



Minimum Wage Standards for Farm Workers

**Article 19-A
of the New York State Labor Law**

*As Amended
Effective April 1, 2005*

Article 19-A

Minimum Wage Standards and Protective Labor Practices for Farm Workers

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§ 670. Statement of public policy; findings.

The legislature of the state of New York declares that it is the public policy of the state and the purpose of this act that minimum wage standards shall apply to farm workers, so as to eliminate as rapidly as practicable the employment of farm workers at wages insufficient to provide adequate maintenance and protection of health, without substantially curtailing opportunities for employment or earning power.

The legislature hereby finds that the establishment of minimum wage standards for farm laborers involves distinct and unusual problems; that the agricultural labor force is made up of regular all-year workers as well as short-term seasonal workers; that although some workers are paid on an hourly basis, many are paid on a piecework, weekly, monthly, or other basis; and that the agricultural industry is particularly affected by weather and market conditions and by perishability of products.

Accordingly, the legislature further declares that it is the purpose of this act to provide a flexible approach with full consideration of the unusual problems involved.

§ 671. Definitions.

As used in this article:

1. "Farm" includes stock, dairy, poultry, furbearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses, or other similar structures, used primarily for the raising of agricultural or horticultural commodities.

2. "Employee" includes any individual employed or permitted to work by an employer on a farm but shall not include: (a) domestic service in the home of the employer; (b) the parent, spouse, child or other member of the employer's immediate family; (c) a minor under seventeen years of age employed as a hand harvest worker on the same farm as his parent or guardian and who is paid on a piece-rate basis at the same piece rate as employees seventeen years of age or over; (d) an individual employed or permitted to work for a federal, state, or a municipal government or political subdivision thereof; or (e) an individual to whom the provisions of article nineteen of this chapter are applicable.

3. "Employer" includes any individual, partnership, association, corporation, cooperative, business trust, legal representative, or any organized group of persons acting as an employer of an individual employed or permitted to work on a farm. If a farm labor contractor recruits or supplies farm workers for work on a farm, such farm workers shall, for the purposes of this article, be deemed to be employees of the owner, lessee or operator of such farm.

4. "Farm labor contractor" includes: a. Any person who, for a fee, recruits, transports, supplies, or hires farm or food processing workers to work for, or under the direction, supervision, or control of, a third person; or b. Any person who recruits, transports, supplies, or hires farm or food processing workers and who, for a fee, directs, supervises or controls all or any part of the work of such workers. "Fee" includes any money or other valuable consideration paid or promised to be paid to a farm labor contractor for the performance of any of the services enumerated in this definition. The term "farm labor contractor" shall not include an employment agency licensed in accordance with the provisions of article eleven of the general business law.

5. "Wage" includes allowances in the amount determined in accordance with the provisions of this article for meals, lodging, and other items, service and facilities when furnished by the employer to his employees.

6. "Hours worked" means the time that a farm worker is permitted to work in the fields or at his assigned place of work, and shall include time spent on a single farm in going from one field to another, or in waiting for baskets, pick-up, or for similar purposes; provided, however, that time not worked because of weather conditions shall not be considered as hours worked.

7. "Work agreement" means a job service recruitment or placement order; a farm labor contract or migrant labor registration; an agricultural employment contract executed by the employer or its representative with the Commonwealth of Puerto Rico or with the representatives of a foreign government; an agreement voluntarily entered into by the employer and the worker; or any comparable agreement.

§ 672. Application of article.

This article shall apply to every employer during any part of the twelve consecutive months beginning February first, nineteen hundred seventy and February first of each subsequent year, preceded by a calendar year in which the cash remuneration paid to all employees aggregated twelve hundred dollars or more, provided, however, that one hundred eighty days after this act shall take effect this article shall apply to every employer if in the previous calendar year the cash remuneration paid to all employees aggregated two thousand dollars or more and on July first, nineteen hundred eighty-four this article shall apply to every employer if in the previous calendar year the cash remuneration paid to all employees aggregated three thousand dollars or more.

§ 673. Minimum wage.

1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than the wage established pursuant to subdivision one of section six hundred fifty-two of this chapter, or such other wage as may be established in accordance with the provisions of this article.

2. Existing wage order. The minimum wage order in effect on the effective date of this act shall remain in full force and effect, except as modified in accordance with the provisions of this article.

§ 673-a. Farm workers; mandatory work agreements.

Notwithstanding the provisions of any general, special or local law, rule or regulation to the contrary, for the purpose of notifying each employee, in writing, of the conditions of employment every employer shall utilize the farm work agreement prescribed by the commissioner.

§ 674. Regulations.

1. The commissioner may promulgate such regulations to safeguard minimum wage standards. Such regulations may include, but are not limited to, the defining of the circumstances or conditions for the acceptance of non-hourly rates and piece rates as equivalent to the minimum hourly rates established by this article. Such regulations also may include, but are not limited to, waiting time and call-in pay rates; wage provisions governing guaranteed earnings during specified periods of work; allowances for meals, lodging, and other items, services and facilities when furnished by the employer; or by physical or mental deficiency or injury, under special certificates issued by the commissioner, at such wages lower than the minimum wage established by this article and for such period as shall be prescribed in such regulations.
2. Such regulations may vary with localities if in the judgment of the commissioner conditions make such variation appropriate.
3. Such regulations shall be promulgated by the commissioner after a public hearing held after due notice. A notice of the public hearing and a notice of the promulgation of any such regulation shall be published in the state bulletin. The notice of the promulgation of any such regulation shall be published at least twenty days before the effective date of the regulation.

§ 674-a. Farm laborers wage board.

1. Wage board. The commissioner shall hereby convene a farm laborers wage board. The wage board shall be comprised of three members: one representative of the farm bureau, one representative of the New York State AFL-CIO and one member appointed by the commissioner, who shall be selected from the general public and designated as chairperson. The wage board shall hold its first hearing no later than March first, two thousand twenty. The members of the board shall not receive a salary or other compensation, but shall be paid actual and necessary traveling expenses while engaged in the performance of their duties.
2. Organization. Two-thirds of the members of the board shall constitute a quorum. The chairperson may from time to time formulate rules governing the manner in which the wage board shall function and perform its duties under this article.
3. Powers. The wage board shall have power to conduct public hearings. The board may also consult with agricultural employers and farm laborers and their respective representatives, in the occupation or occupations involved, and with such other persons, including the commissioner and the commissioner of agriculture and markets, as it shall determine. The board shall also have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, and the production of all books, records, and other evidence relative to any matters under inquiry. Such subpoenas shall be signed and issued by the chairperson of the board and shall be served and have the same effect as if issued out of the supreme court. The board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the supreme court. The board shall not be bound by common law or statutory rules of procedure or evidence.
4. Public hearings. Within forty-five days of the appointment of the wage board, the board shall conduct public hearings. The wage board shall only meet within the state and must hold at least three hearings at which the public will be afforded an opportunity to provide comments. At least one Spanish language interpreter shall be present at each public hearing to interpret oral testimony delivered in Spanish. Where a witness reveals the need for an interpreter in a language other than Spanish, to the extent practicable, an interpreter in that language shall be provided. Any materials advertising such hearings shall be bilingual in English and Spanish. Any written materials disbursed at the hearing or subsequent to the hearing, including written testimony and hearing transcripts, shall be available in English, Spanish, and, to the extent practicable, any other language upon request.
5. Report. The wage board shall make a report to the governor and the legislature, including its recommendations as to overtime work for farm laborers. The report and recommendations of the board shall be submitted only after a vote of not less than a majority of all its members in support of such report and recommendations. Such report shall be submitted no later than December thirty-first, two thousand twenty. The overtime rates recommended by the wage board shall not be in excess of sixty hours, and the wage board shall specifically consider the extent to which overtime hours can be lowered below such amount set in law, and may provide for a series of successively lower overtime work thresholds and phase-in dates as part of its determinations.

6. The wage board shall consider existing overtime rates in similarly situated industries in New York state. Nothing contained in the wage board's report or recommendations shall diminish or limit any rights, protections, benefits or entitlements currently available to any farm laborer.

7. The commissioner shall comply with section six hundred fifty-six of this chapter upon receipt of the wage board's recommendations. The commissioner may reconvene the same wage board or appoint a new wage board in compliance with section six hundred fifty-nine of this chapter.

* NB Effective January 1, 2020

(§ 675 deleted)

§ 676. Appeals from regulations.

1. Finality. Any regulation issued by the commissioner pursuant to this article shall, unless appealed from as provided in this section, be final. The findings of the commissioner as to the facts shall be conclusive.

2. Review by board of standards and appeals. Any person in interest, including a labor organization or employer association, who is aggrieved by such regulation may obtain review before the board of standards and appeals by filing with said board, within forty-five days after the date of the publication of the notice of such regulation, a written petition requesting that the regulation be modified or set aside. A copy of such petition shall be served promptly upon the commissioner. On such appeal, the commissioner shall certify and file with the board of standards and appeals a transcript of the entire record, including the testimony and evidence upon which such regulation was made. The board of standards and appeals, upon the record certified and filed by the commissioner, shall, after oral argument, determine whether the regulation appealed from is contrary to law. Within forty-five days after the expiration of the time for the filing of a petition, the board of standards and appeals shall issue an order confirming, amending or setting aside the regulation appealed from. The appellate jurisdiction of the board of standards and appeals shall be exclusive and its order final except that the same shall be subject to an appeal taken directly to the appellate division of the supreme court, third judicial department, within sixty days after its order is issued. The commissioner shall be considered an aggrieved party entitled to take an appeal from an order of the board of standards and appeals.

3. Security. The taking of an appeal by an employer to the board of standards and appeals shall not operate as a stay of a minimum wage regulation issued under this article unless and until, and only so long as, the employer shall have provided security determined by the board of standards and appeals in accordance with this section. The security shall be sufficient to guarantee to the employees affected the payment of the difference between the wage they receive and the minimum wage they would be entitled to receive under the terms of the minimum wage regulation (such difference being hereinafter referred to as "underpayments") in the event that such regulation is affirmed by the board of standards and appeals. The security shall be either:

a. A bond filed with the board of standards and appeals issued by a fidelity or surety company authorized to do business in this state. The bond shall be sufficient to cover the amount of underpayments due at the time the bond is filed with the board of standards and appeals and the amount of underpayments that can reasonably be expected to accrue within the following sixty days; or

b. An escrow account established by the employer in behalf of employees and, deposited in a bank or trust company in this state, of which the employer has notified the board of standards and appeals in writing that he has established such account. The account shall be sufficient to cover the amount of underpayments due at the time of notification to the board of standards and appeals and shall be kept current by the employer depositing therein the amount of underpayments accruing each and every pay period. Such deposits shall be made no later than the day on which the wages for each pay period are payable. As an alternative thereto, an employer may deposit the amount of underpayments due at the time the deposit is made and the amount of underpayments that can reasonably be expected to accrue within the following sixty days, as determined by the board of standards and appeals. The employer shall keep accurate records showing the total amount of each deposit, the period covered, and the name and address of each employee and the amount deposited to his account. The employees escrow account shall be deemed to be a trust fund for the benefit of the employees affected, and no bank or trust company shall release funds in such account without the written approval of the board of standards and appeals.

4. Maintenance of security. The commissioner, at the request and on behalf of the board of standards and appeals, shall have the right to inspect the books and records of every employer who appeals or who provides a security in accordance with subdivision eight of this section. In the event that the board of standards and appeals finds that the security provided by an employer is insufficient to cover the amount of underpayments, it shall notify the employer to increase the amount of the security. If the employer fails to increase the security of the amount requested within seven days after such notice, the stay shall be terminated. If the board of standards and appeals finds that the amount of the security is excessive, it shall decrease the amount of security required.

5. Review of determination as to security. Notwithstanding any provision in this chapter, any determination of the board of standards and appeals with reference to subdivisions three and four of this section shall be reviewable only by a special proceeding under article seventy-eight of the civil practice law and rules instituted in the supreme court in the third judicial district within ten days after such determination.

6. Security on court review. In the event that an appeal is taken from the order of the board of standards and appeals to the supreme court in the third judicial district pursuant to subdivision two of this section, the court may continue the security in effect or require such security as it deems proper.

7. Waiver of security. Notwithstanding any provision in this section, the board of standards and appeals may, in its discretion, waive the requirement of a security for an employer who the board of standards and appeals finds is of such financial responsibility that payments to employees of any underpayments due or to accrue are assured without the security provided by this section.

8. Stay for other employers. Any employer affected by a minimum wage regulation from which an appeal has been taken by another employer to the board of standards and appeals or to the supreme court in the third judicial district, may obtain a stay of proceedings against him by providing a security in accordance with subdivisions three and four of this section within thirty days after the filing of the appeal by the other employer.

§ 677. Appeals from compliance orders.

Within sixty days after the issuance by the commissioner of an order to comply with any provision of this article or with any minimum wage regulation promulgated thereunder, any person aggrieved may appeal questions of law and fact involved in such order to the board of standards and appeals by filing with said board a written petition in accordance with such rules as the board shall prescribe, provided, however, that no such appeal shall bring under review any minimum wage regulation promulgated under this article.

The provisions of subdivision two of section six hundred seventy-six relating to appeals from determinations of the board and the provisions of subdivisions three through seven of section six hundred seventy-six shall apply to appeals such as herein provided. Unless an appeal such as herein provided is taken within the prescribed time, the findings of fact and conclusions of law contained in such order to comply shall be final and binding and no board or court shall have jurisdiction to review such order, or finding or conclusion contained therein, or to restrain or interfere with its enforcement.

§ 678. Commissioner's powers of investigation.

The commissioner or his authorized representative shall have power: (a) to investigate the wages of persons employed on a farm; (b) to enter the place of business or employment of any employer for the purpose of (1) examining and inspecting any and all books, registers, payrolls and other records that in any way relate to or have a bearing upon the wages paid to, or the hours worked by any employee, (2) ascertaining whether the provisions of this article and the regulations promulgated hereunder are being complied with; and (c) to require from any employer full and correct statements and reports in writing of the records required by this article, at such times as the commissioner may deem necessary.

§ 679. Records of employers.

Every employer shall keep true and accurate records of hours worked by each employee, the wages paid, and such other information as the commissioner deems material and necessary, and shall, on demand, furnish to the commissioner or his duly authorized representative a sworn statement of the same. Every employer shall keep such records open to inspection by the commissioner or his duly authorized representative at any reasonable time. Every employer of an employee shall keep a digest or

summary of this article and regulations, which shall be prepared by the commissioner, posted in a conspicuous place in his establishment and shall also keep posted such additional copies of said digest or summary as the commissioner prescribes.

Employers shall, on request, be furnished with copies of this article and regulations, and of digests or summaries thereof, without charge.

Employers shall permit the commissioner or his duly authorized representative to question any individual employed by such employer in the place of employment and during working hours in respect to the wages paid and the hours worked when records of hours worked are required under this article.

§ 680. Penalties.

1. Discrimination against employee. Any employer or his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has made a complaint to his employer, or to the commissioner or his authorized representative, that he has not been paid in accordance with the provisions of this article, or because such employee has caused to be instituted a proceeding under or related to this article, or because such employee has testified or is about to testify in an investigation or proceeding under this article, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty dollars nor more than five hundred dollars.

2. Payment of less than minimum wage. Any employer or his agent, or the officer or agent of any corporation, who pays or agrees to pay to any employee less than the wage applicable under this article shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment of not less than ten nor more than ninety days or by both such fine and imprisonment, and each payment to any employee in any week of less than the wage applicable under this article shall constitute a separate offense.

3. Failure to keep records. Any employer or his agent, or the officer or agent of any corporation, who fails to keep the records required under this article or to furnish such records or any information required to be furnished under this article to the commissioner or his authorized representative upon request, or who hinders or delays the commissioner or his authorized representative in the performance of his duties in the enforcement of this article, or refuses to admit the commissioner or his authorized representative to any place of employment, or falsifies any such records or refuses to make such records accessible to the commissioner or his authorized representative, or refuses to furnish a sworn statement of such records or any other information required for the proper enforcement of this article to the commissioner or his authorized representative, shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and each day's failure to keep the records required under this article or to furnish such records or information to the commissioner or his authorized representative shall constitute a separate offense.

§ 681. Civil action.

1. By employee. If any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees as may be allowed by the court, and if such underpayment was willful, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayment found to be due him and any agreement between him and his employer to work for less than such wage shall be no defense to such action.

2. By commissioner. On behalf of any employee paid less than the wage to which he is entitled under the provisions of this article, the commissioner may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and if such underpayment was willful, an additional amount as liquidated damages equal to twenty-five percent of the total of such underpayments found to be due him.

3. Limitation of time. Notwithstanding any other provision of law, an action to recover upon a liability imposed by this article must be commenced within six years.

§ 682. Referrals by employment agencies.

No employment agency shall place or attempt to place any employee in an occupation at less than the wage applicable to such occupation under this article.

The term "employment agency" as used in this section shall mean an employment agency as defined in section one hundred seventy-one of the general business law.

§ 683. Savings clause.

If any portion of this article or the application thereof to any person, employer, occupation or circumstance is held invalid, the remainder of the article and the application of such provision to other persons, employees, occupations, or circumstances shall not be affected thereby.