

“NO TAX ON OVERTIME” HITS DIFFERENT FOR AGRICULTURAL EMPLOYERS: WHY MOST ON THE FARM AG WORKERS WON’T BENEFIT + KEY COMPLIANCE POINTS FOR YOUR BUSINESS

Insights
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“No Tax on Overtime” Hits Different for Agricultural Employers: Why Most On the Farm Ag Workers Won’t Benefit + Key Compliance Points for Your Business

The “No Tax on Overtime” rules that rolled out nationwide last year have a limited impact on the agricultural industry but can create challenging compliance issues for employers. We’ll explain why most on the farm ag workers won’t qualify for the new tax deduction related to overtime compensation – even in states where they are entitled to receive OT pay – and what employers must know about their new compliance obligations.

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Quick Overview

The One Big Beautiful Bill Act (OBBBA), which President Trump signed into law last year, includes a new federal income tax deduction related to overtime pay. You can read all about the nuances of these new tax rules and how they impact all kinds of employers in this prior FP insight:

[Separating Myth From Reality on New “No Tax on Overtime” Law: Key Facts Employers Must Know This Tax Season and Beyond.](#)

This insight focuses on the unique issues these new rules raise for agricultural employers.

Why Most FLSA Classified “Agricultural” Workers Do Not Get a Tax Deduction for Overtime Pay

The OBBBA’s “No Tax on Overtime” rules allow an eligible worker to take a deduction on their federal income tax return in the amount of the “qualified overtime compensation” they received during the applicable tax year, up to a maximum of \$12,500 (or \$25,000, if married filing jointly). However, most FLSA-defined “agricultural” workers will not qualify for this deduction, because:

- the deduction is only available if the overtime paid to an individual is required by section 7 of the Fair Labor Standards Act (FLSA); and
- many agricultural employees are exempt from the FLSA’s overtime requirements based on the type of work they perform.

As a result, even when an employer pays overtime because state law requires it or because the employer voluntarily opts to pay overtime, that pay is often **not** considered federally required overtime.

For example, states such as California, Colorado, Hawaii, Maryland, Massachusetts, Minnesota, New York, Oregon, and Washington, require employers to pay certain ag workers overtime pay (in accordance with each state’s specific rules and conditions), even if those workers who are overtime exempt under the FLSA. When that is the case, overtime compensation they receive is not “qualified overtime compensation” for purposes of the OBBBA and therefore not eligible for the new tax deduction.



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Want more? For a general look at how the new federal tax deduction rules are impacted in a state with overtime mandates that go beyond what's required by the FLSA, check out our insight: [California Employer Guide to Federal "No Tax on Overtime" Law: Key Takeaways That May Surprise and Challenge Your Workplace.](#)

Caution: The FLSA's Overtime Exemption for Agriculture Can Be Tricky

Properly determining an employee's exempt or nonexempt status is not only essential to avoid liability under the FLSA but also a critical step in determining whether the individual has received any "qualified overtime compensation" for purposes of the new tax rules.

Generally, the FLSA exempts employees working in agriculture from the law's overtime pay provisions. However, the FLSA's definition of "agriculture" contains some important nuances and is broken into two categories:

- **primary agriculture**, which includes farming in all its branches (including the 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); and
- **secondary agriculture**, which includes any practices (including any forestry or lumbering operations) performed by a farmer or on a farm "as an incident to or in conjunction with" the above "primary" farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

Whether "secondary" agricultural practices are "an incident to or in conjunction with such farming operations" depends on the specific facts and circumstances. According to [federal regulations](#), secondary agricultural practices must meet be performed:

- either by a farmer or on a farm; and
- either in connection with the farmer's own farming operations or in connection with farming operations conducted on the farm where the practice is performed; and

- as an incident to or in conjunction with the farming operations.

As to the first requirement, the regulations provide that to be a “farmer” within the meaning of the agricultural exemption, “the employer must be engaged in activities of a type and to the extent that the person ordinarily regarded as a ‘farmer’ is engaged.” In 2013, a [federal appeals court held](#) that a farmer also generally “performs his farming operations on land owned, leased, or controlled by him and devoted to his own use.”

Employment that does not fit within these primary or secondary agriculture categories does not qualify for an exemption from the FLSA's overtime requirements. Because the FLSA's agriculture exemption can be tricky in some scenarios, and employers should work closely with counsel on analyzing these issues.

5 Key Points to Know If You Have Workers Entitled to Overtime Pay Under the FLSA

If you are required to pay certain workers overtime compensation under the FLSA, here are the top things you should know about the new federal tax deduction for workers and your employer obligations.

1. Only the Overtime Premium Is Deductible

Even in the limited circumstances where an agricultural employee is entitled to overtime under the FLSA, the new tax deduction does not apply to the employee's full overtime pay.

Instead, the deduction applies only to the overtime premium portion, which is the additional amount paid above the employee's “regular rate” of pay (as determined by the FLSA). This distinction may surprise employees, particularly those who assume the deduction applies to all overtime earnings.

2. Overtime Pay Required By State Law – But Not the FLSA – Is Not Deductible

Remember, the FLSA generally only requires employers to pay covered, nonexempt employees at least 1.5 times their “regular rate” of pay for all hours worked beyond 40 hours in a given workweek. This is very important to keep in mind

because some states have overtime laws that overlap with, but also go beyond, the requirements of the FLSA.

For example: California requires **double-time pay** for hours worked beyond certain thresholds (in addition to daily, weekly, and other overtime requirements). Even if a California employee is nonexempt under both the FLSA and state law, any double-time pay they receive that exceeds what is required by federal law is not “qualified overtime compensation” under the OBBBA.

3. All overtime pay remains subject to payroll taxes and withholding rules.

The phrase “No Tax on Overtime” is misleading because it doesn’t actually mean that overtime pay is no longer taxable. To the contrary, all OT pay remains subject to federal income tax (though, as explained above, employees may be eligible to claim a limited income tax deduction for qualified overtime compensation) and therefore subject to income tax withholding rules. However, employees may opt to adjust their Forms W-4 to reflect any expected deductions for qualified overtime compensation.

In addition, all overtime compensation remains fully subject to other payroll taxes, such as Social Security and Medicare taxes (both the employer’s share and the employee’s share), because the OBBBA’s new tax deduction applies only for federal income tax purposes.

4. The “No Tax on Overtime” Rules Impose New Filing and Reporting Requirements

While the OBBBA’s new overtime deduction is a tax benefit for employees filing individual tax returns, it imposes compliance obligations on employers. The federal law requires employers to separately report the total amount of “qualified overtime compensation” on the employee’s Form W-2. For the 2025 taxable year, the IRS is granting employers penalty relief related to failures satisfy this new reporting requirement. However, this relief will not be available in future tax years, so it is essential to understand how to correctly calculate qualified overtime compensation.

As mentioned above, employers also must be aware of their withholding obligations in light of the new tax rules around qualified overtime compensation and look out for any employee updates to Forms W-4.

5. Agricultural Pay Structures Can Complicate Your Reporting Obligations

Agricultural employers frequently use compensation methods such as piece-rate pay, day-rate pay, or blended pay systems. These arrangements can make it difficult to calculate the employee's "regular rate" and identify the overtime premium portion of pay.

As a result, even when federally required overtime applies, payroll systems may not automatically isolate the deductible portion. This can increase the risk of reporting errors if employers attempt to track or report qualified overtime compensation without careful review. As always, make sure to maintain accurate records of hours worked, overtime paid, and the basis for any FLSA exemption or coverage determinations. These records are especially important if questions arise later.

Conclusion

Although "No Tax on Overtime" may sound appealing, its practical impact in the agricultural sector is limited. Employers should take a thoughtful, conservative approach by reviewing FLSA coverage, maintaining accurate payroll records, and preparing to address employee questions as the new rules take effect (but avoid giving any individualized tax planning advice). Clear communication and education for HR, payroll, and management teams can help manage employee expectations and minimize compliance risk.

We expect the IRS to release more guidance in the near future, so make sure you are subscribed to our [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any member of our [Agriculture Team](#), or any member of our [Wage and Hour](#) or [Employee Benefits and Tax](#) Teams.