

IN SOME CASES, POOLING RESOURCES MAY ALSO MEAN POOLING OVERTIME

QUESTION: I grow cucumbers, and my neighbor has a strawberry farm. Earlier this summer, we set up a roadside stand where we sold both my cucumbers and her strawberries. Each of us had one employee working at this stand, and sometimes they worked 60 or 65 hours a week.

Our understanding is that because our employees are working solely in agriculture, we don't have to pay overtime. Is that correct?

ANSWER: Strange as it may seem, you are probably not correct. It's true that employees who work strictly in "agriculture" are exempt from overtime requirements under Oregon and federal wage laws. But it is crucial to have an understanding of the legal definition of "agriculture" to determine which employees are truly exempt.

Both federal and state laws define "agriculture" as cultivating and tilling the soil, dairying, producing, cultivating, growing, and harvesting any agricultural or horticultural commodities, raising livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer on a farm as an incident to or in conjunction with such farming operations, including preparing for market, delivering products to storage or to market or to carriers for transportation to market.

And while it seems that your workers clearly must qualify, the law throws a couple of unexpected twists into this definition:

1. First, your employees must be engaged in agricultural employment for 100 percent of the workweek to fall under this exemption. Unlike some other exemptions that allow for certain percentages of nonexempt work, any amount of non-agricultural work will automatically destroy the exemption in Oregon.
2. Although it may seem a bit counterintuitive, the law also states that if an agricultural employee is performing any work on products not grown by their own employer, the work is automatically not "agricultural" and the employee is thus not exempt.

Remember, however, that if you have other employees that are working only on your products, they may indeed be exempt from overtime.

In addition to overtime, there are some exemptions from minimum wage for certain agricultural employees. For example, Oregon hand harvesters and pruners who are paid on a piece rate basis can be exempt from minimum wage if the employer falls under the legal definition of a "small" farm.

And since the Christmas season is quickly approaching, it is worth mentioning that the harvesting of Christmas trees is not considered agricultural (although mistletoe probably is).

For more information on this and other important issues affecting Oregon employers, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.