

MAAHS Reviews Wage Hour Issues in Light of Minimum Wage Increases

Mid American Ag and Hort Services (MAAHS) reminds agricultural and horticultural employers to understand the applicability of minimum wage and overtime pay laws. As of this writing, the U.S. Congress is finalizing potential increased federal minimum wages. Ohio already increased its minimum wage. Legislation has been introduced in Indiana and Kentucky to increase their state minimum wages.

It is best to make planned investments of wages in your workforce by understanding how to apply the proper minimum wage rates and overtime pay.

Wage Hour Division Enforcement - In fiscal year 2006, more than 222,000 employees received a total of \$135.7 million in minimum wage and overtime back wages as a result of Fair Labor Standards Act (FLSA) violations. The U.S. Department of Labor Employment Standards Administration's Wage and Hour Division (WHD) collected over \$120.5 million in back wages for FLSA overtime violations and more than \$15.2 million for FLSA minimum wage violations. Back wages for overtime violations represented roughly 89 percent of all FLSA back wages collected, and the number of employees due overtime back wages represented about 87 percent of all employees due FLSA back wages. WHD assessed employers \$2.9 million in FLSA civil money penalties. This included 1,410 agricultural cases in which \$1,688,599 of back wages was collected for 2968 employees.

Agricultural Employers - Virtually all employees engaged in agriculture are covered by FLSA in that they produce goods for interstate commerce. There are, however, some exemptions that exempt certain employees from the minimum wage provisions, the overtime pay provisions, or both.

Employees who are employed in agriculture as that term is defined in the FLSA are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours worked in excess of forty per week.

Agriculture does not include work performed on a farm that is not incidental to or in conjunction with such farmer's farming operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are being worked on.

Any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

Additional exemptions from the minimum wage and overtime provisions of FLSA for agricultural employees apply to the following:

- Agricultural employees who are immediate family members of their employer
- Those principally engaged on the range in the production of livestock
- Local hand harvest laborers who: commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.

Compliance with The Part 541 Overtime Security Regulations - Of the \$135.7 million in FLSA back wages collected, over \$13.2 million were collected for approximately 12,000 employees for violations of the revised Overtime Security regulations. This compares to \$13.6 million collected for approximately 10,000 employees in fiscal year 2005. The violation most frequently cited was one in which the employee's primary duty was not "the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers." This violation of the administrative duty test was cited in 353 cases and affected approximately 2,800 employees. Employers need to understand how the Part 541 overtime security regulations apply to their businesses.

Employers are welcome to visit www.midamservices.org, click on "Labor Laws" then "Wage Hour" to find links to federal and state sources of wage hour compliance information. MAAHS stands ready to assist its members learn how to apply these laws and regulations to their businesses.

(Insert Sponsor Member Name) is a sponsor member of MAAHS, a unique non-profit consortium of associations, organizations and employers organized to create widespread human resource management strengths in Mid American agricultural and horticultural businesses. One of the methods is to serve as a resource for a wide array of human resource issues through newsletters, manuals, a web site, phone consultation and workshops. Contact MAAHS at 614-246-8286, labor@ofbf.org or www.midamservices.org to become an employer member. You may subscribe to MAAHS' free e-newsletter by visiting www.midamservices.org and clicking the "Join Our FREE Email List" button.

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