmer from a violation if the minor was using a fake or altered form of identification. The only way for an employer to absolutely protect itself from a child labor law violation is to get an official certificate of age from the Department of Labor.

Employment of Minors – Penalties

- Monetary Civil Penalties:

Type of Violation	Statutory Citation	CFR Citation	Maximum Civil Monetary Penalty on or before 1/15/2021	Maximum Civil Monetary Penalty on or after 1/16/2021
Child labor: (1) Violation of child labor standards (sec 212 or 213(c));	29 USC 216(e)(1)(A)(i)	29 CFR 570.140(b)(1) and 29 CFR 579.1(a)(1)(i)(A)	\$13,072	\$13,227
(2) Violation of child labor standards (sec 212 or 213(c)) that causes the serious injury or death of a minor;	29 USC 216(e)(1)(A)(ii)	29 CFR 570.140(b)(2) and 29 CFR 579.1(a)(1)(i)(B)	\$59,413	\$60,115
(3) Willful or repeated violation of child labor standards (sec 212 or 213(c)) that causes the serious injury or death of a minor	29 USC 216(e)(1)(A)(ii)	29 CFR 570.140(b)(2) and 29 CFR 579.1(a)(1)(i)(B)	\$118,826	\$120,230
(4) Repeated or willful violation of section 206 or 207.	29 USC 216(e)	29 CFR 579.1(a)(2)	\$2,050	\$2,074

- Other penalties may include:

- Goods may not be shipped or sold because it is a “hot good” that was created in violation of the FLSA;
- Criminal prosecution and fines if violation is willful.
- If a farmer violates the Idaho child labor law governing the number of hours a minor may work, the farmer will be subject to a fine by the state of no more than \$50.00. If a dairyman is notified of a minor’s truancy by a school authority and continues to employ the minor, then the dairyman will be fined between \$5.00 and \$20.00 for each day thereafter while the minor remains employed. I.C. §§ 44-1305.

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QUESTIONS ?



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