

FELS

Farm Employers Labor Service



Serving Agriculture in Labor Management Relations

September 20, 2019

Memorandum

To: County Farm Bureaus and Interested Parties

From: Bryan Little, Chief Operating Officer

Re: Labor Commissioner's guidance letter concerning application of overtime for sheepherders

On July 26, 2019, Laura Moskowitz, Attorney for the Labor Commissioner, issued a [guidance letter](#) in response to questions submitted by George Soares of the Sacramento law firm Kahn, Soares, & Conway, LLP. Moskowitz describes the purpose of the letter in this way: "You have asked for the Labor Commissioner's interpretation concerning how to calculate overtime for sheepherders who earn a monthly minimum wage for all hours worked."

Moskowitz cites Labor Code section 2695.2, subdivision (a)(1), which provides for a monthly minimum wage for "a sheepherder employed on a regularly scheduled 24-hour shift on a seven-day-a-week 'on-call' basis." The minimum monthly wage in 2019 for sheepherders is \$2,133.52 for employers of 26 or more employees and \$1,955.74 for employers of 25 or fewer employees.¹

Moskowitz explains that the statutory minimum monthly wage for such sheepherders may be paid "as an alternative to paying the minimum wage for all hours worked." This includes the minimum wage due for those hours that the sheepherder is or will be due an overtime premium per the provisions of the Phase-In Overtime for Agricultural Workers Act of 2016,² a part of that year's Assembly Bill 1066.

¹ Industrial Welfare Commission Wage Order No. 14-2001, Subsection 4(E).

² Under that Act, a sheepherder—like other covered ag employees in California—ultimately will have to be compensated at:

- one-and-one-half times the employee's regular rate of pay for
 - hours worked beyond eight and up to 12 in a workday,
 - hours worked beyond 40 in a workweek, and
 - the first eight hours worked on the seventh consecutive day worked in a workweek; and
- twice the employee's regular rate of pay for hours worked beyond
 - 12 in a workday and
 - eight hours on the seventh consecutive day worked in a workweek.

Moskowitz continues by explaining the regular rate of pay of a shepherd paid the statutory minimum monthly wage is computed per these three steps:

- 1- Multiply the monthly minimum wage by 12 months to get the yearly wage.
- 2- Divide the yearly wage by 52 weeks (in a year) to get the weekly wage.
- 3- Divide the weekly wage by 168 hours (in a week) to get the regular (hourly) rate of pay.

For a shepherd employed in 2019 by an employer of 26 or more employees (who are now covered by the first step of the overtime phase-in), the calculation is as follows:

- 1- $\$2,133.52$ per month \times 12 months = $\$25,602.24$
- 2- $\$25,602.24 \div 52$ weeks = $\$492.35$ per week
- 3- $\$492.35$ per week $\div 168$ hours per week = $\$2.93$ regular (hourly) rate of pay

Such a shepherd may work up to 55 hours in a workweek at the shepherd's regular rate of pay. Thus an overtime premium is due for the other 113 hours of the workweek. Sixteen of those hours (i.e., the hours worked beyond the eighth hour of the workweek's seventh day) are compensable at twice the employee's regular rate of pay, with the other 97 hours compensable at one-and-one-half times the employee's regular rate of pay.

As the monthly minimum wage compensates the employee at the regular rate of pay for each hour worked in the workweek, only the additional premium amount is owed: one-half of the regular rate of pay (i.e., $\$1.47$) for each of those 97 hours and the regular rate of pay (i.e., $\$2.93$) for those 16 hours. Thus:

97 hours \times $\$1.47$ per hour = $\$142.59$
16 hours \times $\$2.93$ per hour = $\$ 46.88$
Total overtime pay due = $\$189.47$

For informational purposes, please refer to [Ag Overtime Resources](#) at Farm Employers Labor Service's website, and to [Overtime Phase-in and Minimum Wage Increases](#) on California Farm Bureau Federation's website. Please refer questions to info@fels.net or 800-753-9073.