



AGRICULTURAL LAW AND TAXATION BRIEFS

DEPARTMENT OF AGRICULTURAL AND CONSUMER ECONOMICS, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

MINIMUM WAGE INCREASING IN ILLINOIS BUT AG EXEMPTION IS UNCHANGED

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Synopsis: This article summarizes recent changes in Illinois and federal laws that increase the minimum wage, beginning in July 2007 and annually through 2010. "Agricultural employment" exemptions from minimum wage and overtime laws remain unchanged. This article is part of a law-related educational program for Illinois family farmers made possible by the support of the Illinois Bar Foundation.

What is the minimum wage in Illinois and when does the law require that an employer pay at least minimum wage? When does the law require an employer to pay "overtime"? What special rules apply to farmers? This article answers these questions, based on amendments to the Illinois and federal minimum wage laws effective in July 2007.

Illinois employers must comply with both state and federal minimum wage laws, unless an exemption applies; employers paying the higher IL minimum wage are complying with federal law

The Illinois "Minimum Wage Law" and the federal "Fair Labor Standards Act" require that non-exempt employers pay their employees a "minimum wage" and, in certain situations, "overtime". Amendments to both laws gradually raise the minimum wage beginning in July 2007. Both laws exempt from their minimum wage mandates wages paid to many agricultural employees by family-sized farmers.

General Illinois and federal minimum wage rates. Table 1 summarizes the minimum wage rates. The Illinois rates reflect Public Act 94-1072, effective July 1, 2007. The federal minimum wage rates reflect Public Law 110-28 whose minimum wage provisions are effective later in July 2007.

Increases in the Illinois minimum wage are the first since January 1, 2005. The federal increases are the first since 1997. The Illinois minimum wage remains higher than the federal minimum wage.

Illinois law has a special provision that the minimum wage for workers under age 18 is \$0.50 less than the rates appearing in Table 1. Also, the Director of the Ill. Department of Labor may, by regulation, provide that "learners" may be paid a lower rate, but not less than 70% of the rate stated in Table 1. The Illinois minimum wage law is codified at 820 ILCS 105.

Table 1. General Minimum Wage Rate Increases

Starting Date IL Min. Wage	Illinois Min. Wage**	Federal Min. Wage [#]
Pre-July 07	\$6.50 per hr	\$5.15 per hr
July 1, 2007	\$7.50 per hr	\$5.85 per hr [◇]
July 1, 2008	\$7.75 per hr	\$6.55 per hr [◇]
July 1, 2009	\$8.00 per hr	\$7.25 per hr [◇]
July 1, 2010	\$8.25 per hr	Same as 2009

**For workers at least 18 years old, unless exempt; one exemption is for "agricultural employment"

[#] Unless a special provision or an exemption applies

[◇] Starting July 24th for the federal minimum wage

Employers not exempt from the Illinois minimum wage law need to pay the higher Illinois rate in order to be in compliance. Two important exemptions [see 820 ILCS 105/3(d)] are discussed below.

Illinois' general exemption for employers with fewer than 4 employees. The Illinois law does not apply to an "employer employing fewer than 4 employees exclusive of the employer's parent, spouse or child or other members of his immediate family." Small businesses exempt from the Illinois law may still need to pay the lower federal minimum wage unless exempt under the federal minimum wage law.

Illinois' exemption for wages paid to agricultural employees. The term "employee" does not include individuals employed in agriculture or aquaculture in either of the following two employment situations which are very common on Illinois farms:

- (A) the employer "did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural or aquacultural labor" [note that six workers employed six days per week for 13 weeks represent 468 man-days in that calendar quarter].
- (B) the "employee is the parent, spouse or child, or other member of the employer's immediate family."



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Two other situations involve persons employed as “hand harvest laborers” on a “piece rate” basis. Discussion of these additional situations, and other exemptions, is beyond the scope of this article.

The *agricultural exemption* in the federal Fair Labor Standards Act is similar to the exemption in the Illinois statute. Therefore, as a general rule, a farmer exempt from the Illinois minimum wage law is also exempt from federal minimum wage law.

No Illinois or federal requirement to pay “overtime” for “agricultural employment”

Under the Illinois minimum wage law, employers generally are required to pay at least one and one-half times the minimum hourly wage for each hour of work in excess of 40 hours a week. The same “time and a half” rule generally applies under the federal Fair Labor Standards Act. However, both laws exempt from their “overtime” pay mandates wages paid for all agricultural employment. The Illinois exemption appears at 820 ILCS 105/4a(2)C. The federal exemption is at 29 U.S.C. § 213(b)(12).

The agricultural employment exemption for overtime is much broader than the exemption from minimum wage. Consider a farmer with more than 500 worker-days of agricultural employment during one quarter of the preceding calendar year. The law requires this farmer to pay minimum wage (too many worker-days to be exempt) but this farmer is *exempt* from the “time and a half” for overtime mandate.

Farmers employing “non-agricultural” labor are required to pay minimum wage and overtime

Not all employment “by farmers” or “on the farm” is agricultural employment. The technical definition of agricultural employment is important in determining whether a farmer must pay minimum wage or overtime. The technical meaning of “agriculture” is defined in the Illinois Administrative Code (56 Ill. Admin. Code § 210.110).

"Agriculture" means farming in all of its branches including the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and

harvesting of any agricultural or horticultural commodities (excluding Christmas trees), the raising of livestock, bees, fur-bearing animals, or poultry. The definition also includes any practice (including forestry or lumbering operations) performed by a farmer or on a farm as an “incident to or in conjunction with” such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

“Agriculture” does not include the processing of ag commodities or any activities subsequent to processing. The phrase "incident to or in conjunction with" does not include construction by a private contractor of farm buildings on a farm. Federal regulations also define “agriculture” [29 C.F.R. 780] and guide interpretations under the Illinois law.

Farmers with multiple enterprises, farmers involved in the retail sale of their agricultural products, and farmers who employ persons in tasks beyond obvious “agricultural activities” should seek legal advice about the applicability of the exemption if they plan to pay wages below the general minimum wage or if they do not plan to pay “time and a half” for overtime.

Summary

The Illinois minimum wage rate increased to \$7.50 per hour on July 1, 2007 and will increase annually to \$8.25 in 2010. The federal minimum wage also is increasing but the Illinois minimum wage is higher.

Both the Illinois and federal minimum wage laws contain an exemption for agricultural employment. These exemptions were not altered by the amendments increasing the Illinois and federal minimum wage rates. Because of these exemptions, only some Illinois farmers are required by law to pay minimum wage for agricultural employment. In contrast, none are required by law to pay “time and a half” overtime for agricultural employment.

Not all employment on the farm is *agricultural employment*. Many farmers intending to pay less than minimum wage or intending not to pay overtime should consult an attorney before relying on the agricultural exemption.

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