



Farmworker Justice Summary of the Fairness for Farm Workers Act

The Fairness for Farm Workers Act would remedy the discriminatory denial of overtime pay and the minimum wage to farm workers under the FLSA. The legislation would eliminate existing exemptions for agricultural employers from overtime. The legislation would also eliminate most of the remaining exemptions to the minimum wage for agricultural employers; however, the exemption for an agricultural employer's immediate family members would continue.

Specifically, section 2(a)(1) of the legislation amends FLSA section 207 to add language requiring overtime pay for any employee employed in agriculture. FLSA's requirements that the employee is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce are applicable here as well. The overtime requirement is phased in, with the phase-in beginning in 2019 for employers with more than 25 employees and in 2022 for employers with 25 or fewer employees. The phase-in will take place over 4 years, with employers being required to pay overtime after fifty-five hours in any workweek beginning on January 1, 2019; fifty hours beginning on January 1, 2020; forty-five hours beginning on January 1, 2021; and forty hours beginning on January 1, 2022. Overtime pay for employers of 25 or fewer employees will begin on January 1, 2022, with a similar phase-in over three years and full implementation for a workweek over forty hours beginning January 1, 2025. The bill mirrors California's phase-in requirement to ensure equity with California. Section 2(a)(2) also repeals an exemption to overtime protections for certain tobacco employees found in FLSA section 207(m).

Section 2(b) of the legislation strikes the exemptions to overtime and minimum wage for agricultural employees that are found in FLSA's section 213. Specifically, section 2(b)(1) of the legislation strikes the exemptions to both overtime and the minimum wage for agricultural work found in section 213(a)(6), including the small farm exemption (also known as the 500 man-days exemption—which is equivalent to roughly seven full-time employees employed throughout the calendar quarter); the local hand harvest laborer exemption; the non-local minor exemption; and the exemption for range production livestock. The exemption for agricultural employers' immediate family members would continue and is not removed by this legislation.

Section 2(b)(2) of the legislation would remove all of the exemptions to overtime protections for agricultural workers in the remaining sections of 213, including paragraphs (b)(12) through (16), which cover any employee employed in agriculture; agricultural irrigation projects; livestock auctions incidental to farming expenses; small country grain elevators; intra-state transportation and preparation for transportation of fruits and vegetables from farm to place of first processing or marketing and transportation of fruit and vegetable harvest workers. The legislation would also delete exemptions for

certain sugar processing and cotton ginning or compressing employees found in FLSA sections 213(h) through (j).

Section 2(c) provides effective dates for the legislation's overtime and minimum wage provisions. Section 2(c)(1) provides a delayed one-time full implementation date for employees addressed in subsections (a)(2)[certain tobacco employees]; (b)(1)[small farm; local hand harvest laborer; non-local minor; and range production livestock]; and (b)(3)[sugar processing and cotton ginning or compressing]. The effective dates would be the final year of implementation—January 1, 2022 for an employer with more than 25 employees and January 1, 2025 for an employer with 25 or fewer employees. These delayed implementation dates provide employers with employees under FLSA 213(a)(6) who are currently exempt from both the minimum wage and overtime additional time to comply with the minimum wage and overtime requirements. In addition, for employees under 213(h)-(j) and 207(m), who already receive some limited overtime protections under FLSA, the bill's coverage would have a later effective date for those occupations to ensure that the employees in those occupations continue to be eligible for any overtime for which they are already eligible during the bill's phase-in period. The implementation date would also apply to Section 2(d) which includes a conforming amendment to the Migrant and Seasonal Agricultural Worker Protection Act. The conforming amendment and implementation date do not change the Migrant and Seasonal Agricultural Worker Protection Act; they are intended to maintain continuity for an exemption referencing FLSA's 500 man-day exemption section.

Finally, Section 2(c)(2) provides that the effective date for the overtime requirements for employees referenced in FLSA sections 213(b)(12) through (16) shall begin the phased-in implementation on January 1, 2019 for an employer with more than 25 employees and on January 1, 2022 for an employer with 25 or fewer employees.