



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law

Webinar Series

Understanding the Basics of

Understanding the Basics of the Fair Labor Standards Act (FLSA)

November 17, 2023

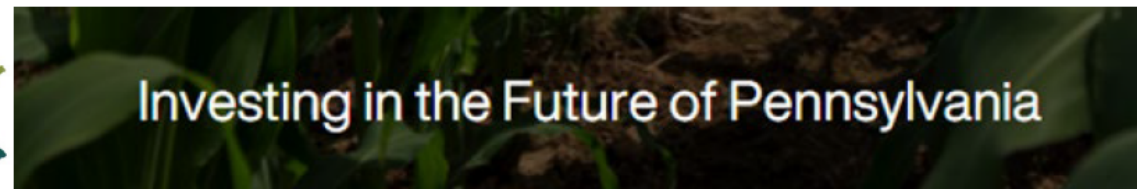
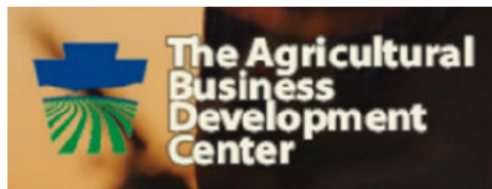




Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and
Business Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Series:

Past Topics:

- Agricultural Labor Laws
- Leasing Farmland for Energy Development
- Local Land Use Regulation of Agriculture
- Statutory Protections for Ag Operations
- Agricultural Cooperatives
- Livestock Market Regulation
- Crop Insurance
- Federal & State Conservation Programs
- Licensing & Regulation of Direct Agricultural Product Sales
- Agricultural Finance
- PA's "Clean & Green" Tax Assessment Program
- Animal Confinement Laws
- Conservation Easements
- Landowner Immunity Statutes
- The Farm Credit System
- Milk Pricing

aglaw.psu.edu/understanding-agricultural-law/



Understanding Agricultural Law Webinar Series

Upcoming Topics:

Dec. 15, 2023 *Understanding the Basics of The Perishable Agricultural Commodities Act*

Jan. 26, 2023 *Understanding the Basics of Food Labeling*

Register at

<https://aglaw.psu.edu/events/>



Housekeeping

- This webinar is being recorded.
- Please use the Q&A feature for questions.
- Please fill out surveys.
- CLE credits:
 - Link to CLE form will be posted in the chat
 - Please fill out form ASAP
 - Listen for code word, enter code word in the form



Federal Laws Affecting Employment/Labor

- ➔ • **Fair Labor Standards Act (FLSA)**
- Migrant and Seasonal Agricultural Worker Protection Act (MSPA)
- Immigration and Nationality Act (INA) (H-2A Program)
- Occupational Safety and Health Act (OSHA)
- National Labor Relations Act (NLRA)
- Title VII of the Civil Rights Act
- Equal Pay Act (EPA)
- Family and Medical Leave Act (FMLA)



FLSA Background—"Lochner Era" Precursor

"Lochner Era" (1890s–1937)

- [*Lochner v. New York*](#), 198 U.S. 45 (1905)
 - "The right to purchase or to sell labor is part of the liberty protected by [The Fourteenth Amendment's right to due process and right to contract]."
- [*West Coast Hotel Co. v. Parrish*](#), 300 U.S. 379 (1937)
 - "Liberty under the Constitution is thus necessarily subject to the restraints of due process, and **regulation which is reasonable** in relation to its subject and is adopted **in the interests of the community** is due process."



Protest Against Child Labor in a Labor Parade.
New York, 1909. [May 1] Photograph.
<https://www.loc.gov/item/97519062/>

FLSA Background—Policy

FLSA Enacted in 1938

29 U.S.C. §202. Congressional finding and declaration of policy

(a) The Congress finds that *the existence*, in industries engaged in commerce or in the production of goods for commerce, *of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers*

- (1) **causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States;**
- (2) **burdens commerce and the free flow of goods in commerce;**
- (3) **constitutes an unfair method of competition in commerce;**
- (4) **leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and**
- (5) **interferes with the orderly and fair marketing of goods in commerce.**



Harris & Ewing, photographer. Last signature necessary to bring wages-hours bill to floor of house. Washington, D.C., Dec. 2. Rep. Joseph J. Mansfield, of Texas, affixing his signature--the last of 218 necessary--to petition which today enabled the administration to win its fight to free the Wages-Hours Bill from the House Rules Committee which pigeon-hole the measure last August. Standing left to right: Rep. Mary T. Norton, Chairman of House Labor Committee; Speaker Bankhead; and Rep. Pat Boland, House Whip. 12/2/37. Washington D.C. Washington D.C. District of Columbia United States, 1937. [December 2] Photograph. <https://www.loc.gov/item/2016872694/>



FLSA Background—Commerce Power Explicit

29 U.S.C. §202. Congressional finding and declaration of policy

(b) It is declared to be the policy of this chapter, through **the exercise by Congress of its power to regulate commerce** among the several States and with foreign nations, **to correct and as rapidly as practicable to eliminate the conditions above** referred to in such industries without substantially curtailing employment or earning power.



FLSA Background—Upheld under *Darby*

United States v. Darby, 312 U.S. 100 (1941)

- FLSA Upheld Under Congress's Commerce Power
 - "Congress, following its own conception of public policy concerning the **restrictions which may appropriately be imposed on interstate commerce**, is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the state has not sought to regulate their use."



The Hughes Court. Supreme Court of the United States (1930–1941):
Chief Justice Charles Evans Hughes, Associate Justice Owen J. Roberts, Justices George Sutherland, Pierce Butler, James C. McReynolds, Willis Van Devanter, Louis D. Brandeis, Harlan Fiske Stone, and Oliver Wendell Holmes <https://supremecourthistory.org/history-of-the-courts/hughes-court-1930-1941/>



What Does FLSA Do?

- Sets standards for
 - **covered employers and employees** regarding
 - Minimum wages
 - Overtime
 - Child Labor
 - Record-Keeping
- Created the Wage and Hour Division in the Dept. of Labor (29 U.S.C. §204(a))



Hine, Lewis Wickes, photographer. Fourteen year old spinner in a? Brazos Valley Cotton Mill at West. Violation of the law. Matty Lott runs six sides. See family group and their story. Location: West, Texas. United States West Texas, 1913. November. Photograph.

<https://www.loc.gov/item/2018677658/>



FLSA Coverage—Employment Relationship

29 U.S.C. §203(e)(1)

- [T]he term "employee" means any individual employed by an employer.

29 U.S.C. §203 (g)

- "Employ" includes to suffer or permit to work



FLSA Coverage—Employment Relationship

3rd Circuit Independent Contractor Factors:

- 1) employer's control of the work's *manner*
- 2) employee's opportunity for *profit or loss*
- 3) employee's investment in *equipment or materials*, or employment of *helpers*
- 4) need for a *special skill*
- 5) *permanence* of the working relationship;
- 6) work is *integral part* of employer's business.

“1) the degree of the alleged employer's right to control the manner in which the work is to be performed; 2) the alleged employee's opportunity for profit or loss depending upon his managerial skill; 3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers; 4) whether the service rendered requires a special skill; 5) the degree of permanence of the working relationship; 6) whether the service rendered is an integral part of the alleged employer's business.”

Donovan v. Dialamerica Marketing, Inc., 757 F.2d 1376, 1382 (3d. Cir., 1985)



FLSA Coverage—Employment Relationship

3rd Circuit Factors:

- "[N]either the presence nor absence of any particular factor is dispositive."
- "[C]ourts should examine the 'circumstances of the whole activity.'"
- Courts "should consider whether, as a matter of economic reality, the individuals 'are dependent upon the business to which they render service.'"

Donovan v. Dialamerica Marketing, Inc.,
757 F.2d 1376, 1382 (3d. Cir., 1985)



FLSA Coverage—Two Types

- **Enterprise Coverage**
 - All employees entitled to FLSA protections
- **Individual Coverage**
 - Enterprise not covered, individual employees entitled to FLSA protections



FLSA Coverage—Enterprise Coverage

- Engaged in commerce/production of goods for commerce
- At least \$500,000 of commercial sales/business
- Has two or more employees

29 U.S. C. §203. Definitions

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that—

(A)(i) has **employees** engaged in **commerce or in the production of goods for commerce**, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is **not less than \$500,000** (exclusive of excise taxes at the retail level that are separately stated);



FLSA Coverage—Individual Coverage

- Individual's activities determine coverage:
 - "engaged in commerce or production of goods for commerce"
- Based on "workweek"
 - Fixed 7 consecutive days
 - May not be changed to avoid FLSA coverage

29 U.S. C. §§ 206(a), 207(a)

"employees who in any workweek is engaged in commerce or in the production of goods for commerce"

29 C.F.R. §§ 780.609, 780.721, 783.49, 793.19

"A workweek is a fixed and regularly recurring interval of seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing of the workweek for the purpose of escaping the requirements of the Act is not permitted."



What Does FLSA Do?

- Sets standards for
 - covered employers and employees regarding
 - Minimum wages
 - Overtime
 - Child Labor
 - Record-Keeping



Hine, Lewis Wickes, photographer. Fourteen year old spinner in a? Brazos Valley Cotton Mill at West. Violation of the law. Matty Lott runs six sides. See family group and their story. Location: West, Texas. United States West Texas, 1913. November. Photograph.

<https://www.loc.gov/item/2018677658/>



FLSA Requirements—Minimum Wage

- Last amended in 2007
- Current Federal Minimum Wage: \$7.25/hr.

29 U.S.C. § 206(a)(1)(C)

"(a) Every employer shall pay to each of his employees who in any workweek 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*, **wages** at the following rates:

(1) except as otherwise provided in this section, **not less than— . . .**

(C) **\$7.25 an hour"**



FLSA Requirements—Overtime

- Employers must pay at least
 - 1 ½ regular rate for
 - Hours worked in excess of 40 in a **workweek**

29 U.S.C. § 207(a)

(a) (1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek 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*, for a **workweek longer than forty hours unless** such employee receives compensation for his employment in excess of the hours above specified at a **rate not less than one and one-half times the regular rate** at which he is employed.



FLSA Requirements—Child Labor

- Prohibits shipping or delivering products produced using "oppressive child labor"

29 U.S.C. § 212(a)

"No producer, manufacturer, or dealer shall **ship or deliver for shipment in commerce any goods produced in an establishment** situated in the United States in or about which within thirty days prior to the removal of such goods **therefrom any oppressive child labor has been employed:**

Provided, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection"



FLSA Requirements—"Oppressive Child Labor"

- Prohibits employment of children aged 16–17 in "particularly hazardous" occupations
 - But may work unlimited hours
- Restricts employment of children aged 14–15:
 - Non-hazardous, non-manufacturing, limited jobs
 - outside school hours/limited times
- Prohibits employment of children aged 13 and under (some exceptions)

29 U.S.C. § 203 (I)

"Oppressive child labor" means a condition of employment under which

(1) **any employee under the age of sixteen years is employed by an employer** (*other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being*) **in any occupation**, or

(2) **any employee between the ages of sixteen and eighteen years** is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be **particularly hazardous** for the employment of children between such ages or detrimental to their health or well-being

The Secretary of Labor shall provide **by regulation or by order** that the employment of employees between the **ages of fourteen and sixteen years** in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor **if** and to the extent that the Secretary of Labor determines that **such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.**



FLSA Requirements—Recordkeeping

- Employee's full name and social security number.
- Address, including zip code.
- Birth date, if younger than 19.
- Sex and occupation.
- Time and day of week when employee's workweek begins.
- Hours worked each day.
- Total hours worked each workweek.
- Basis on which employee's wages are paid (e.g., "\$9 per hour", "\$440 a week", "piecework")
- Regular hourly pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

29 C.F.R. § 516.2

See also DOL Fact Sheet #21: Recordkeeping Requirements under FLSA <https://www.dol.gov/agencies/whd/fact-sheets/21-flsa-recordkeeping>



What is "Agriculture" Under FLSA?

"Primary" Agriculture:

- "farming in all its branches"
- "cultivation and tillage of the soil"
- "dairying"
- "the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities"
- "the raising of
 - livestock,
 - bees,
 - fur-bearing animals, or
 - poultry"
- "forestry or lumbering operations"

29 U.S.C. § 203(f)



What is "Agriculture" Under FLSA?

"Secondary" Agriculture:

"any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

29 U.S.C. § 203(f)

See Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755 (1949):

- practices "must relate to farmer's own farming operations"

See also Mitchell v. Huntsville Wholesale Nurseries, Inc., 267 F.2d 286

(5th Cir. 1959); *Acosta v. Bland Farms Prod. & Packing, LLC*, 767 F. App'x

862 (11th Cir. 2019)



FLSA Provisions for Agriculture

Provides Exemptions from

- Minimum Wage Requirements
- Overtime Pay Requirements
- Child Labor Provisions

Note: Burden is on employer to show exemption!

See *Mitchell v. Kentucky Finance Co.*, 359 U.S. 290 (1959); *Arnold v. Kanowsky*, 361 U.S. 388 (1960)



Wolcott, Marion Post, photographer. Agricultural day laborers cultivating celery near Sarasota, Florida. Sarasota Sarasota County Florida United States, 1941. Jan. Photograph. <https://www.loc.gov/item/2017806563/>



FLSA Ag Exemptions: Minimum Wage & Overtime

1. Employer's immediate family members
2. Employer used less than "500 man-days"
3. Hand-harvest laborers
4. Hand-harvest laborers 16 years old or younger
5. Range production of livestock



FLSA Ag Exemptions: Minimum Wage & Overtime

1. Employer's immediate family members:

If the "employee is the parent, spouse, child, or other member of his employer's immediate family" (29 U.S.C. § 213(a)(6)(B))

Also—Enterprise exception for family-run establishments consistent with ag exemption:

29 U.S. C. §203. Definitions

(s) (2) Any establishment that has as its **only regular employees** the **owner thereof or the parent, spouse, child, or other member of the immediate family of such owner** shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.



FLSA Ag Exemptions: Minimum Wage & Overtime

2. Employer used less than "500 man-days" during any calendar quarter during the preceding calendar year (§ 213(a)(6)(A))

- "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour. (§203(u))
- Approximately 7 full-time employees in a quarter (29 C.F.R. § 780.305)
- Includes joint-employment
- "Man-day" does not include family members (§203(e)(2))



FLSA Ag Exemptions: Minimum Wage & Overtime

3. Hand-harvest laborers (§ 213(a)(6)(C))
 - Employees who are
 - Employed as hand harvest laborer
 - Paid on a piece rate basis
 - Operation "customarily and generally" recognized as paid on piece rate in the region
 - Commutes daily from permanent residence
 - Employed in agriculture less than 13 weeks in preceding year



FLSA Ag Exemptions: Minimum Wage & Overtime

4. Hand-harvest laborers 16 years old or younger § 213(a)(6)(D))
 - Employees who are
 - Employed as hand harvest laborer
 - Paid on a piece rate basis
 - Operation "customarily and generally" recognized as paid on piece rate in the region
 - 16 years old or younger
 - Employed on same farm as parents
 - Paid same as adults



FLSA Ag Exemptions: Minimum Wage & Overtime

5. "Principally engaged in range production of livestock § 213(a)(6)(E))

- "Principally engaged": take care of animals or stand by in readiness; generally more than 50% of time (29 C.F.R. §§ 780.325, 780.327)
- "Range": noncultivated land typically not suitable for cultivation (29 C.F.R. §§ 780.326)



FLSA Ag Exemptions: Overtime Only

- "Any employee employed in agriculture" (§213(b)(12))
 - Also provisions for employees working in
 - Waterways that supply ag operation (§213(b)(12))
 - Livestock auctions (§213(b)(13))
 - Must be paid minimum wage



FLSA Ag Exemptions: Child Labor

| Youth Age | Permitted Activities/Time Restrictions | Regular FLSA Provision |
|-----------|---|--|
| 16 and up | All/None | No employment in "particularly hazardous" occupations (16–18)/No time restrictions |
| 14–15 | Non-hazardous jobs/outside school hours | Non-hazardous/outside school hours |
| 12–13 | Non-hazardous jobs/outside school hours on farms that also employ their parents or w/ parent permission | Generally no employment |
| Under 12 | Non-hazardous jobs/outside school hours w/ parent permission on farms where no employees subject to minimum wage | Generally no employment |
| 10–11 | With Permission of Labor Secretary: Hand harvest short-season crops/outside school hours no more than 8 weeks June–October | Generally no employment |
| Any Age | All/None—on farm owned/operated by parents | N/A |



FLSA—Child Labor "Particularly Hazardous"



29 C.F.R. § 570.71(a)(1)

"Operating a **tractor of over 20 PTO horsepower**, or connecting or disconnecting an implement or any of its parts to or from such a tractor."

A modern steerable all-tracked power unit planting wheat (Case STX Steiger tractor with Case IH seed drill combination) in western North Dakota, USA, https://commons.wikimedia.org/wiki/File:Wheat_Planting_Rig_May_2007.jpg



FLSA—Child Labor "Particularly Hazardous"

29 C.F.R. § 570.71(a)(2)(i)

May not operate:

- Corn picker,
- cotton picker,
- grain combine,
- hay mower,
- forage harvester,
- hay baler,
- potato digger, or
- mobile pea viner;



New Holland CR9060 combine harvester with a corn picker header, Beatrice, Nebraska, USA, https://commons.wikimedia.org/wiki/File:New_Holland_CR9060,_Beatrice,_NE.jpg



FLSA—Child Labor "Particularly Hazardous"



29 C.F.R. § 570.71(a)(2)(ii)

May not operate:

- Feed grinder,
- crop dryer,
- forage blower,
- auger conveyor, or
- the unloading mechanism of a nongravity-type self-unloading wagon or trailer;

The auger device that receives freshly harvested grapes at the crush pad of at Columbia Crest winery in Patterson, Washington. https://commons.wikimedia.org/wiki/File:Auger_at_crush_pad_hopper_of_Columbia_Crest.jpg



FLSA—Child Labor "Particularly Hazardous"

29 C.F.R. § 570.71(a)(2)(iii)

May not operate:

- Power post-hole digger,
- power post driver, or
- nonwalking type rotary tiller.



Ferguson post hole auger, https://commons.wikimedia.org/wiki/File:Ferguson_post_hole_auger_-_3342.jpg



FLSA—Child Labor "Particularly Hazardous"



29 C.F.R. § 570.71(a)(3)

May not operate:

- Trencher or earthmoving equipment;
- Fork lift;
- Potato combine; or
- Power-driven circular, band, or chain saw.

Chainsaw, https://commons.wikimedia.org/wiki/File:Motors%C3%A4ge_2014-03-08.jpg



FLSA—Child Labor "Particularly Hazardous"

29 C.F.R. § 570.71(a)(4)

May not work near a

- Bull, boar, or stud horse maintained for breeding purposes; or
- Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)



Pig lactation, a sow suckling her piglets, https://commons.wikimedia.org/wiki/File:Pig_lactation.jpg



FLSA—Child Labor "Particularly Hazardous"



29 C.F.R. § 570.71(a)(5)

May not engage in

- Felling, bucking, skidding, loading, or unloading timber with **butt diameter of more than 6 inches.**

Timber cutter near a large log in the Barakula district, https://commons.wikimedia.org/wiki/File:Timber_cutter_near_a_large_log_in_the_Barakula_district.jpg



FLSA—Child Labor "Particularly Hazardous"

29 C.F.R. § 570.71(a)(8)

May not work inside

- A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
- An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
- A manure pit; or
- A horizontal silo while operating a tractor for packing purposes



Liquid manure storage pit from a dairy operation in northeast Iowa., [https://commons.wikimedia.org/wiki/File:NRCSIA99213 - Iowa \(3121\)\(NRCS Photo Gallery\).jpg](https://commons.wikimedia.org/wiki/File:NRCSIA99213_-_Iowa_(3121)(NRCS_Photo_Gallery).jpg)



FLSA—Child Labor "Particularly Hazardous"



29 C.F.R. § 570.71(a)(9)

May not work

- Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) **agricultural chemicals** classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as **Category I** of toxicity, identified by the word “**poison**” and the “**skull and crossbones**” on the label; or Category II of toxicity, identified by the word “**warning**” on the label;

Skull and Crossbones, EPA <https://www.epa.gov/pesticide-worker-safety/requirements-monitoring-pesticide-handlers>



FLSA—Child Labor "Particularly Hazardous"

29 C.F.R. § 570.71(a)(10)

May not work

- Handling or using a blasting agent, including but not limited to,
 - dynamite,
 - black powder,
 - sensitized ammonium nitrate,
 - blasting caps, and
 - primer cord;



Eric Rudolph dynamite,

https://commons.wikimedia.org/wiki/File:Eric_Rudolph_dynamite.jpg



FLSA—Child Labor "Particularly Hazardous"

29 C.F.R. § 570.71(a)(11)

May not work

- Transporting, transferring, or applying anhydrous ammonia



Anhydrous ammonia
fertilizer, https://commons.wikimedia.org/wiki/File:Anhydrous_ammonia_fertilizer.jpg



PA Laws for Agricultural Employees

- **Minimum Wage**

- PA Seasonal Farm Worker Act applies minimum wage to agricultural workers: **\$7.25**

- <https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1978&sessInd=0&smthLwInd=0&act=93&chpt=2&sctn=1&subsctn=0>

- **Overtime**

- PA Seasonal Farm Worker Act exempts agricultural employers from paying overtime

- **Child Labor**

- PA Child Labor Act applies FLSA agricultural exemptions for child labor

- <https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=2012&sessInd=0&smthLwInd=0&act=151&chpt=0&sctn=13&subsctn=0>



FLSA/Ag Exemption Summary:

- Enacted in 1938 to address dire working conditions
- Creates standards for covered employers and employees regarding
 - Minimum wages, Overtime, Child Labor, & Record-Keeping
- Ag Exemptions include
 - **Minimum Wage & Overtime:** Employer's immediate family members; "500 man-days"; Hand-harvest laborers; 16+ hand harvest laborers; & range livestock production
 - *BUT—PA Law establishes \$7.25 min wage for agricultural workers*
 - **Overtime Only:** All agricultural workers
 - **Child Labor Provisions:** 16+ all activities/hours permitted; 15 or younger "non hazardous" outside school hours (w/ limitations)
 - *All activities permitted at anytime if parent is owner/operator of farm*



Agricultural Work?

"any practices . . . performed by a farmer or on a farm as an incident to or in conjunction with such farming operations"

- [*Farmers Reservoir & Irrigation Co. v. McComb*](#), 337 U.S. 755 (1949)
 - Irrigation company not "engaged in agriculture"
- [*Maneja v. Waialua Agricultural Co.*](#), 349 U.S. 254 (1955)
 - Railworkers on sugar plantation "agriculture employees," but others not.
- [*Holly Farms Corp. v. Nat'l Labor Rels. Labor Bd.*](#), 517 U.S. 392 (1996)
 - Live-haul crews for chicken processing company not agricultural employees



Agricultural Work— Travel (11th Cir. 2021)

- *Ramirez v. Statewide Harvesting & Hauling*, LLC 997 F.3d 1356 (11th Cir. 2021)
 - Supervisor travel time for necessities not exempt



Agricultural Work— Building CAFO?

Denied Certiorari Oct. 2, 2023:

- *Signet Builders Inc. v. Vanegas*, No. [22-869](#)
 - Is building a concentrated animal feeding facility (CAFO) "agricultural work" under FLSA for purpose of overtime exemption?



Recently in the News: Packers Sanitation

DOJ Headline : "More than 100 Children Illegally Employed in Hazardous Jobs . . ."

<https://www.dol.gov/newsroom/releases/whd/whd20230217-1>

- "Packers Sanitation Services Inc. employed minors to use caustic chemicals to clean razor-sharp saws"
- "Employed at least 102 children—from 13 to 17 years of age"
- NOT Agriculture!



FLSA Requirements—"Oppressive Child Labor"

- Prohibits employment of children aged 16–17 in "particularly hazardous" occupations
 - But may work unlimited hours
- Restricts employment of children aged 14–15:
 - Non-hazardous, non-manufacturing, limited jobs
 - outside school hours/limited times
- Prohibits employment of children aged 13 and under (some exceptions)

29 U.S.C. § 203 (I)

"Oppressive child labor" means a condition of employment under which

(1) **any employee under the age of sixteen years is employed by an employer** (*other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being*) **in any occupation**, or

(2) **any employee between the ages of sixteen and eighteen years** is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be **particularly hazardous** for the employment of children between such ages or detrimental to their health or well-being

The Secretary of Labor shall provide **by regulation or by order** that the employment of employees between the **ages of fourteen and sixteen years** in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor **if** and to the extent that the Secretary of Labor determines that **such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.**



FLSA Ag Exemptions: Child Labor

| Youth Age | Permitted Activities/Time Restrictions | Regular FLSA Provision |
|-----------|---|--|
| 16 and up | All/None | No employment in "particularly hazardous" occupations (16–18)/No time restrictions |
| 14–15 | Non-hazardous jobs/outside school hours | Non-hazardous/outside school hours |
| 12–13 | Non-hazardous jobs/outside school hours on farms that also employ their parents or w/ parent permission | Generally no employment |
| Under 12 | Non-hazardous jobs/outside school hours w/ parent permission on farms where no employees subject to minimum wage | Generally no employment |
| 10–11 | With Permission of Labor Secretary: Hand harvest short-season crops/outside school hours no more than 8 weeks June–October | Generally no employment |
| Any Age | All/None—on farm owned/operated by parents | N/A |



Recently in the News: Packers Sanitation

Child Labor | U.S. Department of



<https://www.dol.gov/agencies/whd/child-labor>

Common Questions

- [What are the child labor laws that apply to workers in the restaurant industry?](#)
- [Are workers under 18 allowed to load, operate, or unload balers and compactors?](#)
- [Are workers under 18 allowed to operate meat slicers or bakery machines?](#)
- [Is an intern or student entitled to receive the minimum wage and overtime pay?](#)
- [Are workers under 18 allowed to clean or operate meat processing machinery?](#)
- [What are the child labor laws that apply to driving or delivering goods?](#)



Recently in the News: Packers Sanitation

HO 10. Power-driven meat-processing machines, slaughtering and meat packing plants—bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and delicatessens). Also **prohibits minors from cleaning such equipment**, including the hand-washing of the disassembled machine parts. This ban also includes the use of this machinery on items other than meat, such as cheese and vegetables. HO 10 also bans most jobs in meat and poultry slaughtering, processing, rendering, and packing establishments.*

<https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture>

* The regulations provide a limited exemption from HOs 5, 8, 10, 12, 14, 16 and 17 for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.



Thank you!

Understanding Agricultural Law Series Upcoming Topics:

Dec. 15, 2023 *Understanding the Basics of The Perishable Agricultural Commodities Act*

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