

# Bond

## Farm Labor 101: An Introduction to the New Legislation in New York

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## Overview of the Farm Laborers Fair Labor Practices Act

- Mandatory Day of Rest
- Overtime Pay
  - Farm Laborers Wage Board
- Right to Organize and Negotiate a Collective Bargaining Agreement
- Unemployment Insurance Coverage
- Workers Compensation Coverage
- Disability and Paid Family Leave
- Permits for Migrant Housing



## Mandatory Day of Rest

- Effective January 1, 2020
- Farm laborers are entitled to **24 consecutive hours** of rest in **each and ever calendar week**
- “Whenever possible” the day of rest should coincide “with the traditional day reserved by the farm laborer for religious worship.”
- 24 consecutive hours spent at rest because of circumstances such as weather or crop conditions, shall constitute the rest required



## Mandatory Day of Rest

- Farm Laborers can voluntarily agree to work on their day of rest but must be paid at least 1.5x their regular rate of pay for all time worked on their day of rest (regardless of the total number of hours they worked during the week)



## Overtime Pay

- Effective January 1, 2020
- Overtime pay at the rate of 1.5x the laborer's **regular rate** of pay for all time worked over **60 hours in a week**
  - Regular Rate = all remuneration received by an employee is included into an employee's regular rate of pay, except a specific narrow list of exemptions
    - Do employee's receive non-discretionary bonuses?
    - Shift differentials?
    - Valid allowances taken for meals and lodging?
    - Regular Rate ≠ Minimum Wage Rate



## Overtime Pay

- H-2A Workers – must still be paid overtime for all time worked over 60 hours in the week
- Most Farm Laborers are non-exempt employees
  - Must pay 1.5x regular rate for all hours worked over 60 per week
  - Cannot just pay a salary to avoid overtime
    - Only can avoid paying overtime for Exempt employees that satisfy both the salary basis test and the duty test



## Overtime Pay

- Farm Laborers Wage Board
  - Comprised of 3 members:
    - A representative from the Farm Bureau
    - A representative from the New York State AFL-CIO
    - One member appointed by the Commissioner, who shall be selected from the general public and designated as the chairperson
  - Power to hold public hearings
    - First hearing must be held no later than March 1, 2020
    - Must hold at least 3 meetings that provide the opportunity for public comment



## Overtime Pay

- Farm Laborers Wage Board
  - Provide a report and recommendation to the Governor and Legislature about Overtime pay by December 31, 2020.
    - The Wage Board must “specifically consider the extent to which overtime hours can be lowered below such amount set in law, and may provide a series of successively lower overtime work threshold and phase-in dates as part of its determination.”



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Effective January 1, 2020
- Right to Organize
  - If the choice to employees in a negotiating unit is limited to selecting or rejecting a single employee organization, that choice shall be ascertained by the board on the basis of dues deductions instead of elections
    - The employee organization will be certified without an election by the Board if a majority of the employees have executed dues deductions authorizations.



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Employers obligated to negotiate in Good Faith with Employees that have organized
- Impasse
  - Occurs when the Employer and the Union Organization cannot come to an agreement
  - Impasse may be deemed to exist if the parties fail to reach an agreement within 40 days from:
    - the date of certification or recognition of an employee organization; or
    - the expiration of a collective bargaining agreement



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Impasse (cont.)
  - Either the Employer or the Union Organization can request impasse
  - If the board determines there is an impasse between the parties, the following procedure occurs:
    - Mediation: the board will appoint a mediator – if the mediator is unable to effectuate a settlement within 30 days, either party may petition the board to refer the dispute to a neutral arbitrator
    - Arbitration: A hearing shall be held before a neutral arbitrator “on all matters related to the dispute”



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Arbitration (cont.)
  - the parties select a neutral arbitrator
  - A hearing is held where each party presents evidence related to its position about each proposal at issue during negotiations
  - The arbitrator is required to provide a written decision that specifies the basis for his/her findings
  - The arbitrator’s decision is **final and binding**, but shall not exceed 2 years from the date of the arbitrator’s determination



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Arbitrators consider the following:
  - o Comparable Data:
    - Reviews “comparable” employers in the community related to the wages, hours and conditions of employment of other employees performing similar services/requiring similar skills
  - o The interest and welfare of the farm laborers and the financial ability of the agricultural employer to pay



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Arbitrators consider the following:
  - o Comparison of other factors related to the specific trade, including:
    - Hazards of employment;
    - Physical qualifications;
    - Educational qualifications;
    - Mental qualifications;
    - Job training
  - o The terms of collective bargaining agreements negotiated between the parties in the past, if any
  - o The impact of the food supply and commodity pricing



## Right to Organize and Negotiate a Collective Bargaining Agreement

- Unfair Labor Practices
  - Employees Cannot Strike/cause a work slowdown
  - Employers Cannot:
    - Lockout employees;
    - Refuse to continue all the terms of an expired agreement;
    - Discourage union organization or discourage an employee from participating in a union organizing drive or from participating in protected concerted activity



## Unemployment Insurance Coverage

- Effective January 1, 2020
- Employers are now required to maintain unemployment insurance for farm laborers
- Only Exception: Services rendered by an individual who is admitted to the United State to perform agricultural labor pursuant to 8 USC 1188 (Admission of temporary H-2A workers) if, at the time such services are rendered they are excluded from the definition of employment in section 3306(c) of the Federal Unemployment Tax Act





## Unemployment Insurance Coverage

- All Prior exceptions have been repealed:
  - Previously employers only had to make unemployment contributions if the employer:
    - Paid cash remuneration of \$20,000 or more in any calendar quarter; or
    - Employed 10 or more agricultural laborers on each of 20 days during a calendar year or the preceding calendar year, each day being in a different calendar week; or
    - Was liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor



## Workers Compensation Coverage

- Effective January 1, 2020
- All farm laborers now covered
- Prior Exception Repealed:
  - Only required to provide workers compensation coverage for all farm laborers who were employed during any part of the 12 consecutive months beginning April 1<sup>st</sup> of the calendar year preceded by a calendar year in which the cash remuneration paid to all farm laborers aggregated \$1200 or more
- Employers required to post workers compensation notice in BOTH English and Spanish



## Workers Compensation Coverage

- Supervisor, farm labor contractors and foreman who have notice of an injury incurred on-the-job are required to inform the employer, owner or operator of the farm
- Unlawful to discriminate against an employee because he/she:
  - has claimed or attempted to claim compensation or workers compensation benefits;
  - has requested a claim form for injuries received in the course of employment; or
  - Testified in a workers compensation proceeding



## Disability and Paid Family Leave

- Effective January 1, 2020
- Farm laborers are now entitled to receive Disability and Paid Family Leave if qualify
- Exceptions for “farm laborers” was eliminated
- PFL provides partial income replacement and job protection for workers who take leave for a covered reason
- Generally funded by employees through payroll deductions to cover the employer’s premium cost



## Disability and Paid Family Leave

- Some temporary and part-time employees may have the opportunity to waive PFL coverage
- Qualifying Leave:
  - Bond with a newly-born, adopted or foster child;
  - Care for a family member with a serious health condition;
  - To assist when a family member is deployed abroad on active military service.
- Employers cannot discriminate against employees for using PFL



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## Disability and Paid Family Leave

- PFL Policy
  - Must provide written guidance regarding rights and obligations under the PFL
  - In employee handbook if employer has one
- Notice Posting
  - Display or post notice concerning PFL in form prescribed by the Workers' Compensation Board Chair



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## Permits for Migrant Housing

- Effective January 1, 2021
- The requirement that a permit was only required for labor camps that house five or more migrant workers was removed
- Permits can be required for labor camps regardless of the number of migrant workers who occupy the camps



## Future Follow-Up Dates:

- December 2019 NYFB State Annual Meeting:
  - Focus on union organizing, collective bargaining and how to ensure employers do not commit an unfair labor practice in the process
- January 2020:
  - Follow-up webinar to provide additional guidance on issues that seem most problematic; and
  - Review any guidance provided by the State related to these new requirements



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