



# Labor Rights for Farmworkers

## BASIC LABOR RIGHTS UNDER US FEDERAL LAW:

- Be Paid** minimum wage of \$7.25, whether hourly or piece rate, on set days (there are exceptions for family labor, range workers, local part time hand harvesters, and farmworker children under 16.) An agriculture employer who didn't use more than 500 "man days" (about 7 workers) of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime, though most states require the federal minimum for farmworkers from farms of all sizes. Some states have a higher minimum wage (see chart by state.) **Be sure to check state regs!** Farm Commons has specific farm labor guides for many states: <https://farmcommons.org>
- Work Free from Discrimination** based on race, color, ethnicity, gender, sexual orientation, disability, being pregnant, or age.
- Safe Workplace** that does not pose a risk to worker health or safety.
- Workers' Compensation** if worker injured on the job or gets sick due to work. (required in all NE states, though more limitations in Vt)
- Work Free from Sexual Assault or Harassment.**
- All workplace rights apply to all workers regardless of immigration status: Undocumented workers have the same rights as any other worker.
- Time that is **mandatory & directly related to the worker's job** must be paid.
- Employer cannot make any deductions from wages, unless:
  - a. **required by law**(taxes, child support orders), OR
  - b. worker **agrees in writing** & they are for the **benefit of the worker**
- Because of exclusion of farmworkers from [National Labor Relations Act \(1935\)](#), agricultural work does not have to be compensated at time and a half for overtime over 40 hours a week, however, **when farmworkers do non-agricultural work, the farm must pay time and a half. Some states, like CA, interpret very strictly and do not classify packing shed work, for example, as ag work! Also, [recent laws in CA](#) and [NY require overtime for ag work, after 60 hours](#) in NY, and by 2022 after 40 in CA, or 2025 for smaller farms, 25 employees or less. Also in CA beginning in 2022, or in 2025 for smaller farms, working more than 12 hours a day will earn double pay.**
- Additionally, farm workers must be provided written information regarding their wages and working conditions in a language they can understand.
- Agriculture employers must keep accurate and complete payroll records. There isn't a required form for these records, but [the records must include:](#)
  - The employee's full name and Social Security Number;
  - Address, including zip code;
  - Birth date, if younger than 19;
  - Sex and occupation;
  - Time and day of week when the employee's workweek begins;
  - Hours worked each day;



- Total hours worked each workweek;
- Basis on which employee's wages are paid;
- Regular hourly rate;
- Total daily or weekly straight-time earnings;
- Total overtime earnings for the workweek (agricultural employees are exempt from overtime pay requirements);
- All additions to or deductions from the employee's wages;
- Total wages paid each pay period;
- Date of payment and the pay period covered by the payment.

Federal Laws that Apply to Farmworkers: [The Fair Labor Standards Act \(FLSA\)](#), [Migrant and Seasonal Worker Protection Act \(MSWPA\)](#), [Occupational Safety and Health \(OSH\)](#), [Immigration and Nationality Act \(INA\)](#), [Agricultural Worker Protection Standards](#). FLSA defines "agriculture" as: *"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), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an 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."*

**Personnel Records farmer/employer must keep:**

- A. Federal Form I-9 – filled out upon hiring
- B. US Form W-4 (updated annually)
- C. Signed work agreement or written contract
- D. Must have **Federal Employer Identification Number (EIN)**

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- Workers' rights to freedom of association and collective bargaining
- Living wages (hourly, piece rate phased out) and comprehensive benefits (workers comp, unemployment insurance, disability insurance, social security, sick leave, maternity/paternity leave)
- Termination only for just cause and full access to employee files
- No full time employment for minors under 16
- Learning contracts for Interns and apprentices – All workplace rights apply to them except okay to pay minimum wage instead of living wage
- Clear conflict resolution and grievance policies in writing with no retaliation for whistleblowing, making a complaint or raising issues
- Personnel policies when hiring that provide an equitable, open working process and environment.
- Farmworkers can negotiate with their employer an overtime policy for all hours worked over 48 per week on average and work with farmer on plan to achieve this
- Seniority: Right to return to same farm for work next season or to take an unpaid leave of absence if there is a family emergency.
- Training in workplace health and safety with full disclosure of all materials used based on farm health and safety plan
- One day off per week – work on 7<sup>th</sup> day only if voluntary