



# Interpretive Notice & Formal Opinion (“INFO”) #12A:

## Overtime and Minimum Wage Obligations for Agricultural Employment

This INFO covers minimum wage and overtime pay requirements in agriculture under the [Agricultural Labor Rights & Responsibilities Act \(ALRRA\)](#) and [Colorado Overtime and Minimum Pay Standards \(COMPS\) Order](#). ([INFO #12D](#) details how these rights are enforced, and which employers, employees, and work they cover.)

### MINIMUM WAGE

Employers must pay all agricultural employees at least the Colorado minimum wage, which is \$13.65 per hour in 2023.<sup>1</sup> For livestock range workers,<sup>2</sup> employers can pay a weekly salary of \$559.29 instead.<sup>3</sup> Every year, both of those amounts are increased for inflation, and published in the [PAY CALC Order](#).<sup>4</sup>

### OVERTIME PREMIUM PAY

**(1) Overtime Pay: What’s Required, and When.** Outside agriculture, hours past 40 weekly, or 12 daily, must be paid time-and-a-half: 1.5 times the worker’s regular rate of pay. But most agricultural work is exempt from that 40-and-12 overtime if the employer pays the different forms of weekly and daily overtime pay listed below.<sup>5</sup>

#### **(a) Weekly Time-and-a-Half Overtime**

- from November 1, 2022 through the end of 2023 — after **60 hours** per week, for all agricultural employers (regardless of how large or how seasonal they are).
- for all of 2024 — based on the type of agricultural employer:
  - highly seasonal employers — after 48 hours per week, or 56 hours for up to 22 “peak weeks”;
  - small employers — after 56 hours per week; and
  - other employers: after 54 hours per week.
- as of January 1, 2025: after **48 hours** per week, or **56 hours** for up to 22 peak weeks at highly seasonal employers (with no difference for small employers).<sup>6</sup>

Summary: Weekly Overtime Pay at Different Agricultural Employer Types			
Time Period	(a) Highly Seasonal Employers	(b) Non-Highly-Seasonal Employers	(c) Small Employers (seasonal or not)
Before 11/1/22	No overtime pay required		
11/1/22-12/31/23	60 hours		
2024	48 hours, except	54 hours	56 hours
from 2025 on	56 hours for up to 22 peak weeks	48 hours	No separate rule; use (a) or (b)

#### **(b) Daily Overtime**

- after **12 hours** per day — a **half-hour paid break** instead of the usual shorter third rest period (which can be on next workday, if the employer didn’t know the employee would work 12 hours); and
- after **15 hours** per day — an **extra hour’s pay** of at least the Colorado minimum wage.<sup>7</sup>

<sup>1</sup> C.R.S. 8-6-101.5(1)(a) (requiring minimum wage in agriculture); [COMPS Order](#), 7 CCR 1103-1, Rules 2.3.1, 3.1 (adopting the annually inflation-adjusted minimum wage listed in each year’s Publication And Yearly Calculation of Adjusted Labor Compensation Order (“[PAY CALC Order](#)”), 7 CCR 1103-14, Rule 1.2(A).

<sup>2</sup> [INFO #12D](#) explains who is a “range worker” covered by this minimum weekly salary rather than hourly minimum wages.

<sup>3</sup> C.R.S. 8-6-101.5(1)(b) (minimum salary required for range workers); COMPS Order, 7 CCR 1103-1, Rules 2.4.9, 3.1 (same); PAY CALC Order, 7 CCR 1103-14, Rule 1.2(D) (listing annually inflation-adjusted range worker minimum salary).

<sup>4</sup> C.R.S. 8-6-101.5(1)(a), (1)(b)(II); see also COMPS Order, 7 CCR 1103-1, Rule, 3.1; PAY CALC Order, 7 CCR 1103-14, Rule 1.2(A), (D).

<sup>5</sup> These overtime exemptions don’t apply to employers receiving at least 50% of annual earnings from direct sales to consumers (rather than resale), who must pay regular 40-and-12 overtime. COMPS Order, 7 CCR 1103-1, Rule 2.3.2(F).

<sup>6</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(A)(1).

<sup>7</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(A)(2).

**(2) Definitions of “Small” and “Highly Seasonal” Agricultural Employers for Overtime Rules**

(a) A “small agricultural employer,” with less weekly overtime required in 2024, means the following:

- staffing — fewer than four employees on average in the prior three calendar years; and
- income — average adjusted gross annual income under \$1,000,000 for the three prior tax years.<sup>8</sup>

(b) A “Highly seasonal agricultural employer” means an employer with at least **twice as many employees in an up to 22-week peak season** than during the rest of the year,<sup>9</sup> and that can pay 56-hour rather than 48-hour overtime during that peak season, as long as it:

- provides employees a notice, at least annually (with pre-employment notice for H-2A workers, or for other employees either 30 days before peak weeks begin, or upon hiring if the hiring is less than 30 days before the peak weeks start), stating —
  - that overtime will be paid after 56 rather than 48 hours during up to 22 peak weeks, and
  - a good-faith estimate of when the peak weeks will occur, and whether those peak weeks will be divided into two or three periods, rather than one continuous set of weeks; and
- provides a disclosure to employees, at least annually (and seven days in advance of the first peak week, or upon hiring for employees hired later) identifying when the peak weeks will be.<sup>10</sup>

These notices and disclosures must be in English and any language that is the first language of at least 5% of employees at the worksite.<sup>11</sup> The employer may change which weeks are its “peak” weeks if:

- it gives at least one week written notice before the change;
- the initial notice or disclosure was its good-faith belief of which would be the peak weeks; and
- the change is based on information not available as of the initial disclosure (such as a late frost).<sup>12</sup>

**3. How to Count Employees for Highly Seasonal & Small Employer Rules.** Employees are counted based on their average work hours the prior year (counting any week of at least one hour worked), as follows:

- Workers with 35 hours or more count as 1.0 employees;
- Workers with 15-35 hours count as 0.5 employees; and
- Workers with under 15 hours count as 0 employees.<sup>13</sup>

**Example:** A farm has six year-round employees, and hires extra help during the July-August harvest. Two of its year-round employees work “full-time” (over 40 hours weekly), one works 40 hours per week during harvest and 20 hours per week the rest of the year, and the other three work 20 hours per week. That makes 4.0 employees: the two “full-time” employees count as 1.0 each; the other four count as 0.5 each (the employee working 20 or 40 hours, depending on time of year, averages less than 35.)

In 2023, the farm hires five extra farm hands working full-time during harvest, for 5.0 more employees.

In 2024, if the farm provides initial and peak week disclosures, it will qualify as a “highly seasonal” employer, because in the prior year it had more than twice as many employees during its busy period (9.0) as during the rest of the year (4.0), and the busy period was fewer than 22 weeks.

All employees at the worksite are included in the count, including exempt employees (owners, family members,

<sup>8</sup> [COMPS Order](#), 7 CCR 1103-1, Rule 2.3.2(B). Because the small employer overtime standard applies only in 2024, the measurement years will be 2021-23. Employers in operation fewer than 3 years should use as many complete years they’ve operated, except that if an employer hasn’t been in operation for one complete year, it’s considered a “small agricultural employer.”

<sup>9</sup> The 22 “peak weeks” can be one continuous set of weeks, or divided into up to 3 periods of at least 4 workweeks each.

<sup>10</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(C).

<sup>11</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(C)(3).

<sup>12</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(C)(2).

<sup>13</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(E)(1).

range workers, decision-making livestock managers, etc.).<sup>14</sup>

**Example:** A small farm owner employs their three children, one full-time employee, and two part-time employees each working 20 hours per week. That totals 6.0 employees: the owner, their three children, and the full-time employee are 1.0 each; the two part-time employees are 0.5 each. This employer is not a “small agricultural employer” entitled to reduced overtime in 2024. But overtime premium pay is owed to only the full-time and part-time employee, since the owner and their three children are exempt.

Employers do not need to use prior years’ staffing numbers if either of the following apply:

- (a) the employer has been in operation for less than one calendar year; or
- (b) the employer has a good-faith belief that its staffing that year will be within the threshold — and if that belief proves incorrect, it must pay back overtime wages, plus 5% interest, within 30 days of realizing it will be above the threshold, or of the end of the calendar year if it does not become aware until then.<sup>15</sup>

**Example:** From 2021 through 2023, a farm employed 4.5 workers: three full-time employees working at least 40 hours per week, and three part-time employees working 20 hours per week. At the end of 2023, one full-time employee resigned. Rather than hire another employee, the farm redistributed work, and each part-timer increased their hours to 30 per week in 2024. Though the farm was not a small agricultural employer based on its prior staffing (4.0 employees in the three years before 2024), it could consider itself one in 2024 based on its good-faith belief that it would have 3.5 employees.

**Example:** At the end of June 2024, the same farm finds that it has an especially busy harvest, and needs to hire another part-time worker for the summer. With four employees, it no longer qualifies as a “small employer” and must pay overtime at 54 hours, not 56, going forward. Within 30 days of becoming aware it no longer was a small employer, it must also pay overtime for any hours worked after 54 during the time it applied the small employer rules, plus 5% interest.

**(4) Exempt employees.** The following employees are exempt from all overtime payment requirements, including from the overtime standards applicable to agriculture. However, these employees are not exempt from other requirements of the COMPS Order, such as minimum wage, rest and meal periods, and recordkeeping, so employers should be sure to track hours worked and wages earned by these employees.

- (a) **Family owners** of agricultural employers, and certain members of their family, are overtime-exempt.<sup>16</sup> Exempt family members are: individuals related by blood, adoption, or marriage to a family owner, or children, siblings, spouses, parents, aunts, uncles, nephews, nieces, first cousins, grandchildren, or grandparents.<sup>17</sup> A “family owner” is an individual with majority ownership (over 50%), or at least a 10% ownership interest that, combined with other exempt family members’ interests, totals a majority.<sup>18</sup>
- (b) **Decision-making livestock managers** who work for a livestock employer, and who are paid the salary for exempt managers (in 2023, \$961.54 per week), are overtime-exempt.<sup>19</sup> To qualify for the exemption, such managers must be permanent (not temporary or seasonal), and have a high-level role:
  - having primary duties requiring routine exercise of independent judgment and discretion in matters of significance, in either manual or non-manual labor; and
  - either —
    - supervising two or more full-time employees, or
    - reporting directly to an owner (majority or minority), or an executive who reports directly to an

<sup>14</sup> See [COMPS Order](#), 7 CCR 1103-1.

<sup>15</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(E)(2).

<sup>16</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(D).

<sup>17</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(D).

<sup>18</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(D).

<sup>19</sup> COMPS Order, 7 CCR 1103-1, Rule 2.3.2(D); Rule 2.4.8; [PAY CALC Order](#), 7 CCR 1103-14, Rule 1.2(E) (stating exempt manager salary).

owner, who routinely exercises independent judgment and discretion in matters of significance, in either manual or non-manual labor (e.g., the second-in-command or head of the worksite).<sup>20</sup>

“Livestock employers” are operations with significant livestock care responsibilities that do not qualify as highly seasonal agricultural employers — such as dairies, cattle ranches, and feedlots.<sup>21</sup> “Livestock” is defined by federal rules, and includes cattle, sheep, swine, horses, mules, donkeys, and goats.<sup>22</sup>

**Example:** A dairy employee in charge of cow health or birthing who reports to the owner and regularly makes independent judgment calls on what actions to take in response to health or birthing needs, including what if any items to purchase for those needs, and similar decisions, is exempt. Cow health and birthing are matters of significance to the dairy, and the employee routinely exercises independent judgment and discretion on those matters by making decisions on how to address health needs.

**Example:** A working crew supervisor in a milking parlor is not exempt, even though they supervise more than two full-time employees. While these duties may have monetary stakes, duties as to “matters of significance” require more than merely operating expensive machinery. Additionally, this employee would not be exercising judgment and discretion often enough for it to be “routine,” nor exercising their own judgment enough to be “independent,” because they would typically follow established procedures.

**(c) Range workers**<sup>23</sup> are exempt from overtime “during periods when they are principally engaged in the range production of livestock ... on the open range[,]” are paid the range worker weekly salary (\$559.29 in 2023), and are provided, with no cost or deduction, with housing, food, transportation, and equipment required by H-2A visa regulations.<sup>24</sup>

Some agricultural employees also may be covered by other overtime exemptions in the COMPS Order that are not specific to agriculture — for example, the exemptions for supervisors, decision-making administrative employees, professionals, outside salespersons, and more.<sup>25</sup>

**For More Information:** Visit the Division [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

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<sup>20</sup> COMPS Order, 7 CCR 1103-1, Rule 2.4.8(A).

<sup>21</sup> [COMPS Order](#), 7 CCR 1103-1, Rule 2.4.8(B).

<sup>22</sup> See COMPS Order, 7 CCR 1103-1, Rule 2.4.8(B) (livestock is as defined as under federal rules); [29 C.F.R. 780.120](#) (defining “livestock”).

<sup>23</sup> [INFO #12D](#) explains which workers are covered by the “range worker” partial exemption.

<sup>24</sup> COMPS Order, 7 CCR 1103-1, Rule 2.4.9; [20 C.F.R. 655.210](#), [655.1304](#) (H-2A visa requirements for range workers).

<sup>25</sup> For more information, see COMPS Order, 7 CCR 1103-1, Rules 2.2, 2.4, 2.5; [INFO #1](#).