

## California Agricultural Industry Wage Pains Not Just A Phase

### New State Law Will Mandate “Phase-In” Overtime Requirements

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On September 12, 2016, Governor Jerry Brown signed the Phase-In Overtime for Agricultural Workers Act of 2016 (AB 1066) into law, providing more stringent overtime protections for agricultural workers. California law currently requires that employers only pay agricultural workers overtime when they work more than 10 hours in a day, but under the new law, sponsored by the United Farm Workers’ union, employer compensation obligations will increase considerably.

#### What Will The New Law Require?

AB 1066 establishes a “phase-in” process for new overtime requirements. The new section 857 of the Labor Code, created by this law, will apply to any worker who is engaged in an agricultural occupation.

The phase-in process begins in 2019 and will span three years, ending in 2022. Each year, the hours that a worker must work in a day to receive overtime pay (time and a half) are decreased by half an hour, until all hours worked over eight hours in a workday must be paid at the time-and-a-half rate.

Additionally, the number of hours that are required in a workweek before an employee receives time and a half for any additional hours will be decreased by five hours each year until all hours over 40 in a workweek must be paid at the time-and-a-half rate. Finally, the phase-in culminates in 2022 when workers must be paid double time if they work more than 12 hours in a workday.

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The specific timeline for the phase-in process is as follows:

- **January 1, 2019:** Workers will receive time and a half for all hours worked in excess of 9½ hours in a workday or in excess of 55 hours in a workweek.
- **January 1, 2020:** Workers will receive time and a half for all hours worked in excess of nine hours in a workday or 50 hours in a workweek.
- **January 1, 2021:** Workers will receive time and a half for all hours worked in excess of 8½ hours in a workday or 45 hours in a workweek.
- **January 1, 2022:** Workers will receive time and a half for all hours worked in excess of eight hours in a workday or 40 hours in a workweek.
- **January 1, 2022:** Workers will receive double time for all hours worked in excess of 12 hours in a workday.

If the employer has 25 or fewer employees, then an additional three years is added on to each of the above dates in the phase-in timeline. For example, these smaller employers have until January 1, 2022 (as opposed to January 1, 2019) to begin paying time and a half to employees who work more than nine hours per day or more than 55 hours per week.

### Who Is Impacted By The New Law?

The list of which workers are considered to be employed in agricultural occupations and thus entitled to the phase-in overtime raises is contained in Industrial Welfare Commission (IWC) Order No. 14-2001 and is not changed by the new law. The definition is broad, and it includes (but is not limited to) employees who prepare for planting; care for pipelines or other irrigation systems; plant, harvest, pack, or transport crops; or manage farm animals.

### Not Just Going Through A Phase: Things To Keep In Mind In The Years To Come

Being an agricultural employer in California is difficult – drought, joint employer liability, heat illness regulations, and wage and hour laws are just a few obstacles that come to mind. However, California’s legislature seems intent on piling on the agricultural industry to make it harder for them to do business without raising prices that would ultimately be paid for by consumers.

Given this looming new state law, agricultural employers are strongly encouraged to coordinate with their employment counsel to audit their pay practices and any current arrangements with labor contractors. These California employers will want to evaluate their workers’ schedules with their employment counsel to determine how operational needs can be met while complying with the upcoming rules regarding overtime pay.



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If you have any questions about these changes, or how they may affect your organization, please contact your Fisher Phillips attorney or one of the attorneys in any of our California offices:

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