

Explanation of Minimum Wage Exemptions for Ag

The exemption from minimum wage is contained in ORS 653.020. The exemption that applies specifically to agricultural employment is in ORS 653.020(1) and applies to individuals employed in agriculture if:

(a)Such individual is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been paid, on a piece-rate basis in the region of employment and is employed by an employer who did not, during any calendar quarter during the preceding year use more than 500 piece-rate-work-days of agricultural labor;

While this exemption may appear to be a piece rate exemption, it contains a 500-work day limitation that only effectively applies to small farms. The 500 work day applies to any worker who works for an hour on a farm harvesting/pruning on a piece rate basis. For a farm that employs 50 workers per day it will hit a cumulative total of 500 work days threshold in 10 days. Another example is a farm with 7 such employees would hit the threshold within a calendar quarter.

(b)Such individual is the parent, spouse, child or other member of the employer's immediate family;

This family member exemption is commonly used by Oregon farms who have multiple members of the immediate family working on the farm.

(c)Such individual:

(A)Is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(B)Commutes daily from a permanent residence to the farm on which the individual is so employed; and

(C)Has been employed in agricultural labor less than 13 weeks during the preceding calendar year;

This so called part-time worker has limited application. Many piece-rate workers are migrant workers, who move from farm to farm, and do not live locally permanently. The part time worker exception also requires that the worker be employed in ag less than 13 weeks during the preceding year (regardless of whether they work at one farm or several farms), and most of these workers work in ag year after year and for well over 13 weeks.

(d)Such individual, other than an individual described in paragraph (c) of this subsection:

(A)Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; and

(B)Is paid at the same piece-rate as employees over 16 years of age on the same farm; or

Piece rate workers are typically not under 16. This is not a full exemption for high schoolers.

(e) Such employee is principally engaged in the range production of livestock and earns a salary and is paid on a salary basis.

This exemption is frequently used by range workers.

ORS 653.020 also has an exception from the minimum wage for administrative/managerial employees in ORS 653.020(3). The exemption applies to:

An individual engaged in administrative, executive or professional work who:

- (a) Performs predominantly intellectual, managerial or creative tasks;*
- (b) Exercises discretion and independent judgment; and*
- (c) Earns a salary and is paid on a salary basis.*

This exemption is used for office and administrative workers, but does not apply to workers in the field. So while it has some applicability to agricultural employment, it is not applicable to migrant/seasonal farmworkers.

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