

# **The Business of Farming:** The Growing Challenge of Employing People in California

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# Let's Set the Table...

- What Sacramento already did to you...
- What Sacramento is about to do to you...
- What might be coming next...

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# The Legislature May be in Recess, but...

- 2016, 2017, and 2018 have been very busy years for legislators and advocates
- Hang onto your checkbooks, because there is more to come

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# Let's Talk about What's Just Over the Horizon

Legislation over the last three years  
beginning to phase in:

- Ag Overtime
- Minimum Wage

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# Overtime and Minimum Wage

- Changes to both are happening at the same time.
- Need to be sure to correctly implement both on 1/1 (and every Happy New Year's Day until 2025).

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# What Changed on 1/1/17?

## Minimum Wage:

- **\$10.50/hour** for “large” employers (26 or more employees)

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# What Changed on 1/1/17?

## Minimum Wage:

- **Counting Employees:**
  - Full-Time
  - Part Time
  - Minors
  - New Hires
  - Overtime-exempt supervisors
  - Your FLC's employees
  - **They all count** when you're counting to 25
- DIR says count is **pay-period-by-pay-period** – if you have more than 25 employees in that pay period, you're "large"

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# What Changed on 1/1/17?

## “Day of Rest”

- Ag exemption repealed
- Forbids employer to “cause” employee to work more than 6 days in 7
- If an employee works more than 6 days in 7, employer can provide required number of days of rest in the same calendar month
- Employees may choose to work more than 6 days in 7 (*Mendoza v. Nordstrom*)

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# What Changed on 1/1/17?

## 7<sup>th</sup> Day Overtime (Labor Code) v.

### 7<sup>th</sup> Day Overtime (Order 14):

- New ag overtime law *probably* applied Labor Code 7<sup>th</sup>-day overtime requirement to ag, displacing the long-standing Order 14 requirement.
- **Order 14:** work in excess of 8 hours on the 7<sup>th</sup> **consecutive day of work** in a workweek must be compensated at twice the regular rate of pay.
- **Labor Code:** *work in excess of 8 hours on any 7<sup>th</sup> day of work in a workweek must be compensated at no less than twice the regular rate of pay....*

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# What Changed on 1/1/17?

## 7<sup>th</sup> Day Overtime (Labor Code) v. 7<sup>th</sup> Day Overtime (Order 14):

- This *might* mean employees are due double-time for hours worked over 8 on the 7<sup>th</sup> day of a workweek, even if they didn't work on any other day of that workweek
- But maybe not!
  - DIR's draft update of Order 14 continues to say double-time is due only after 8 hours worked on the 7<sup>th</sup> consecutive day of work in a workweek

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# What Changed on 1/1/17?

## Meal Periods

- Ag Overtime bill (AB 1066) *probably* applied Labor Code meal period provisions to ag, replacing Order 14 provisions
- **Order 14:** Meal period after a (**each**) work period of not more than 5 hours
- **Labor Code:** Meal period after a work period of not more than 5 hours per day; 2<sup>nd</sup> meal period after a work period of not more than 10 hours per day
- DIR appears to be adopting the Labor Code structure for the newly-rewritten Order 14

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# What Changed on 1/1/18?

## Minimum Wage Increase

- **\$10.50/hour** for “**small**” employers (at no time more than 25 employees in a pay period)
- **\$11/hour** for “**large**” employers (26 or more employees at some time in a pay period)

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# What Changes on 1/1/19?

## Minimum Wage Increase

- **\$11** per hour for “**small**” employers  
(25 or fewer)
- **\$12** per hour for “**large**” employers  
(26 or more)



# What Changes on 1/1/19?

## Ag Overtime Thresholds

For “**large**” employers: (26 or more)

- **1.5x** regular rate of pay for more than **9½ hours** per workday
- **1.5x** regular rate of pay for more than **55 hours** per workweek

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# What Changes on 1/1/20?

## Minimum Wage Increase

- **\$12** per hour for “**small**” employers  
(25 or fewer)
- **\$13** per hour for “**large**” employers  
(26 or more)

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# What Changes on 1/1/20?

## Ag Overtime Thresholds

- For “**large**” employers (26 or more)
  - **1.5x** regular rate of pay for more than **9 hours** per workday
  - **1.5x** regular rate of pay for more than **50 hours** per workweek

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# What Changes on 1/1/21?

## Minimum Wage Increase

- **\$13** per hour for “**small**” employers  
(25 or fewer)
- **\$14** per hour for “**large**” employers  
(26 or more)



# What Changes on 1/1/21?

## Ag Overtime Thresholds

- For “**large**” employers (26 or more)
  - **1.5x** regular rate of pay for more than **8½ hours** per workday
  - **1.5x** regular rate of pay for more than **45 hours** per workweek

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# What Changes on 1/1/22?

## Minimum Wage Increase

- **\$14** per hour for “**small**” employers  
(25 or fewer)
- **\$15** per hour for “**large**” employers  
(26 or more)

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# What Changes on 1/1/22?

## Ag Overtime Thresholds

- For “**large**” employers (26 or more)
  - **1.5x** regular rate of pay for more than **8 hours** per workday
  - **1.5x** regular rate of pay for more than **40 hours** per workweek
  - **2x** regular rate of pay for more than **12 hours** per workday

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# What Changes on 1/1/22?

## Ag Overtime Thresholds

- For “**small**” employers (25 or fewer)
  - **1.5x** regular rate of pay for more than **9½ hours** per workday
  - **1.5x** regular rate of pay for more than **55 hours** per workweek

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# What Changes on 1/1/23?

## Minimum Wage Increase

- **\$15** per hour for “**small**” employers (25 or fewer)
- Stays at \$15 for “**large**” employers (26 or more)

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# What Changes on 1/1/23?

## Ag Overtime Thresholds

- For “**small**” employers (25 or fewer)
  - **1.5x** regular rate of pay for more than **9 hours** per workday
  - **1.5x** regular rate of pay for more than **50 hours** per workweek

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# What Changes on 1/1/24?

## Ag Overtime Thresholds

- For “**small**” employers (25 or fewer)
  - **1.5x** regular rate of pay for more than **8½ hours** per workday
  - **1.5x** regular rate of pay for more than **45 hours** per workweek

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# What Changes on 1/1/25?

## Ag Overtime Thresholds

- For “**small**” employers (25 or fewer)
  - **1.5x** regular rate of pay for more than **8 hours** per workday
  - **1.5x** regular rate of pay for more than **40 hours** per workweek
  - **2x** regular rate of pay for more than **12 hours** per workday

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# Wage Order 14 Update

- Ag overtime bill (AB 1066) directed Dept. of Industrial Relations (DIR) to “update” Order 14 consistent with the ag O/T Labor Code provisions added by AB 1066
- *“...any existing provision of Wage Order No. 14-2001 providing greater protections or benefits to agricultural employees shall continue in full force and effect...”*

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# Wage Order 14 Update

- AB 1066 applied *all other provisions of* [Labor Code Div. 2, Pt. 2] *Chapter 1 ... regarding compensation for overtime work ... to workers in an agricultural occupation commencing Jan. 1, 2017*
- Order 14 has O/T exemptions for irrigators, shepherders, fishing boat crew members, immediate family members, salaried managers, and truck drivers regulated by Hours-of-Service safety regulations
- DIR: exemptions for the first three, unique to Order 14, will be eliminated

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# What's New for 2019?

## ➤ #MeToo agenda:

- ✓ Expanded workplace sexual harassment training requirement:
  - **Now:** 2 hours every other year for supervisors if you employ **50** or more
  - **New:** 2 hours for supervisors and 1 hour for all employees (including temporary/seasonal) if you employ **5** or more, and every two years after
  - Dept. of Fair Employment & Housing will provide online training resources to meet the new requirements

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# What's New for 2019?

- Implementation of CalSavers – formerly Secure Choice
- ✓ Automatic payroll deduction IRA
  - Voluntary for employees, but they must “opt-out” or employer must deduct contributions and forward to CalSavers plan administrator
  - Program will be supported by fees paid by participants (employees)



# What's New for 2019?

- Employers must:
  - ❖ furnish CalSavers program information to new hires
  - ❖ deduct contributions from pay of employees not opting out
  - ❖ Funnel information from program to employees and furnish employees program-provided information to employees
- Employer may contribute, but not required
- No fees for employers
- No cost to state/taxpayers



# What's New for 2019?

- Default employee contribution rate: 5%
- Voluntary “pilot program”
  - volunteer employers sign up in Nov. – Dec. 2018
  - begin forwarding contributions in Jan. 2019
  - Ends June 2019



# What's New for 2019?

- Mandatory employer registration
  - Registration begins July 2019
  - Employers of 100+ must register by June 2020
  - Employers of 50-99 by June 2021
  - Employers of 5 or more by June 2022
- **Problem:** CalSavers is likely pre-empted by federal Employee Retirement Income Security Act (ERISA); litigation on-going

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# Thanks for Your Attention!

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