

Farm Laborers Wage Board

Final Report

**Report and Recommendations of the Farm Laborers
Wage Board**

TO THE NEW YORK STATE COMMISSIONER OF LABOR

Executive Summary

Over the past two years, beginning in 2020, the Farm Laborers Wage Board (“the Board”) held hearings and gathered testimony to fulfill its charge to consider the threshold above which overtime wages must be paid to farm workers in New York State. The Board accepted oral testimony, formal presentations, and written comments from a wide variety of stakeholders, including farm owners, workers, advocacy groups, and academic researchers.

This report, prepared under the Board’s direction by staff of the New York State Department of Labor (“the Department”), documents and summarizes the Board’s process and the information it received, and sets forth findings and recommendations. The report is organized into the following sections:

- (1) Appointment, Scope, and Method of Work of the Board
- (2) Board Meetings and Public Hearings
- (3) Characteristics of the Industry
- (4) Formal Presentations Made to the Board
- (5) General Testimony and Comments – Common Themes
- (6) Considerations
- (7) Final Recommendations

Through this process, members of the Board have deepened their understanding of the issue and assessed the potential impact of a threshold reduction on the everyday lives of people in this industry. The Board members carefully reviewed all arguments for and against lowering the overtime threshold, and understand the concerns this policy question raises for all parties involved.

On January 28, 2022, the Board recommended that the current 60-hour threshold for overtime be lowered to 40 hours per week by January 1, 2032. The Board further recommended that this reduction be phased in over ten years, with reductions of four hours made on a biannual basis, as follows:

- Beginning on January 1, 2024, the current overtime threshold will be reduced by four hours to 56 hours.
- On January 1, 2026, the threshold shall drop by four hours to 52 hours.
- Every other year thereafter, the threshold shall be reduced by four more hours until it reaches 40 hours per week on January 1, 2032. Thereafter, the threshold shall remain at 40 hours.

Appointment, Scope and Method of Work of the Board

Statutory Purpose and Authority

The Farm Laborers Fair Labor Practices Act (“the Act”), enacted in 2019, requires that beginning on January 1, 2020, farm laborers be compensated with overtime pay for any work that they perform in excess of 60 hours per week. The Act also extends certain worker protections to farm laborers, including collective bargaining rights, workers compensation, unemployment insurance, housing, and a day of rest.¹

The Act requires that the Commissioner of Labor (“the Commissioner”) convene a Farm Laborers Wage Board (“the Board”) to further consider the appropriate overtime threshold for farm laborers. The Act further requires that once convened, the Board make recommendations concerning if and to what extent the overtime threshold for farm laborers could be lowered below 60 hours per week.² The Act permits the Board to recommend a phasing in of any reduction by successively and incrementally reducing the threshold before reaching a final recommended threshold. The Act states that that the Board must consider existing overtime rates in similarly situated industries in New York State. The Act expressly prohibits the Board from submitting a report or recommendation that diminishes or limits any rights, protections, benefits, or entitlements that are currently available to any farm laborer.

On February 28, 2020, Commissioner Roberta Reardon convened the Board pursuant to the Act and the minimum wage provisions of Articles 19 and 19-a of the New York State Labor Law, which also authorize the Commissioner to convene wage boards. The Act established a three-member Board to include one member from the New York Farm Bureau, one member from the New York State AFL-CIO and one member to be appointed by the Commissioner. The members of the Board are:

- Ms. Brenda McDuffie, Board Chair, former President of the Buffalo Urban League
- Mr. David Fisher, Board Member, President of the New York Farm Bureau
- Mr. Denis Hughes, Board Member, former President of the New York State AFL-CIO

The Commissioner’s Charge

During the February 28 hearing, the Commissioner charged the Board with the following responsibilities:³

- The Board shall make recommendations for overtime work for farm laborers that shall not be in excess of sixty hours.

¹ <https://dol.ny.gov/farm-laborers-fair-labor-practices-act>

² <https://legislation.nysenate.gov/pdf/bills/2019/A8419>; New York Labor Law § 674-a.

³ <https://dol.ny.gov/system/files/documents/2021/03/farm-wage-board-commissioners-charge.pdf>

- The Board shall consider the extent to which the overtime threshold can be lowered below the 60 hours established by the Act.
- The Board may provide for a series of successively lower overtime work thresholds and phase-in dates as part of its determinations.

Wage Board Meetings and Public Hearings

Gathering the Record: Organizational Activities

Over the course of 2020, the Board heard live testimony and accepted written testimony during five public hearings and subsequently held four public meetings to discuss the testimony given. Each hearing was publicized in advance, open to the public, videotaped, and posted on the Department's website.⁴ During each hearing and meeting, the Board offered translation services to help facilitate broad participation.

During the Board's first hearing on February 28, 2020, following the Commissioner's presentation of her charge to the Board, the Department's General Counsel, serving as Counsel to the Board, reviewed the Board's authority and responsibilities. The Board designated the Department's Deputy Commissioner for Worker Protection as Secretary to the Board. The Chief of Labor Statistics from the Department's Division of Research and Statistics, also provided descriptive data and statistics on the agricultural industry in New York State.

The Board discussed a process for obtaining public comment and agreed to schedule four additional hearings: on March 13 (Syracuse), on March 23 (Binghamton), on April 16 (Long Island) and on April 23 (Batavia). However, due to the COVID-19 pandemic, the Board was unable to hold these additional hearings as planned. Instead, the Board set new hearing dates and conducted them remotely using an online videoconference system. The rescheduled hearings occurred on August 26, August 27, August 31, and September 30 of 2020. Subsequently, the Board held public meetings on November 19, December 28, December 29, and December 31 of 2020. During these meetings, members received additional presentation materials from Department staff and deliberated as a Board.

2020 Pause (COVID-19)

During the December 31, 2020, meeting, the Board, by a vote of 2-1, passed a resolution in favor of issuing a report citing the extenuating circumstances of the COVID-19 pandemic, including the unprecedented challenges impacting both the agriculture industry and the global economy, as well as its effects on food systems in New York State, and recommending that the Board reconvene at a later date but before the end of 2021.

⁴ www.labor.ny.gov/farmwageboard

In accordance with NY Labor Law §656, the Commissioner issued an Order on February 19, 2021 that called for: (i) the Board to reconvene no later than December 15, 2021, and (ii) the Department, in consultation with the Department of Agriculture and Markets and other agencies and stakeholders, to present statistical data and other key information related to the matter before the Board including information concerning: (1) agricultural employees' economic security and mental and physical health, as documented by occupational safety and health clinics and other organizations within New York State that provide direct services to this population; (2) agricultural employers' gross and net incomes, as published annually by the United States Department of Agriculture; (3) employee retention rates for the industry based on the Department's data; (4) the impact of the sixty-hour overtime threshold and other worker protections implemented under the Act on employers and employees within particular sectors of New York's agricultural industry; and (5) the impact of wage and other worker protections in other similarly situated industries in New York State.

On December 15, 2021, the Commissioner reconvened the Board and announced dates for four additional public hearings to be held in January 2022. These hearings occurred on January 4, January 18, January 20, and January 28 of 2022. They were open to members of the public and conducted via videoconference.

Public Participation & Information Gathering

The Board heard from a wide range of stakeholders, including farmers, workers, agricultural industry associations, labor and worker advocates, agriculture supply and financing organizations, and other related groups. Several members of the New York State Legislature also testified, as did members of the public. Members of the public also submitted written testimony to the Board. The Board received various governmental, academic, and other studies and reports presenting data and statistical information.

Characteristics of the Industry

In 2020, New York State's agriculture industry employed just under 23,500 workers in approximately 2,300 establishments throughout the state, according to New York State's Quarterly Census of Employment and Wages (QCEW) program.

The QCEW program uses the 2017 version of the North American Industry Classification System (NAICS) – the standard used by Federal statistical agencies in classifying business establishments. NAICS classifies the relevant subsectors of New York State's agriculture industry under two

codes:⁵ 111 (Crop Production) and 112 (Animal Production and Aquaculture). The Crop Production subsector is comprised of industries that grow crops mainly for food and fiber and establishments primarily engaged in growing crops, plants, vines, or trees and their seeds such as farms, orchards, groves, greenhouses, and nurseries. The Animal Production and Aquaculture subsector is comprised of industries that raise or fatten animals for the sale of animals or animal products and/or raise aquatic plants and animals in controlled or selected aquatic environments for the sale of aquatic plants, animals, or their products. Code 112 also includes establishments primarily engaged in keeping, grazing, breeding, or feeding animals such as ranches, farms, and feedlots.

Because QCEW employment data includes only workers covered by unemployment insurance, proprietors, the unincorporated self-employed, unpaid family members, and certain domestic workers are not captured. The data also excludes farm workers paid “off the books,” a group that many experts believe to be significant in size.

Farm Worker Profile

Farm workers perform a variety of functions related to the production of agricultural goods, including planting, cultivating, and harvesting crops, as well as attending to live farm, ranch, and aquaculture animals.

Farm workers in New York State tend to be slightly younger in age than the average worker across all private industries. According to 2015-2019 data from the American Community Survey, 47% of New York State farm workers were between the ages of 16 and 34, compared to 40% of all private sector workers. The agricultural workforce also tends to have fewer years of education; only 37.7% of farm workers in the state had received some form of post-secondary education, compared to nearly 64.8% of workers in all private industries. The number of males working in agriculture far outweighs the number of females, comprising nearly three out of four workers.

Wage Profile

Agriculture workers tend to earn significantly lower wages than the average worker in all private industries in New York State. In 2020, the annual average wage in New York State’s agriculture industry was \$39,137, compared to \$84,739 across all private industries.

⁵ This definition of New York State’s agriculture industry differs from NAICS sector 11: Agriculture, Forestry, Fishing and Hunting. It excludes industries not traditionally affected by the exception to overtime rules, such as Forestry, Fishing and Hunting, and Agricultural Support Services.

Within the industry, Crop Production accounted for about half of total employment and wages (51.4% and 48.4%, respectively), while Animal Production and Aquaculture subsector comprised 48.6% of total agricultural employment and 51.6% of the total wages. The annual average wage of \$36,850 in Crop Production was 5.9% lower than the industrywide average. The annual average wage of \$41,590 in Animal Production was 6.2% greater than the industrywide average.⁶

Hours Worked

Workers employed in New York State's agriculture industry tended to work longer hours on average than workers across all private industries. The share of agricultural employees working more than 41 hours per week (41.9%) exceeded the average share among all private sector workers (25.3%) in 2015-19. The share of agricultural employees working more than 60 hours per week (10.4%) was nearly five times that of all private sector workers (2.1%). Crop Production, and Animal Production and Aquaculture ranked among New York State's top 10 industries in terms of the percentage of workers working 60 hours or more per week. Animal Production and Aquaculture ranked first with 15.9% of employees working 60+ hours per week, and Crop Production ranked sixth with a share of 5.7%.

Similarly Situated Industries

The Act requires that the Board consider the characteristics of other similarly situated industries as part of its charge. The Board fulfilled this requirement by taking into account information provided by the Department during formal presentations on November 19, 2020, and January 4, 2022. This information highlighted and discussed 10 different industries where businesses involved in those industries contend with some of the same conditions that the farm owner community identifies as being especially challenging when it comes to paying overtime.

Despite these conditions, the businesses within the highlighted industries all must pay overtime wages for hours in excess of 40 per week unless an exception exists based on the individual employee's duties (e.g., as a professional), rather than an industry classification. For example, in the transportation and warehousing, and retail trade industries, increased consumer demand during the holidays drives the need for increased staffing. In the landscaping industry surge staffing is common during a snowstorm when snow plowing is critical. The table below illustrates some of these points. While limited exemptions exist for occupations in certain

⁶ See page 10 for more information on definitions: [Briefing Document on Employment, Wages and Hours in New York State's Agriculture Industry \(ny.gov\)](#)

industries (e.g., camp counselors), no other industry has a categorical exception to providing overtime pay after 40 hours.

Operational Challenges Influencing Overtime Needs For Similarly Situated Industries					
Industry	Surge Staffing (holiday)	Weather Dependency	Seasonality	Distance from/Lack of Workforce	Live Animals
Transportation & Warehousing	X				
Retail Trade	X				
Golf Courses		X	X		
Landscaping (including snow removal)		X	X		
Construction		X	X		
Hotels (except casino hotels) and Motels			X	X	
Recreational & Vacation Camps			X	X	
Zoos & Botanical Gardens					X
Pet Care Services (including kennels; excluding veterinary)					X
Veterinary Services					X

Formal Presentations Made to Board

2020 New York State Department of Labor presented by Kevin Hannel and Jeanette Lazelle

Mr. Kevin Hannel, a representative from the Department's Division of Research and Statistics, made presentations during each of the five public hearings and one public meeting conducted during 2020.⁷ The information presented to the Board is summarized in the preceding sections of this report and covered topics that included: industry background (wages, number of establishments, number of workers, demographics of workers, number of hours worked), similarly situated industries, emerging COVID challenges and industry financial data from the United States Department of Agriculture (USDA).

The Board also heard information from the Department about the other states that acted on overtime in agriculture industries, including:

- California (lowering the overtime threshold, with different phase-in periods for farms of different sizes as measured by the number of employees; a 40-hour overtime standard will be in effect for agricultural employers of all sizes by 2025)⁸
- Hawaii (overtime after 40 hours but with employer option to select up to 20 weeks per year where overtime is paid after 48 hours)
- Maryland (overtime after 60 hours)
- Minnesota (overtime after 48 hours)
- Washington (overtime after 40 hours for dairy workers)⁹

Ms. Jeanette Lazelle, a representative from the Department's Division of Immigrant Policies and Affairs (DIPA), presented to the Board during the public meeting on November 19, 2020, providing a summary of the Act and an overview of the work done by the worker protection divisions within the Department.¹⁰

⁷ Research and Statistics presented to the Board on the following dates: February 28, 2020, August 26, 2020, August 27, 2020, August 31, 2020, September 30, 2020, and November 19, 2020.

⁸ [Overtime for Agricultural Workers \(ca.gov\)](https://ca.gov)

⁹ As of January 1, 2022, all agricultural workers in WA are eligible for overtime according to a phase-in schedule which reaches 40 in 2024. [Overtime \(wa.gov\)](https://wa.gov)

¹⁰ 2020 video recordings: <https://dol.ny.gov/farm-laborers-wage-board-hearings>

2022

During the 2022 hearings, the Board heard formal presentations from the Department and other non-governmental organizations. The presenters, dates of presentations, and brief descriptions of their presentation are noted in the table below with links to video recordings provided in footnotes. Summaries and some key points from each of the presentations follow.

Organization	Presenter	Date	Description
NYS Department of Labor (Division of Research & Statistics)	Kevin Hannel, Bureau Chief	1/04/22	Presented information and data related to specific items enumerated in the Commissioner's Order (see page 3). ¹¹
NYS Department of Labor	Melissa Buckley, Acting Assistant Director	1/04/22	Presented an overview of the role and work of the Division of Worker Protection, including the Division of Immigration Policies and Affairs. ¹²
Farm Credit East	Chris Laughton, Director of Knowledge Exchange	1/18/22	Presented 10-year trend data and findings from his analysis of potential impact of lowering the threshold. ¹³
Cornell University (Dyson School of Applied Economics and Management)	Chris A. Wolf, Professor	1/20/22	Presented findings from research on potential effects of lowering the threshold to 50 and 40 hours and results of a recent farm owner survey. ¹⁴
National Employment Law Center	Rebecca Dixon, Executive Director	1/20/22	Presented historical context of the overtime exception for farm workers. ¹⁵
National Employment Law Center	Paul Sonn, State Policy Program Director	1/20/22	Presented information on the CA and WA experience, and similarly situated industries. ¹⁶
Economic Policy Institute	Daniel Costa, Director of Immigration Law and Policy Research (and visiting scholar at the University of California, Davis)	1/20/22	Presented on the experience of California's agricultural industry following the state implementation of new overtime protections for farm workers. ¹⁷
Immigration Research Initiative	David Kallick, Director	1/20/22	Offers perspective on what has happened in New York State following the effectuation of the 60-hour threshold and potential impacts if it is further lowered. ¹⁸

New York State Department of Labor presented by Kevin Hannel and Melissa Buckley

¹¹ <https://youtu.be/iCr4jCIEW9Q>; minute 17:58.

¹² <https://youtu.be/iCr4jCIEW9Q>; minute 27:07.

¹³ <https://youtu.be/uaXqdpabSOk>; minute 5:53.

¹⁴ <https://www.youtube.com/watch?v=3tQSRUjTt0M>; minute 11:19.

¹⁵ <https://www.youtube.com/watch?v=3tQSRUjTt0M>; minute 22:12.

¹⁶ <https://www.youtube.com/watch?v=3tQSRUjTt0M>; minute 26:23.

¹⁷ <https://www.youtube.com/watch?v=3tQSRUjTt0M>; minute 33:29.

¹⁸ <https://www.youtube.com/watch?v=3tQSRUjTt0M>; minute 39:40.

Mr. Hannel's presentation focused on four of the five items outlined in the Commissioner's 2021 Order.¹⁹ Key highlights include:

- USDA 2020 Income Statement data showed that net income in New York State's agricultural industries had declined 3%, dropping \$74 million from \$2.251 billion in 2019 to \$2.177 billion in 2020.
- Despite this single year decline, net income nonetheless exceeded the 5-year average of \$1.576 billion by \$601 million (or 38%). The share of net income in 2020 attributable to direct government payments exceeded historic averages (\$721 million, highest on record and approximately eight times New York State's 5-year average). Without these payments, the decline in year-over-year net income would have been greater.
- Income Statement data from New York State agricultural firms, compared to that of five other states that have made changes to overtime thresholds for farm workers (CA, HI, MN, MD, and WA), showed wide variations in the experience of these states, making it difficult to draw clear conclusions.
- Based on data from New York State's QCEW, the annual retention rate of farm employees has not varied significantly over the last decade, even in recent years. Additionally, demand for H-2A visas from New York State agriculture employers has generally risen each year from 2012-2021, including in the two most recent years that followed passage of the Act.
- Despite the number of establishments being counted in the QCEW rising significantly in 2020, QCEW annual average employment for this industry dropped slightly. Total wages and average wages continued to rise in 2020 as well.

In a separate presentation, Ms. Buckley provided an overview of the Act, the increases in New York State's minimum wage and the H-2A Adverse Effective Wage Rates (AEWR). She described the work of several of the Department's divisions that serve functions relevant to the safety of agricultural workers, including that of the Worker Protection Division. Ms. Buckley described DIPA's processing of H-2A and H-2B job orders by New York State agriculture firms to the United State Citizen and Immigration Services, as well as DIPA's approach to housing inspections for the H-2A guest worker program. She also provided additional information on DIPA's educational and compliance-based approach to its work.

¹⁹ The Board relied on oral and written testimony to ascertain the employees' economic security and mental and physical health as documented by occupational safety and health clinics and other organizations within NYS that provide direct services to this population.

Farm Credit East presented by Chris Laughton

Mr. Laughton's presentation focused on the impact to farm owners of lowering the 60 hour per week overtime threshold to 40 hours. The basis of his presentation was an October 2021 report produced by Farm Credit East and formally submitted to the Board.²⁰ Some of his key highlights and arguments include:

- Average wages and average overtime rate within the agricultural industry have increased in conjunction with New York State's minimum wage increases since 2011.
- These increased labor costs contrast with decreases in wholesale milk prices, value of farm production, and net farm income over the same period.
- Mr. Laughton also highlighted his analysis of average 5-year data (2016-2020) related to farm production, hired labor costs, and estimated debt principal payments.
- Lowering the overtime threshold to 40 hours (on top of the minimum wage increases) would result in an average 42% increase in labor costs and an average reduction of 20% in farm income.
- In general, farms have been able to manage through the overtime threshold set at 60-hours but that a further reduction could have deleterious effects.
- A mix of short and long-term changes would come about as a result of increased labor costs. These changes include reduction in farm earnings, increased insolvency, more farms exiting the industry altogether, reductions in worker hours, reduced investment in New York State agriculture, a shift to labor-saving practices, and a shift to less labor-intensive crops etc.

Cornell University, Dyson School of Applied Economics and Management presented by Chris Wolf

Professor Wolf presented his perspective on the effects of New York State overtime laws on production costs and competitiveness, starting with the effects of the existing 60-hour threshold, then broadening the analysis to the potential impact of a 50-hour and a 40-hour threshold. Prof. Wolf and his team evaluated the effects of the current 60-hour threshold using secondary survey data (Cornell Dairy Farm Business Summary and Lake Ontario Fruit Program Fruit Farm Business Summaries). However, the basis for his broader, prospective analysis was the information he and his team gleaned from surveys and interviews of 40 farm operations (20 dairy, 20 fruit/vegetable) conducted between July and September 2021.

²⁰ [The Economic Impact of Overtime Pay for New York State Agriculture \(farmcrediteast.com\)](https://farmcrediteast.com)

- Information from the Cornell Dairy Farm Business Summary and Lake Ontario Fruit Program Fruit Farm Business Summaries shows increased labor costs for both dairy farms and fruit/vegetable farms from 2019 to 2020.
- Based on the 2021 survey, some of the recurring themes (across all threshold limits) from operators about how they have managed at 60-hours or will manage in response to an even lower overtime threshold include: tighter controls over labor costs, investment in labor-saving technologies, and a switch to less labor-intensive crops.
- Additionally, owners pointed to reductions in the overall number of hours worked for many workers in order to avoid incurring the incremental cost of additional overtime hours, delayed or canceled investments, or exiting the industry entirely.
- During his discussion of competitiveness, Prof. Wolf focused on the adverse effects related to increased production costs, the regulatory environment, community impacts and ability to attract workers.

National Employment Law Project (NELP) presented by Rebecca Dixon and Paul Sonn

Ms. Dixon and Mr. Sonn focused on the historical context of the exemption and the experiences of other states, like California and Washington, in providing overtime protection after 40 hours, highlighting a phase-in approach as a path to achieving this.

Key points made during Ms. Dixon's testimony:

- The history of exempting farmworkers from labor protections is discriminatory in origin and based in Jim Crow compromises by Congress aimed at preserving the plantation economy in the South.
- This history is connected to New York State's present-day denial of labor protections to its largely Latinx farmworker population.
- Ms. Dixon highlighted that the 60-hour overtime threshold consigns New York State's disproportionately Latinx farmworker population to a life of substandard pay and poverty.

Key points made during Mr. Sonn's testimony:

- As market leaders in dairy and apple production and states with comparable minimum wage rates, California and Washington's experience suggest that New York State can make a successful transition to a 40 hour per week overtime threshold.

- Mr. Sonn highlighted that the change would not result in a labor shortage as a result of workers fleeing to neighboring states because employers would strive to hire more workers to reduce overtime usage.
- One of the intended effects of overtime is to reduce overwork.

Economic Policy Institute (EPI) presented by Daniel Costa

Mr. Costa presented in support of lowering the overtime threshold to 40 hours per week and based his remarks on written testimony he submitted to the Board. He highlighted that farm workers provide an essential service and are vastly underpaid. During his testimony, Mr. Costa presented several charts to illustrate key points related to farm worker characteristics and the experience of California since adopting new overtime provisions. Some of these points included:

- Farm workers are some of the lowest paid workers in the U.S. labor market. On average, farm workers earn less than workers without a high school diploma.
- California’s labor market has held steady since the implementation of the state overtime requirement for farm workers.
- The total wage paid by agricultural employers to farm workers in California have increase more slowly after passage of California’s agriculture overtime law.
- The California overtime law did not lead to a sharp increase in total wages paid by agricultural employers.
- The number of agriculture establishments in California remained constant after California’s overtime provisions took effect.
- The number of H-2A jobs created in California have not declined during the overtime phase in period but instead has increased rapidly.

Immigration Research Initiative (IRI) presented by David Kallick

Mr. Kallick presented what he and his team at the Fiscal Policy Institute (FPI) have seen as New York State implemented the 60-hour overtime standard. These findings are presented in a 2019 report from FPI entitled “Farm Workers’ Overtime Pay is Affordable and Long Overdue.”²¹

Some key points include:

²¹ [farm workers brief 05-22mgddk \(fiscalpolicy.org\)](https://www.fiscalpolicy.org/farm-workers-brief-05-22mgddk)

- Farm workers saw less extreme overtime hours and their weekly pay increased.
- Farm owners were also able to manage through the overtime regulations. Some farm owners added more workers to reduce the number of hours per worker, while some owners implemented better management practices making more efficient use of workers' time. Some farm owners invested in farm equipment which made work easier and faster, reduced the amount of lifting and carrying, and thereby increased productivity.
- In many instances when employers are required to pay higher wages, they make a bigger effort to increase the efficiency of their workplace. Examples of this include when the minimum wage was increased, when businesses unionize, and over the past year in farms with the 60-hour overtime threshold.
- Mr. Kallick specifically disagreed with the prediction of economic disaster from farm owners who were asked what would happen if they had to meet a 40-hour overtime threshold.
- There would be a cost to farm owners but even if farm owners were going to absorb all of the costs, it would represent a manageable share of their profits.

General Testimony and Comments – Common Themes

Over the course of the nine public hearings held in 2020 and 2022, the Board heard testimony from hundreds of individuals, and estimated total hearing attendance reached well over 1,000. The comments that the Board received fell almost exclusively into three categories: (1) reduce the overtime threshold to 40 hours to align with other workers in the state; (2) maintain the 60-hour threshold indefinitely; and (3) study the impact of the 60-hour threshold which has just been enacted.

Arguing against lowering the 60-hour overtime threshold for farmworkers, farmers and agricultural industry groups stated that labor is already a large business expense and farmers operate on slim profit margins. The industry also urged the Board to stay any action and study the impact of the 60-hour overtime threshold for several years, cautioning that lowering the threshold now would be premature. Industry conditions like the dependency on the weather, farmers as price takers, and competing with states/countries with no overtime and lower minimum wages were also cited as factors against lowering the threshold.

Some farmworkers testified alongside their employers, and several farms collected the written testimony of some of their workers. Their comments highlighted the favorable treatment they

received from their employers and these workers urged no lowering of the threshold, citing their desire to work long hours and the potential negative impact on the farm's profitability.

Farmworkers, farmworker advocacy and service organizations, worker advocates, and civil rights groups also testified and provided written testimony, urging the Board to lower the overtime threshold to 40 hours. These constituencies contend that the 40-hour threshold is standard, and the exception for farmworkers is an outdated relic rooted in racism. They also contend that this workforce is particularly vulnerable due to both the strenuous physical labor required, minimal labor protections in the industry, and working long hours for low pay.

Arguing for inclusion in the standard 40 hours threshold, these constituencies pointed to other seasonal workforces, like construction and tourism, that are covered by that standard and are also affected by weather. They also note that agriculture is the only industry that avoids overtime by effectively arguing that it reduces profits. Many stated that Labor Law §674-A(6) requires consideration of only one factor: "existing overtime rates in similarly situated industries in New York State," making the case that because nearly all other employers in the state are required to pay overtime after 40 hours, so should agricultural employers. On this point, owner and owner advocates made it clear that they believe the agricultural industry is like no other.

Farm worker participation in these hearings was lower than that of the owner community. Worker advocates explained why worker participation levels might be low: consistently citing conflicting work schedules, fear of retaliation by employers, and the vulnerability of a low-wage, often undocumented workforce. Indeed, a significant amount of worker testimony was read by advocates themselves as many workers were not available or wished to remain anonymous.

Considerations

We (the Board) held a total of nine public hearings and five public meetings, since the Act became effective, in order to carefully consider the matter of maintaining or lowering the current 60-hour overtime threshold for farm workers. We have given serious consideration to the information received via direct testimony, letters, petitions, reports, and data shared during the hearings and open submission process. The following section is meant to provide insight into the specific observations, concerns, and considerations that underlie our final recommendation to the Commissioner.

Physical and Emotional Toll

Farm workers are an essential part of New York State's robust agricultural economy and workforce. Farm workers work long hours to produce healthy, locally grown food that feeds our school children and our communities.

Physical labor offers many health benefits. However, when practiced repeatedly and for long periods it can impact human health and wellbeing.

We heard directly from workers who gave first-hand accounts of the physical toll they endure. Physicians and others who deal directly with these workers gave testimony about the physically taxing nature of farm work and the impact it has on the human body. We heard experts from NELP and EPI speak to this same issue, pointing to the problem of long hours of work and characterizing the work in this industry as one of the most hazardous in the entire U.S. labor market. While occupational standards exist to address many of these concerns, it is the perspective of the majority of the Board that long, physical labor should be compensated at a higher rate of pay after 40 hours.

Economic Impacts

We heard concerns from a significant number of farmers that any changes would have a detrimental impact on their financial well-being. The COVID-19 pandemic has added to those concerns and informed our decision to take an additional year to study the impact of this unfolding crisis on the industry.

As we resumed deliberations in 2022, the Governor and Legislature enacted three new tax credits to assist farm employers in transitioning to a lower overtime standard.

- The Investment Tax Credit was increased from four percent to 20 percent for farm businesses, providing an encouragement for potential automation of farm production.
- The Farm Workforce Retention Tax Credit was increased to \$1,200 per employee to provide near-term relief for employers.
- Most important, a new refundable overtime tax credit was established for overtime hours paid by farm employers at the level established by the Board and confirmed by the Commissioner of DOL up to 60 hours.

These actions by the Governor and Legislature are supportive of food production and the farm economy. They provide a means for New York's farms to go through the difficult transition to a lower overtime standard with less economic impact and will help to support a continued strong farm economy in New York.

Equity and Racial Justice

The Board views the issue of equity as one of great importance.

No testimony or evidence was presented to support a conclusion that there is currently discrimination in New York State's farm industry based on race. Some commenters expressed their belief that the choice to exempt farm workers from overtime is a relic from an era of

exclusionary policies. Additionally, a majority of the Board views the change to the current overtime practice as reinforcement of the value that New York State places on equitable labor practices across all industries.

Farm Worker Participation

The farm worker stories were compelling as they recounted some of their individual experiences and the benefit that a lower overtime standard would have for themselves. Farm worker advocates point to lack of worker participation in the hearings because of a power imbalance or concern that engagement might impact employment in various ways.

The majority of individuals testifying were part of or spoke on behalf of the farm owner community. This community was well-organized and clear in its message that the threshold should not be lowered. The sentiment expressed was that any increase in operational costs, including wages, would negatively impact their competitive position.

Regardless, we do not conclude that the imbalance in the participation rates reflect a lack of interest on the part of workers.

Final Recommendations

After hearing and reading testimony from farmers, farm workers, representatives of agricultural industry groups, advocacy and service organizations, and civil rights groups, it became even clearer to members of the Board that farms and farm workers play a critical role in New York State's food production and supply, and in ensuring that New York State has a strong, local agriculture and food system.

We (the majority of the Board) have adopted three resolutions recommending that the Commissioner raise standards governing overtime pay in agriculture to parity with those in other industries, while being responsive to the needs of agricultural businesses.

We have evaluated all information presented including the individual testimony and recorded video testimony from speakers with differing perspectives on this important issue. We have deliberated and have voted (2-1, with Mr. David Fisher voting "No") in favor of lowering the threshold down from 60 hours, but doing so in a measured approach, over several years.

This recommendation reflects our (the majority of the Board) finding that overtime after 40 hours must be the standard in New York State for farm workers. However, we urge that this policy take effect in a manner that reflects our desire to achieve this 40-hour goal in a way that mitigates economic hardship for farm owners and improves the economic viability of farm workers. To that end, the details of our recommendation are as follows:

- Beginning on January 1, 2024 the current overtime threshold will be reduced by 4 hours to 56;
- 56 hours shall remain the standard until January 1, 2026 when the threshold shall drop by 4 hours to 52;
- Every other year thereafter, the threshold shall be reduced by 4 more hours until it reaches 40 on January 1, 2032; and
- Thereafter, it shall remain at 40.

Resolutions Adopted by the Farm Laborers Wage Board on January 28, 2022:

RESOLUTION 1.

The overtime threshold for farm laborers, which is currently set at sixty hours, be reduced to forty hours.


RESOLUTION 2.

The reduction of the overtime threshold from sixty to forty hours be phased in over ten years with reductions of four hours on a biannual basis.

RESOLUTION 3.

The phase-in schedule will begin on January 1, 2024 with the threshold set at 56 hours; on January 1, 2026, with the threshold set at 52 hours; on January 1, 2028, with the threshold set at 48 hours; on January 1, 2030, with the threshold set at 44 hours; on January 1, 2032, with the threshold set at 40 hours.

Respectfully submitted,



Mr. David Fisher

President of the New York Farm Bureau

Mr. Denis Hughes

Former President of the New York State AFL-CIO

Ms. Brenda McDuffie

Former President of the Buffalo Urban League

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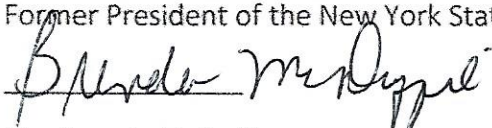
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ADDENDUM

During the virtual Farm Laborers Wage Board meeting on September 6, 2022, the Board voted to include the following comments from Board Member David Fisher as an Addendum to this Report.

DAVID FISHER

Brenda, I would like to make a few comments.

BRENDA MCDUFFIE

Please, Mr. Fisher.

DAVID FISHER

I was hopeful when I was appointed to this Wage Board, what we would learn would be taken to heart in the final outcome. I sincerely appreciate the courtesy and attention Brenda and Denis have shown during the more than two-year process we've been here. It's been an awkward process. The three of us couldn't sit in the same room together or have meaningful discussions or visit a farm or do other things that would have been helpful.

That being said, I didn't come into the process with blinders on. I knew the cards were stacked against the position of my organization and what agriculture truly believes is best for farms, farm workers, and the food supply. In the end, I believe the report, which was written by the Department of Labor, does not reflect the data, research, and scope of the full testimony that was provided. I offered up a number of suggestions, many of which were not taken into consideration. I'll briefly highlight some of the major concerns I have with the report.

For starters, it makes a number of conclusions that are based on nothing more than opinion, not facts, and puts weight behind derogatory charges about the industry. Even though the report says there was no findings of racial injustice on farms, New York State has strict regulations in place to ensure the health and safety of workers in every industry, including farms, and we work with and rely on those state and local agencies to ensure anyone violating these rules are held accountable across all business sectors. The report further asserts, with no supporting evidence, that a large number of farm employees are paid off the books. This claim is patently untrue, and even if it was true, this is a DOL failure to enforce their own regulations. Until DOL can prove their assertions or that farm employers engage in this unlawful practice in a more pervasive way than other industries, the language should be taken out of the report.

The report calls out what it says are significantly lower wages for farm employees versus those in the private industry. Report says that wages are nearly \$40,000 a year for farm workers, but nowhere does it take into account the seasonal workers earn their money in a short period of 4 to 8 months, or the multitude of unique benefits provided on top of wages, like free housing, utilities, food from the farm, and transportation that are often not provided to many other workers. It also refers to similarly situated industries that have overtime but does not include

any of the testimony that outlines how those are not fair comparisons and how different industries truly are.

The report includes testimony from proponents of a lower threshold on how a 40-hour threshold has not had a negative impact in California but makes no mention of the testimonies of the 40-hour threshold just kicked in in the final stages this year and that no data was presented in the January hearings to support such a claim that it's not hurting agriculture there. And that came with a lack of information directly from DOL staff. In highlighting the testimony from economist Chris Wolf at Cornell, the report conveniently leaves out the employee survey that showed 72% of farm workers said they'd leave the state if their hours were cut. It also completely discounts the voice of farmers simply because a majority wants to stay at 60. It barely touches on the testimony of how this will make farms less competitive and how labor shortages are already a challenge and only get worse if workers leave the state.

The facts can't be ignored, even if the report doesn't give them their due diligence. What may be most disheartening is the references of historical racist policies to justifying the lower threshold. The report cited no evidence or testimonies of racial discrimination on farms, but highlights Miss Dixon's testimony that says, "history is connected to New York state's present day denial of labor protection to its Latinx farm worker population," when in fact, farm workers in New York State have some of the strongest, if not the strongest set of protections in the country.

We're here today because a major overhaul of the farm worker regulations in the state, some of which the farm community advocated for, including the 60-hour overtime threshold that was a compromise that all sides supported just three years ago. New York is a leader in farm worker protections. Some farm labor protections are even stronger than those for the rest of the private sector, including mandatory day of rest, over overtime if an employee works a seventh day regardless of total hours worked, and using a card check system to join union versus private vote. The report and the Department of Labor have failed to recognize all the work agricultural industry has done and been doing to improve working conditions on our farms. We championed an Ag workforce development specialist through Cornell Cooperative Extension, have made major investments in safety training and equipment, human resource development, higher wage rates, new housing construction, and it does not take into account the collective bargaining allows for workers and employers to bargain in good faith for additional benefits and workplace conditions. This report paints a picture of farm worker protections that is really not grounded in the truth.

Finally, the report makes the conclusion that a significant number of farm workers did not testify because of fear of retaliation or because they're low wage or often undocumented. It doesn't mention most of the hearings were scheduled when seasonal workers were out of the country or unavailable. While it refers to letters written by farm workers, it clearly discounts their merits versus those who presented in person. Every farm worker's voice should be heard. Every bit of testimony should be weighed. It also fails to mention the Wage Board did not see

all the videos that were submitted. So the DOL in this report should not make charges of lack of participation when all the testimony wasn't referenced or even considered.

For these reasons, at this time, I can't support this final report as written, and if the report is forwarded, I would respectfully request that my comments be added as an addendum to the report, no matter the outcome of today or in the coming weeks, one thing we can all agree on is how valuable our employees are to the work of feeding our fellow New Yorkers. Farmers can't do it without them, and we will continue to stand with them and do the best we can to provide our employees with good jobs and opportunities. Thanks.

BRENDA MCDUFFIE

Thank you, Mr. Fisher. And I want to state, as you know, this meeting is being recorded and all comments made by any Board member, all of you, are part of the public record.