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## Employment Rules for Agricultural Workers in Massachusetts

Agricultural work is treated differently from other types of employment under the law. Agricultural workers may be exempt from minimum wage and overtime requirements. But farms must ensure that their employees are only doing work that is legally considered agricultural work. Tasks such as planting crops would clearly fall within this definition; however, it is sometimes difficult to determine whether other tasks qualify as agricultural work. This guide is intended to help Massachusetts farmers determine what is agricultural work, what is not, and why it matters.

### I. What is Agricultural Work in Massachusetts?

Massachusetts law defines agricultural work as “**labor on a farm and the growing and harvesting of agricultural, floricultural and horticultural commodities.**” Work that is performed on the farm planting and picking crops would probably fall within this definition. Other examples of work that would likely qualify as agricultural work under Massachusetts law are:

- Operating a tractor or similar machinery on the farm
- Cultivating or tilling soil on the farm
- Applying fertilizer or pesticides to crops or weeding crops

Massachusetts courts have recently [clarified](#) that this definition **does not include post-harvesting activities such as cleaning, sorting, or packaging produce.** Some examples of post-harvesting activities that would likely *not* qualify as agricultural work are:

- Cleaning, inspecting, sorting, and weighing produce
- Packaging produce in boxes or bags or stocking it
- Making jam or apple cider, even if the fruit was grown on the farm
- Working at a farm stand, whether it is located on or off the farm
- Processing goods from other farms

General work that is not connected to growing or harvesting crops likely would not qualify as agricultural work, such as:

- Work at an on-farm produce stand
- Washing, packing and transportation of produce
- General cleaning, such as sweeping or mopping
- Filling out paperwork or other office activities



- Working in agro-tourism, such as by hosting a festival, giving hay rides, or operating corn mazes

There is not always a clear line between harvesting and post-harvesting activities, and there is still room for interpretation by the courts. When in doubt, a safe approach is to treat workers as regular employees and abide by state and federal laws for non-exempt workers (see discussion below).

## II. What About Federal Law?

Agricultural work is more broadly defined under federal law. It includes “farming in all its branches” as well as “any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.” Under federal law, post-harvesting activities such as drying or preserving fruits or vegetables or preparing produce for market may qualify as agricultural work. However, farmers must follow the law that is more favorable to employees, which, in this context, is Massachusetts law. **Farmers should therefore follow the more restrictive Massachusetts definition of agricultural work** in carrying out their day-to-day activities.

## III. What Rules Apply for Employees Not Engaged in Agricultural Work?

Let’s look first at rules for regular employees before talking about the agricultural exemption. Regular, non-exempt employees must be paid the regular minimum wage in Massachusetts and must be paid overtime for hours worked in excess of 40 in a workweek.

### A. Minimum Wage

**The regular minimum wage in Massachusetts is \$12.75 per hour as of January 1, 2020.** This amount will increase to \$13.50 effective January 1, 2021, \$14.25 effective January 1, 2022, and \$15.00 effective January 1, 2023.

### B. Overtime

An employee is entitled to overtime for hours worked in excess of 40 hours for that workweek. **Overtime pay is one and one-half times the regular pay rate.** An employee is entitled to overtime pay even if not authorized to work more than 40 hours in the week. Employers cannot withhold the earned overtime. If employers do not want their employees working more than 40 hours in a week, they should make this clear in a written policy, distribute it to employees at the beginning of their employment, and obtain a written acknowledgement of receipt of the policy by each employee.

## IV. What are the Rules for Agricultural Workers?

In Massachusetts, employees engaged in agricultural work may be paid at a lower minimum wage and may be exempt from overtime requirements under certain circumstances.

## A. Minimum Wage

The 2020 agricultural minimum wage in Massachusetts is **\$8.00** per hour. The 2020 Federal minimum wage is **\$7.25** per hour. However, **Massachusetts farms must adhere to the Massachusetts minimum wage, which is higher, since it is more favorable to employees.**

If a Massachusetts employee performs both agricultural work and non-agricultural work during a particular pay period, the employee may be paid at least \$8.00 per hour for the “agricultural” hours, and must be paid at least the regular minimum wage for the “non-agricultural” hours (currently \$12.75 for 2020).

- Example: Avery spends 5 hours in the field picking crops and 2 hours working at the farm stand. Avery is paid \$8.00 per hour for the 5 hours in the field and \$12.75 per hour for the 2 hours at the farm stand.

Records must be kept on time spent on each task. If an employer does not keep track of time spent on agricultural vs. non-agricultural tasks, the employee must be paid the regular minimum wage for all hours worked. Agricultural employers should draw up policies clearly distinguishing between what they believe qualifies as agricultural work and non-agricultural work at their farms. Time sheets should then be designed to accurately track what hours are spent on what tasks.

Federal minimum wage laws have exemptions that do not apply to the Massachusetts minimum wage. Farms that employ roughly less than seven workers in a calendar quarter may be exempt (and thus may legally pay workers less than the federal minimum wage). For example, a farm may be exempt if it did not, in any quarter in the preceding calendar year, use more than 500 “man-days” of agricultural labor. A “man-day” is any day during which an employee performs agricultural work for an hour or more, and 500 “man-days” are “approximately the equivalent of seven employees employed full-time in a calendar quarter.” The following other exemptions may also apply under federal law:

- Agricultural workers who are family members of their employer.
- Agricultural workers who primarily work in the production of livestock.
- Harvesters who commute daily, are paid on a piece rate basis, are employed in a job traditionally paid on a piece rate basis and were employed in agriculture less than 13 weeks in the previous year.
- Non-local minors, age 16 or under, who are harvesters employed on the same farm as a parent and are paid the same piece rate as those over age 16.

**Farmers in Massachusetts are not exempt from the Massachusetts minimum wage requirements on these bases and must pay at least \$8.00 per hour for agricultural work.**

## B. Overtime

Overtime must be paid to employees for all hours worked in excess of 40 hours per week at a

rate of one and one-half times their regular rate. However, **employees engaged in agricultural work are exempt from overtime. This is true under both Massachusetts and federal law.**

An employee doing agricultural work, as that term is more narrowly defined in Massachusetts, for an entire workweek need not be paid overtime. The exemption applies on a workweek basis, so an employee may be exempt in one workweek, but not the next.

- Example: Avery is engaged for 44 hours in agricultural work for an entire workweek and is not paid overtime for that week.
- Example: In the following week Avery works one hour of non-agricultural work and is paid overtime for hours over 40 for that week, despite being exempt in the previous week.

But what if a Massachusetts employee works both agricultural and non-agricultural hours? The employee's "regular rate" for overtime purposes is calculated by dividing the employee's total weekly earnings by the total hours worked during the week.

- Example: Avery works 30 hours at \$8.00 an hour on agricultural work (\$240.00) and 15 hours at \$12.75 an hour for non-agricultural work (\$191.25). Avery's "regular rate" is \$9.58 per hour ( $\$240.00 + \$191.25 = \$431.25$ , divided by 45 total hours worked that week), and Avery's overtime pay is one and one-half times the "regular rate" of \$9.58 per hour (\$14.37) for the 5 hours worked that week above 40.

## Summary

Under Massachusetts law, "agricultural work" does not include many post-harvest activities normally associated with farming. Be sure to carefully track hours worked by activity so that work is compensated at the right rate.

## Additional References

- Massachusetts Law: M. G. L. c. 151, §§ 1A(19), 2, 2A.
- Massachusetts Regulations: 454 C.M.R. § 27.02.
- Federal Law: 29 U.S.C. §§ 203(f), 206, 213(6), 213(13).
- Federal Regulations: 29 C.F.R. §§ 780.10, 780.151(b), 780.300, 780.305(a).
- Federal Guidance: United States Department of Labor ("U.S. D.O.L.") Opinion Letter dated April 2, 2019; U.S. D.O.L. Fact Sheet #12.
- [Massachusetts Supreme Judicial Court Ruling on Farming Overtime Pay is a Cautionary Tale for All Employers](#)

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