

## The New Law

**1. What is the Farm Laborers Fair Labor Practices Act (FLFLPA)?** *The bill, signed on July 17, 2019 by Governor Andrew Cuomo, establishes the Farm Laborers Fair Labor Practices Act to protect farm laborer rights, ensuring safe housing and working conditions. The bill grants farm laborers overtime pay, a day of rest each week, disability and Paid Family Leave coverage, unemployment benefits and other labor protections. The bill also requires the Commissioner of Labor to convene a Wage Board.*

**2. When is the effective date of the FLFLPA?** *All provisions, except for the migrant housing permitting requirement, are effective on January 1, 2020. The expansion of migrant housing permit requirement will be effective on January 1, 2021.*

## Coverage

**3. Are all farms required to comply with the overtime and day of rest provisions of the FLFLPA?** *Yes, all farms regardless of size are covered by the Act.*

**4. Who is covered by the day-of-rest provision of the FLFLPA?** *All farm laborers are covered. The following employees may be **excluded** from coverage if they meet specific requirements:*

- *Foreman in charge (can be more than one),*
- *Members of the employer's immediate family,*
- *Executives,*
- *Administrative employees, and*
- *Professional employees.*

**5. Who is covered by the over-60 overtime provision of the FLFLPA?** *All farm laborers, including crew leaders/chiefs and foremen in charge, are covered by the overtime provisions of the Act. The following employees may be **excluded** from coverage if they meet specific requirements:*

- *Members of the employer's immediate family,*
- *Executives,*
- *Administrative employees, and*
- *Professional employees.*

**6. Who are an employer's immediate family members?** *They are:*

- *related to the third degree of consanguinity or affinity (legal relationship) and*
- *working on a farm out of familial obligations and*
- *not paid wages or other compensation based on their hours or days of work.*

**7. What is "three degrees of consanguinity" as it relates to family members?** *An employer's children, grandchildren, great-grandchildren, parents, siblings, nieces/nephews, grandparents, aunts/uncles, and great-grandparents are within three degrees of consanguinity.*

**8. Should the employer execute Pay Notice & Acknowledgment for Farm Workers (LS309 or employer version) with family members?** *Employers do not need to execute the Pay Notice & Acknowledgment Form (LS309) with family members that meet the criteria above.*

**9. Are family members of LLCs, S-corps, C-Corps or partnerships excluded from the day of rest and overtime provisions?** *Yes, family members that meet the criteria above are excluded from the day of rest and overtime provisions.*

**10. Who is an Executive employee?** *An Executive is someone whose*

*(a) primary duty consists of management, and*

*(b) directs the work of two or more other employees, and*

*(c) has the authority to hire or fire other employees or can recommend hiring, and*

*(d) customarily and regularly exercise **discretionary** power, and*

*(e) who is paid for his services a salary, inclusive of board, lodging, or other allowances and facilities.*

**11. Who is an Administrative employee?** *An Administrative employee is someone whose*

*(a) primary duty consists of the performance of office or nonmanual field work directly related to management policies, and*

*(b) exercises discretion and independent judgment, and*

*(c) directly assists an employer, executive or administrative employee and requiring special training, experience or knowledge, and*

*(d) who is paid for his/her services a salary, inclusive of board, lodging, or other allowances.*

**12. What is the minimum salary requirements for Executive and Administrative Employees?**

- **NYC:** \$1,125 on or after December 31, 2019
- **Nassau, Suffolk and Westchester Counties:** \$975 on or after December 31, 2019; \$1,050 on or after December 31, 2020 and \$1,125 on or after December 31, 2021
- **Remainder of the State:** \$885 on or after December 31, 2019; \$937.50 on or after December 31, 2020.

**13. Who is a Professional Employee?** *A Professional employee is someone whose primary duty consists of the performance of work that:*

*(a) requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction/study, or*

*(b) requires the consistent exercise of discretion and judgment; or*

*(c) is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work).*

**14. Are all foreign guest workers covered by the overtime and day of rest provisions?** *Yes, foreign guest workers (H-2A, J-1, TN, etc.) engaged in agricultural work are covered by the overtime and day of rest provisions. Overtime must be paid at 1 ½ times the AEW, prevailing wage rate or contract rate.*

**15. Are interns or apprentices covered by FLFLPA?** *Interns or apprentices are farm laborers and therefore covered by FLFLPA. Under the Minimum Wage Order for Farm Workers (Part 190), for a trainee enrolled in an organized vocational education training program in agriculture under a recognized educational, nonprofit or governmental agency or authority, including but not limited to programs such as the Farm Cadet, the Agricultural Student Work program of the New York State College of Agriculture at Cornell University and high school agricultural vocational student-work programs, provided such program is approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of the wage order.*

### **Hours of Work**

**16. Are farm laborers allowed to work more than 60 hours per week?** *Farm laborers may not work more than 60 hours per week unless they voluntarily agree to do so. If they do work more than 60 hours per week, then they must be paid overtime at a rate of 1 ½ times their regular rate of pay for such hours.*

**17. Are farm laborers required to receive breaks or meal periods?** *Meal periods are required for all farm laborers. See guidance document [LS 443](#) for more information about requirements for the length of a shift.*

**18. What is a calendar week for purposes of overtime and day of rest?** *For purposes of compliance with the overtime and day of rest, the term calendar week will mean an established, recurring, consecutive 7 days designated by the employer. A calendar week should not be changed from week to week.*

### **Overtime Pay**

**19. What is the overtime rate of pay for farm laborers who agree to work over 60 hours per calendar week?** *The overtime rate of pay is 1 ½ times the regular rate of pay.*

**20. What hours must be counted to calculate regular and overtime rate of pay?** *You must use all hours worked in the employer's calendar week. You do not need to count hours of rest or bona fide meal periods as hours worked.*

**21. How is the regular hourly rate of pay calculated for workers who are paid per piece or by salary?** *Farm Laborers must be paid 1½ times their regular rate of pay for all overtime hours worked. The regular rate of pay cannot be less than the minimum wage. An employee's regular rate is the amount that the farm laborer is regularly paid for each hour of work. When a farm laborer is paid on a non-hourly basis (e.g. piece work, salary), the regular hourly wage rate is found by dividing the total hours worked*

during the week into the farm laborer's total earnings. Where a farm laborer has multiple rates of pay, the regular rate is the weighted average of the laborer's multiple rates of pay for the week based on the number of hours worked at each rate. The weighted average is the total regular pay divided by the total hours worked in the week. The overtime rate may vary from week to week depending on how many hours the farm laborer worked at each rate of pay. Certain payments are not part of the regular rate. They include: ♣ Pay for expenses incurred on the employer's behalf ♣ Premium payments for overtime work ♣ True premiums paid for work on Saturdays, Sundays, and holidays ♣ Discretionary bonuses ♣ Gifts ♣ Payments in the nature of gifts on special occasions ♣ Payments for occasional periods when no work is performed due to vacation, holidays, or illness.

**22. Can an employer take credit for fringe benefits, such as paid sick leave, or discretionary bonuses toward my overtime payment obligation?** *Except for holiday pay and weekend shift differentials, fringe benefits and discretionary benefits are not allowed to offset overtime wages owed.*

**23. Can an employer take an allowance, or a credit for meals and/or lodging if the farm laborer earns more than the Minimum Wage?** *No. Allowances are considered part of the Minimum Wage obligation and may not be taken if the farm laborer earns more than the Minimum Wage. For farm laborers earning the minimum wage, allowances or credits may be taken for adequate meals and lodging provided. There are limits to the allowances permitted per day or week. For more information on allowances see [CR190](#). Please remember allowances for utilities and lodging are not allowed for migrant farm laborers.*

**24. Is an employer required to pay overtime to a farm laborer who works over 60 hours in a calendar week while working for two different employers on a joint H-2A order?** *The H-2A worker is entitled to overtime when the total hours worked exceed 60 in a calendar week. H-2A foreign guest workers and domestic farm laborers employed under the joint H-2A job order agree to work for both employers for the number of days and hours detailed in the contract. Joint employers agree to adhere to the terms and conditions of the certified job order and are jointly liable for any violations.*

**25. Does an employer still have to pay overtime to farm laborers who process other farms' food after 40 hours?** *Yes. Employees whose work includes processing, handling, or packaging other farms agricultural products are covered by the Miscellaneous Wage Order for that work and must be paid overtime after 40 hours worked in a week.*

**26. When must an employer pay overtime to a farm laborer who process the produce from their own farm?** *The employer must pay overtime after 60 hours worked in the calendar week, or if they work on their day of rest.*

**27. Does an employer have to pay overtime to farm laborers who work on their day of rest?** *Yes. Farm Laborers who voluntarily agree to work on their day of rest*

*must be paid time and ½ the regular rate for the hours worked on that day, even if they have not worked more than 60 hours in that calendar week.*

**28. Does a farm laborer have to be paid “double-overtime” if they have already worked over 60 hours and they agree to work on their day of rest?** *If farm laborers work more than 60 hours in a calendar week, they must be compensated at 1½ times their regular rate for hours worked (“standard OT”). Farm Laborers are also entitled to the OT rate (“premium OT”) for any hours voluntarily worked during their day of rest. However, no additional payment of premium OT is required if the worker’s hours has already exceeded 60 hours for the calendar week.*

**29. When does an employer have to pay earned overtime wages?** *Farm laborers, as manual workers, must be paid wages within 7 days from the end of the payroll week in which they are earned.*

**30. Can a farm laborer bank overtime pay to collect a lump payment at the end of the season?** *No. All wages, including overtime wages, must be paid within 7 days from the end of the payroll week in which they are earned.*

**31. Can a farm laborer take time off instead of being paid overtime?** *A farm laborer may not take (or bank) time, often referred to as compensatory (“comp”) time off, instead of being paid overtime wages.*

**32. When is an employer required to pay overtime to farm laborer that works in the field and in the employer’s cafe?** *Restaurant work is covered by the Hospitality Industry Wage Order and therefore, the employer must pay overtime after 40 hours per week at 1½ times the regular rate of pay. Restaurant work must be paid an at hourly rate.*

**33. How does the employer calculate the regular rate if allowances toward the Minimum Wage for housing or meals are taken?** *The regular rate and overtime rates are calculated before allowances are taken.*

**34. Are production bonuses, like a milk quality bonus, included in the regular rate calculation for overtime purposes?** *It depends on whether the bonus is discretionary or non-discretionary. Non-discretionary bonuses must be factored into the regular rate calculation for overtime purposes.*

### **Day of Rest**

**35. How often does a farm laborer need to receive a day of rest?** *A farm laborer must receive one 24 consecutive hours of rest once per calendar week.*

**36. Does the employer have to schedule a farm laborer’s day of rest in advance?** *The law does not require that the day of rest be scheduled in advance. The day of rest*

can be designated and recurring, or it can vary, and should occur at the latest on the 7<sup>th</sup> day of the calendar week.

**37. Can a farm laborer waive their day of rest?** *No, an employee may not waive their day of rest, but an employee may voluntarily agree to work on their day of rest and must be paid overtime for doing so.*

**38. Is an employer required to document a day of rest was provided?** *Yes, employers must keep records of daily and weekly hours worked.*

**39. Is an employer required to document that a farm laborer voluntarily agreed to work on their day of rest?** *The law does not require a record for this specific purpose, but an employer should document that an employee voluntarily agreed to work on their day of rest so overtime wages may be paid accordingly for that pay period.*

**40. If work cannot take place due to weather or other circumstances, does that count as a day of rest?** *Yes, 24 consecutive hours of rest due to weather or other circumstances may count as a weekly day of rest.*

**41. Can an employer provide a day of rest in increments, or part days?** *No, the day of rest must be 24 consecutive hours of rest in a calendar week.*

**42. Can a farm employer apply for a variance from the day of rest provision?** *Yes, an employer may apply for a variance by completing the [LS 137](#). But the employer must pay the overtime rate for hours worked on the seventh day.*

### **Employer Record Keeping Requirements**

**43. What type of payroll and time records am I required to keep?** *The Record keeping requirements in the Labor Law remain the same. Employers must keep true and accurate and contemporaneous time records of daily and weekly hours worked, and payroll records showing rate of pay, gross wages, legal deductions, allowance and net wages for 6 years.*

**44. What new payroll records do I need to keep as a result of the FLFLPA?** *The provisions of Article 6 and/or [Part 190](#) apply to Farms. No new record keeping requirements have resulted from the FLFLPA.*

**45. Does the employer need to provide a new pay notice to farm laborers?** *Yes. Employers must provide the LS309 to farm laborers which explains they are entitled to a day of rest and overtime pay.*

**46. Does the employer need to provide different information on the farm laborer's pay stub (wage statement)?** *The requirements remain the same under the law.*

## **Wage Board**

**47. What does a Wage Board do?** *Wage boards bring together workers, businesses, other stakeholders, and the public to consider minimum workplace standards across industries.*

**48. Who will be on the Wage Board?** *The Wage Board consists of 3 individuals:*

- David Fisher, President of the New York Farm Bureau
- Denis Hughes, former President of the New York State AFL-CIO
- Brenda McDuffie, President of the Buffalo Urban League

**49. When will the Wage Board meet?** *The Wage Board has started conducting public hearings around the state. The Wage Board must make a report to the Governor and Legislature including its recommendations no later than December 31, 2020.*

**50. What kind of changes can the Wage Board recommend?** *The Wage Board will consider overtime rates and thresholds. The Board's overall recommendations cannot decrease protections or benefits for workers.*

## **Enforcement**

**51. When will enforcement of the FLFLPA begin?** *Employers are required to comply with the all provisions of the FLFLPA starting on January 1, 2020. Employers are required to comply with the migrant housing permit requirements on January 1, 2021.*

**52. Are there penalties for failing to comply with the provisions of the FLFLPA?** *Yes. Violations for failure to pay the Minimum Wage, agreed wages, or failure to keep required records have always been subject to civil penalties.*

**53. Will an employer have to pay back wages if found to be in violation of the overtime rules?** *Yes, the Department of Labor calculates wages due and recovers and returns wages to underpaid workers.*

## **Grower Processor, Farm Labor Contractor and Camp Commissary Registration**

**54. Have farm labor contractor, grower processor, or commissary registration requirements changed?** *No, registration requirements remain the same.*

## **Insurance**

**55. Do employers need unemployment insurance?** *As of January 1, 2020, farm employers are required to register for unemployment insurance when you have paid at least \$300.00 in quarterly wages or have purchased the business of another liable employer. This also applies to certified crew leaders who employ agricultural workers.*

**56. How does an employer register for unemployment insurance?**

Go to <https://labor.ny.gov/ui/employer.shtm> for general information and download form NYS100-A (NYS Employer Registration Form for Unemployment Insurance, Withholding Tax and Wage Reporting), at <https://www.labor.ny.gov/formsdocs/ui/nys100aq.pdf>, which can then be faxed to (518) 485-8010. Once you apply, you will be notified of your Employer Registration number in 3-4 weeks. For questions, call the UI Employer Hotline at 888-899-8810.

**More Information**

**57. Where can I find more information?** For information on updates to the labor law, please call 1-833-693-2767 (833-NY-FARMS), or visit [www.labor.ny.gov/FarmLabor](http://www.labor.ny.gov/FarmLabor).

**58. Where can I find more information on Workers Compensation, Disability and Paid Family Leave?** For questions about Workers Compensation and Disability, please call 877-632-4996. For Paid Family Leave questions, please call 844-337-6303. You can also find more information at [www.wcb.ny.gov/farmtoolkit/](http://www.wcb.ny.gov/farmtoolkit/)

**59. Where can I find more information on unions?** For questions about unions, please call 518-457-6410 or visit <https://www.perb.ny.gov/resources-for-farm-laborers-and-agricultural-employers/>