



KNOW YOUR RIGHTS

SAN MATEO COUNTY AGRICULTURAL WORKERS

CENTRO LEGAL
DE LA RAZA

PUENTE



Agricultural workers

You are a Direct Agricultural Workers if you:

- Engage in the preparation and treatment of farmland.
- Care and harvest Crop (e.g. preparing farmland, farm facilities, and farm tools for agricultural purposes, planting, caring for, harvesting, field packing, delivering to the first place of processing agricultural products grown on that farm, or raising or managing livestock.)

You are an Indirect Agricultural Worker if you:

- Process and pack the harvested and purchased agricultural products for market on the farm.
- Prepare agricultural products grown on the farm for market by packing and processing the products in either a permanently fixed structure or moving packing plant.
- Handle and pack agricultural products not grown on the farm for market.



New Minimum Wage - **\$17.06**

- Starting January 1, 2024, any employee who works at least 2 hours per week (not independent contractors) in unincorporated areas in San Mateo County is entitled to a minimum wage of \$17.06, regardless of immigration status.



Overtime and Double-time Pay

When employees work more than a certain number of hours in a workday or workweek, they may be entitled to:

- "overtime pay" (1.5x your hourly rate), or,
- "double pay" (2x your hourly rate).

You may be entitled to both overtime and double time pay based on the hours and days you work. You are only eligible for overtime if:

- you are 18 or older; or,
- 16 or 17 but not required to attend school.
- You might not be entitled to overtime if you are covered by a valid collective bargaining agreement that provides a premium for that work.

Please note that this does not apply to work done in Belmont, Burlingame, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, or South San Francisco.

For direct agricultural workers, the start of overtime pay depends on the year worked:

Effective date (employers with 26 or more employees)	Effective date (employers with 25 or fewer employees)	After how many hours does overtime start?
January 1, 2019	January 1, 2022	9.5 hours per day or 55 hours per workweek
January 1, 2020	January 1, 2023	9 hours per day or 50 hours per workweek
January 1, 2021	January 1, 2024	8.5 hours per day or 45 hours per workweek
January 1, 2022	January 1, 2025	8 hours per day* or 40 hours per workweek
*Double time (2x hourly rate) pay is applied to additional hours worked after employee's 12th hour worked that day.		

Indirect agricultural workers are entitled to:

- Overtime pays for hours worked after the 8th hour and up to the 12th hour working in a single workday, or;
- For hours worked beyond 40 in a workweek.
- Double time pay for any hours worked after the 12th hour in any workday.



Any agricultural worker who works more than six consecutive days in a workweek is entitled to:

- overtime for the first 8 hours of work on that seventh day;
- double pay for all additional hours after the 8th hour that day.

For workers engaging in both direct and indirect agricultural work, the appropriate overtime and double-pay rules depends on the type of activity (indirect or direct agricultural work) the worker is engaged in at the time the overtime was worked.





Meal and Rest Periods

- All agricultural workers are entitled to receive a 30-minute lunch break for each 5 hours worked.
- You must receive one 10-minute rest break if you work at least 3.5 hours in a day.
- You must receive two 10-minute rest breaks if you work at least 6 hours in a day, and one additional 10-minute rest break for every four additional hours you work that day.



Discrimination

Employers cannot discriminate against you on the basis of race, ethnicity, national origin, religion, age (if over 40 years old), disability, sex (including pregnancy status), sexual orientation, any illness, gender identity, marital status, or military status.



Retaliation

An employer cannot take negative actions against you (such as threatening to call immigration, reducing work hours, or firing you) for asking about your rights or exercising a protected activity (e.g. rights to overtime pay, sick leave, etc.).



Other Important Information

Immigration Status: California's labor protections generally apply to all workers equally, regardless of their immigration status, with few exceptions.

Final pay: If you are fired, your employer must pay everything owed to you on your last day of work & you might qualify for unemployment insurance.

Paid Sick Time: You must receive at least 3 paid sick days per year. Some cities and counties require employers to provide additional time. Your available sick time must be listed on each paystub.

California Family Rights Act (CFRA) Leave: If you have worked for an employer more than 12 months, and at least 1,250 hours in the prior 12-month period, you may take up to:

- 12 weeks of job-protected time off to care for yourself or your family members (including any person related by blood or individuals who are like family) dealing with a serious health condition or to bond with a new child, as long as the employer has 5 or more employees.
- Employers are not required to pay for CFRA leave and may require medical certification.

Employees taking CFRA leave may also be eligible for Paid Family leave or disability Insurance.

<https://calcivilrights.ca.gov/family-medical-pregnancy-leave/>

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California Paid Family Leave (PFL): If you need to take time off from work in order to care for a seriously ill family member, bond with a new child, or participate in a qualifying event due to a family member's military employment -

- You might be eligible for up to 8 weeks of short-term replacement benefits at 60-70% of the worker's weekly wages earned.
- This applies to part-time and full-time employees who have contributed to State Disability Insurance and self-employed Californians who contributed to the Disability Insurance Elective Coverage Program at some point during the 18 months previous to filing a claim.

<https://edd.ca.gov/en/disability/paid-family-leave/>



State Disability Insurance: Workers who experience their own non-work-related illness, injury, or pregnancy, and who have their disability certified by a physician/practitioner may qualify for up to:

- 52 weeks of short-term wage replacement estimated to be 60-70% of the wages earned 5 to 18 months before the start of the claim date.

Uniforms & tools: Employers must cover costs.

Housing Costs: If you are paid minimum wage, your employer may not subtract housing costs from your pay unless there is a written agreement between both. There are maximums to this.

For assistance understanding whether you can take legal action to reclaim owed wages or protect yourself against your employer, **Centro Legal de la Raza** provides free legal consultations to low-wage workers. Reach out to us at 510-437-1554 or info@centrolegal.org

https://edd.ca.gov/en/disability/Calculating_DI_Benefit_Payment_Amounts/



Frequently Asked Questions



01. Am I a direct or indirect agricultural worker?

Direct agricultural workers are workers that engage in any of the following jobs: preparing farmland, farm facilities and farm tools for agricultural purposes, planting, caring for, harvesting, field packing, or delivering to the first place of processing agricultural products grown on that farm, or raising or managing livestock.

Indirect agricultural workers also work on the farm. These workers prepare agricultural products grown on the farm for market by packing and processing the products in either a permanently fixed structure or moving packing plant. They also handle and pack agricultural products for market that were not grown on the farm.



Please note a person working in an executive capacity (managing and directing the work of other employees, which requires exercise of discretion and independence), administrative capacity (engaging in non-manual work related to business), or professional capacity (is licensed and engaged in primarily scientific or artistic work) are not classified as an agricultural worker. For more information on indirect/direct agricultural workers, please refer to the Industrial Welfare Commission's Wage Order Nos. 8, 13, and 14:

<https://www.dir.ca.gov/IWC/IWCArticle08.pdf>

<https://www.dir.ca.gov/iwc/iwcarticle14.pdf>

<https://www.dir.ca.gov/IWC/IWCArticle13.pdf>

02. Does the San Mateo County minimum wage apply to me?

- San Mateo County's minimum wage applies to any employee who has performed at least two hours of work in one week (Sunday through Saturday) within the unincorporated areas of San Mateo County.
- This includes employees who are not citizens or nationals of the United States and minors.
- San Mateo County's minimum wage does not apply to independent contractors. In California, a worker is presumed to be an employee rather than an independent contractor unless the hiring entity can prove otherwise (For more information see California Assembly Bill No. 5).

San Mateo County's minimum wage does not apply to the City of San Mateo and several other cities in San Mateo County that have already implemented their own minimum wage rates, including: Belmont, Burlingame, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, and South San Francisco.



03. What rate of overtime am I entitled to if I am a direct agricultural worker?

Overtime rates for direct agricultural workers depends on when you worked and your employer's number of employees.

Example:

If you worked from March 1, 2022, to November 1, 2022, for an employer with 23 employees, you are entitled to 1.5x your pay for any hours worked more than 9.5 hours per day or for any hours worked in excess of 55 hours per workweek.

You are also entitled to 1.5x your pay for the first 8 hours worked on a 7th consecutive working day and double pay for any hours worked over 8 hours on that 7th day.

Therefore, if Employee B works Monday through Friday from 5:00am - 5:30pm, with two 30-minute meal breaks and required rest breaks, then Employee B has worked 11.50 hours per day and 57.5 hours per week. Since Employee B surpassed 8 hours per day, Employee B would be entitled to overtime pay (1.5x their hourly rate) for 10 hours (2 hours per day) that week. There would be no additional overtime for exceeding the 55-hour workweek because the employer will only apply overtime to either the workday or workweek, whichever is most beneficial for the employee's pay.





04. What rate of overtime am I entitled to if I am an indirect agricultural worker?

Indirect agricultural workers are entitled to overtime pay for hours worked after the 8th hour and up to the 12th hour working in a single workday or for hours worked within the workweek in addition to the employee's 40 hours. Indirect agricultural workers may receive double time pay for any hours worked after the 12th hour in any workday. They are also entitled to overtime for the first 8 hours worked on their 7th consecutive day, and double time pay for any additional hours worked on that day.

Example:

If Employee C works Sunday through Friday from 8:00 am – 2:00 pm and works on Saturday from 8:00 am – 7:00 pm, they are owed overtime pay. If Employee C is provided their 30-minute lunch break (two on Saturday) and required rest breaks, they work 5.5 hours per day from Sunday through Friday and 10 hours on Saturday. Employee C would be entitled to overtime and double time pay for their work on Saturday because it is their 7th consecutive day of work. They would be entitled to overtime pay (1.5x their hourly rate) for the first 8 hours and double time pay (2x their hourly rate) for the last 2 hours. Although Employee C worked 43 hours for the workweek, they cannot claim overtime for both a day and week. Employers must apply overtime pay rules based on which method will result in greater pay.

05. How is overtime calculated if I engage in both direct and indirect agricultural work?

For workers engaging in both direct and indirect agricultural work in the same workday or workweek, the appropriate overtime and double-pay rules depend on the type of activity the worker is engaged in at the time the overtime was worked.

Example:

If on March 3, 2023, Employee D, who works for an employer with 20 employees, picks fruit from 6:00 am – 2:30 pm (with a 30-minute meal break within the first five hours of work) and from 2:30 pm – 4:30 pm packages fruit on the farm's processing plant, they are owed overtime pay. Employee D has worked 10 hours: 8 hours engaging in direct agricultural work and 2 hours engaging in indirect agricultural work. Since the overtime the worker engaged in is indirect agricultural work, those overtime rules apply. So, Employee D would receive regular pay for 8 hours and overtime pay (1.5x their hourly rate) for 2 hours.

06. What is the difference between a seasonal agricultural worker and a migrant agricultural worker?

A seasonal agricultural worker is an individual who is employed in temporary agricultural work but does not move from their permanent residence to seek agricultural work. A migrant agricultural worker on the other hand, is an individual who is required to be absent from their permanent place of residence for the purpose of seeking employment in agricultural work.



07. Am I entitled to the same workers' rights if I am employed as a seasonal worker?

Yes, seasonal workers and migrant workers are entitled to the same rights. What is most important to understand your rights is whether you are a direct or indirect agricultural worker. See above for more information.

08. When will direct agricultural workers receive overtime pay on the same basis as all other industries?

As of January 1, 2022, direct agricultural workers at large employers (26 or more employees) are entitled to the same overtime pay and double pay as all other industries. Starting January 1, 2025, direct agricultural workers at small employers (25 or fewer employees) will receive the same overtime pay and double time pay as all other industries.

09. How can I be sure of how many employees my employer has?

Unfortunately, there is no requirement that your employer disclose the number of workers it employs. Some employers disclose the number of workers they employ on the company website, which can be a good place to start. You can also ask other employees if they know or make observations yourself as to how many employees are working at the company. The number of employees is inclusive of agricultural workers and non-agricultural workers.

10. What can I do if I notice a discrepancy in my paystub?

Notify your employer through written communication. If not possible, take notes on the conversation and date. If your employer does not correct the discrepancy, you may be able file a wage claim if the discrepancy resulted in wage theft. There are organizations, like Centro Legal de La Raza that can assist in submitting a wage claim with the Labor Commissioner.

11. How much money can my employer deduct from my paycheck for housing costs?

An employer can deduct money from an agricultural worker's paycheck only if the employee is being paid more than the required minimum wage and if the employer and employee agree to the deduction in writing. The amount an employer can deduct is dependent on the type of housing.

12. Can I report my employer's violations if I do not have legal status?

Yes, if your employer is withholding your wages, not paying you minimum wage, not providing you with legally required meal or rest breaks, or not providing paystubs, you can file a claim with the California Labor Commissioner's Office (state agency), the U.S. Department of Labor (federal agency), or in civil court. Filing a claim with the Labor Commissioner's Office is free and usually more accessible to employees.

<https://www.dir.ca.gov/dlse/howtofilewageclaim.htm>
<https://www.dol.gov/agencies/whd/contact/complaints>

13. Where do I file a claim for a workplace violation?

- If your employer has retaliated against you, you can file a complaint with the Labor Commissioner's Retaliation Complaint Investigation Unit.

<https://www.dir.ca.gov/dlse/HowToFileRetaliationComplaint.htm>

- If your employer has discriminated against you, you can file a complaint with the California Civil Rights Department (state agency) or the U.S. Equal Employment Opportunity Commission (federal agency).

<https://calcivilrights.ca.gov/complaintprocess/>
<https://www.eeoc.gov/es/presentacion-de-cargos-de-discriminacion>

- If you suspect your employer is engaging in unlawful activities, you can file a report with the Labor Enforcement Task Force (LEFT) regardless of your legal status. You can contract LEFT to make the report by calling their hotline at (855) 297-5322, by email at left@dir.ca.gov, or by submitting an online form. You may remain anonymous when you submit our report or leave your information to be contacted for follow up questions.

<https://www.dir.ca.gov/left/left.html>



For assistance understanding whether you can take legal action to reclaim owed wages or protect yourself against your employer, Centro Legal de la Raza provides free legal consultations to low-wage workers. Reach out to us at 510-437-1554 or info@centrolegal.org.

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