

New York Farm Laborer Overtime Threshold to Decline

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New York's state government took another major step toward reducing the farm laborer overtime threshold on September 30, 2022. Labor Commissioner Roberta Reardon issued a [press release](#) and official [order](#) accepting the findings of the [Farm Laborer Wage Board report](#). The NY State Department of Labor will now begin a rule making process to make the Commissioner's order formally a state regulation, this process will include a 60-day public comment period. This is the conclusion of a long and controversial political process that started with the 2019 passage of the Farm Laborer's Fair Labor Practices Act (FLFLPA) in 2019, and continued through 14 lengthy public meetings and hearings of the wage board.

What changes will happen and when?

The overtime threshold for farm laborers is currently at 60 hours per week. This will not change for the rest of 2022 and for all of 2023. The overtime threshold will begin to decline on January 1, 2024 by dropping to 56 hours per week, and then it will continue to decline by four hours every other year after that until it reaches 40 hours per week in 2032. Here is the schedule:

- January 1, 2024, the threshold declines to 56 hours;
- January 1, 2026, the threshold declines to 52 hours;
- January 1, 2028, the threshold declines to 48 hours;
- January 1, 2030, the threshold declines to 44 hours;
- January 1, 2032, the threshold declines to 40 hours, and remains there.

Farm employers will be responsible for paying farm laborers 1.5 times their regularly hourly rate for any hours worked above the weekly overtime threshold. Note that overtime is only payable to those who meet the definition of "farm laborer." While this includes most farm employees, it does not include many [family employees](#) who are related to a farm owners, and some employees who are exempt from overtime due to their status as executive, professional, or administrative employees. Visit [this page](#) on the Cornell Ag Workforce website to view a [presentation](#) that explains this in more detail. One key point to note, just paying an employee via salary DOES NOT exempt them from overtime, they must qualify to be exempt from overtime based on their relationship to the owner or their job qualification as executive, professional, or administrative.

What about the tax credit for overtime?

With the 2022-23 Budget Act, New York state government created a new tax credit that will essentially cover the cost of overtime for farm employers. While this tax credit is technically effective now, it is not relevant because the required overtime threshold remains at 60 hours per

week. Note, tax credits are only available for **state required** overtime, those employers who currently pay overtime voluntarily below 60 hours per week are not eligible for the tax credit.

Here are a few details about the tax credit:

1. Farm employers who are corporations (including a New York S corporation), sole proprietorships, LLCs and partnerships are eligible.
2. Only “farm laborers” as defined in NY labor law are eligible employees. This makes sense because these are the only types of employees for whom overtime is required; family members and certain executives, professionals, and administrative personnel are excluded.
3. Eligible overtime hours include those in any calendar week that exceed the overtime threshold set by the commissioner of labor, up to 60 hours in a week. This is important, only those hours between the threshold and 60 hours are reimbursable through the tax credits, any overtime hours worked above 60 will not be reimbursed to the employer.
4. Farm wineries and cideries who derive more than 50% of their income from beverage sales will need to follow some special rules. Only workers employed on qualified agricultural property will be eligible for the tax credit.
5. Only the overtime premium is reimbursable through the tax credit. For example, if the threshold is at 56 hours in 2024, and an employee whose regular pay is \$18/hour works 58 hours in one week that year, then she will be eligible for two hours of overtime pay. Overtime is 150% of regular pay so she will earn \$27 for each overtime hour worked. Only the overtime premium, the extra \$9/hour over her regular rate, is eligible for reimbursement through the tax credit.
6. When pay goes up, marginal costs such as taxes and worker’s compensation premiums also go up. Recognizing this, the overtime tax credit will allow employers to take 118% of the eligible overtime compensation to cover those additional costs.

7. Advance payments of tax credits for overtime premiums paid from January 1st to July 31st are possible. To receive advance payments, employers will need to prepare their claim and submit it to the NYS Department of Agriculture and Markets.

8. NYS Ag and Markets will be involved in this process. They will develop an application process that employers will use to document their claim for the tax credit. Ag & Markets will then issue a certificate of tax credit to eligible employers. All of the details of this process will need to be worked out.

Obviously, there are many details to work out before January 1, 2024. Farm employers need to pay careful attention to their employee payroll record systems. It is important to have accurate and detailed records of employee hours worked and overtime paid in order to take advantage of this important and potentially large tax credit.

Where do we go from here?

New York farmers are intelligent, resilient, and adaptable, all of those qualities will be required in abundance for the years ahead. The best farm managers will continue to sharpen their leadership and employee management skills in order to recruit and retain the most effective and productive employees. New York farmers will adopt technologies and automation when it makes economic sense, and that automation will replace some farm labor, while it augments and increases the value of other skilled farm labor that remains. The state tax credit will shift part of the cost of overtime to the people of New York, rather than causing farm employers to bear it alone. This shift will benefit farm employees who will likely work some overtime hours in New York, rather than face the serious reductions in work hours, and weekly income, that California and Washington farm employees [are reportedly](#) experiencing.

Going forward, as it has been in the past, the theme for farm employers will be to adapt and create something new, even in the face of adversity.

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