Minimum Wage & Employment Taxes
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This article addresses the following questions:
- What is the current federal minimum wage; is a farmer-employer required to pay minimum wage to agricultural workers; and does the Illinois minimum wage law add any additional requirements?
- Is a farmer-employer required by federal or Illinois law to pay overtime wages to agricultural employees?
- When are farmer-employers generally required to pay the employer’s tax for unemployment compensation?
- When are farmer-employers required to pay social security taxes on employees wages and what procedures must be followed?

The discussion is intended to provide general answers for educational purposes. For more comprehensive information, visit the actual statutes and regulations (links to unofficial versions of relevant statutes and regulations are provided). You may find it helpful to discuss your special circumstances with your legal counselor.

What is the current federal minimum wage; is a farmer-employer required to pay minimum wage to agricultural workers; and does the Illinois minimum wage law add any additional requirements?

The current minimum wage is $5.15 per hour. However, under the Federal Fair Labor Standards Act, certain agricultural employers are generally exempt from any requirement to pay the minimum wage. As a practical matter, Illinois farmers employing less than about five employees in any given calendar quarter and those that employ hand harvest laborers for less than thirteen weeks during a year are usually exempt from the requirement to pay federal minimum wage.

Specifically, 29 U.S.C. § 213(a)(6) [United States Code, Title 29, Section 213(a)(b)] provides that the minimum wage provisions of the Act shall not apply with respect to any employee employed in agriculture if any of the following provisions apply:

- such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;
- such employee is the parent, spouse, child or other member of his employer’s immediate family;
- such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year;
such employee (other than an employee described in the preceding clause) (i) is
sixteen years of age or under and is employed as a hand harvest laborer, is paid on a
piece rate basis in an operation which has been, and is customarily and generally
recognized as having been, paid on a piece rate basis in the region of employment, (ii)
is employed on the same farm as his parent or person standing in the place of his
parent...and (iii) is paid at the same piece rate as employees over age sixteen are paid
on the same farm; or

such employee is principally engaged in the range production of livestock.

As used above, “man-day” means any day during which an employee performs any
agricultural labor for not less than one hour.

Some additional detail regarding the man-day exemption follows:

- All the employer’s agricultural workers must be counted for purposes of the
  exemption. For example, if an employer owns and operates two farms, it is the total
  number of man-days used on both farms and not on each individual farm that
determines whether he meets the 500 man-day test. Likewise an independent
  contractor who harvests crops on different farms during the harvesting season must
total all the man-days of agricultural labor used on all such farms except those
  specifically excluded. 29 C.F.R. § 780.304(b) [Code of Federal Regulations, Title 29,
  Section 780.304(b)].

- Where there is an exchange of labor between the farmers, whether it be the actual
  farmer’s labor that is exchanged or employees of the farmer whose labor is
  exchanged, special rules apply for counting man-days. See 29 C.F.R. § 780.332.

- Where a farmer hires an independent contractor to harvest crops but reserves the
  power to direct, control, or supervise the work of the harvest hands, the farmer must
  include the contractor’s employees in determining whether the man-day count is met.
  29 C.F.R. § 780.305(c).

Regarding the exemption for members of the employer’s immediate family, the statute
exempts “parent, spouse, or child.” The regulations provide further exemptions for a
stepchild, stepparent, and foster parent. 29 C.F.R. § 780.308. Other relatives, even when
living permanently in the same household as the employer, are generally not considered
to be part of the ‘immediate family.’

Illinois also has its own minimum wage law. However, the agricultural exemption under
the Illinois Act is virtually identical to the exemption under the federal Act noted above,
except that the Illinois Act does not exempt employees principally engaged in the range
production of livestock. 820 Ill. Comp. Stat. 105/3(d)(2) [Illinois Compiled Statutes,
Chapter 820, Act 105, Section 39d(2)].

Is a farmer-employer required by federal law or Illinois law to pay overtime
wages to agricultural employees?
Under the federal Fair Labor Standards Act, non-agricultural workers are generally required to receive a minimum of one and one-half times the minimum hourly wage for each hour of work in excess of 40 hours a week. All agricultural workers are exempt from this provision under federal (29 U.S.C. § 213(b)(12)) and Illinois (820 Ill. Comp. Stat. 105/4a(2)C) laws. The overtime exemption for agricultural workers is a blanket exemption which is much broader than the exemption for minimum wages discussed above. For a more detailed description of the exemption, please consult an attorney.

When are farmer-employers generally required to pay the employer’s tax for unemployment compensation?

Under 26 U.S.C. § 3306(a)(2), agricultural employment is subject to the Unemployment Compensation Act if the farm employer pays cash wages of $20,000 or more to employees during any calendar quarter of the current or preceding calendar year; or the farmer employs ten or more individual employees on at least one day during each of 20 different calendar weeks. However, the farmer’s spouse and children under 21 are not considered in determining whether the $20,000 cash wages or ten-employees test is met. Farm employers who meet either of the above tests are required to pay a tax based upon the amount of cash wages paid. 26 U.S.C. § 3301.

Historically, agricultural labor had been exempt from state and federal laws establishing the unemployment insurance system, a system financed through an employer tax based upon the amount of wages paid. In 1976 Congress amended the Unemployment Compensation Act to bring the aforementioned agricultural employment within the permanent coverage of the Act.

In 1977 Illinois amended its unemployment insurance law to include agricultural labor if the farm met provisions nearly identical to the federal statute stated above. This provision is found in 820 Ill. Comp. Stat. 405/211.4. It should be noted that the definition of agricultural labor as defined in 820 Ill. Comp. Stat. 405/214 is very precise and it fails to mention retail sales activities of an employee such as one who might be employed where the farmer is involved in direct marketing activities.

If a farmer is subject to the Illinois Act (820 Ill. Comp. Stat. 405/211.4), the farmer must notify the Illinois Department of Labor within a specified time after operations begin. A quarterly return and tax payment (called “contributions”) must be filed.

When are farmer-employers required to pay social security taxes on employee wages and what procedures must be followed?

The Social Security taxes are applicable to almost all farmers – even if the farmer himself is the sole employee. Like other employers, a farmer has certain obligations to contribute to an employee’s future social security benefits. Generally, employers are required to pay FICA (Federal Insurance Contributions Act) taxes upon the wages of an employee,
other than the employer’s children under the age of 18, who has either received wages of at least $150, or is one of several farmworkers who collectively were paid $2,500 or more during the year. In determining whether an employer/employee relationship exists, the Internal Revenue Code (Code) states that such a relationship will be determined by a factual examination of factors such as the amount of control exerted by the employer (farmer) over the details of the work performed. If the employer/employee relationship is a matter of real or special interest to the reader, please discuss such situation further with an attorney. Absent an employer/employee relationship, there is no duty for a farmer to pay FICA taxes upon that person. Note that the same Code definition of “employee” applies for both FICA contributions and income tax withholding.

Social security applications to special agricultural employment situations include the following:

- **Family Members.** Code § 3121(b)(3) awards special treatment to an employee of a sole proprietor, who is under age 18. These family members are not classified as employees for purposes of FICA tax applicability. Special rules may apply in some circumstances where the employee is the parent of the sole proprietor. Note that the special rules for family members do not apply where the employer is a corporation or partnership.

- **Sharecropper Tenants.** Farming under a crop sharing arrangement is considered operating one’s own business. The landowner has no social security obligations to such a tenant.

- **Crew Leaders.** In some situations it may be possible for a farmer to avoid some FICA liability by using a crew leader. Code § 3121(o) defines “crew leader” and provides that employees of a crew leader are not deemed employees of the farmer. The IRS scrutinizes such arrangements, and it is advised that one examine possible limitations before reverting too quickly to this mechanism as a means for avoiding FICA tax.

- **Migrant Workers.** Code § 3121(b)(1) provides that lawfully admitted foreign agricultural workers are not subject to FICA provisions.

- **Self-Employment.** A self-employed farmer is subject to self-employment tax.

There are considerable bookkeeping and procedural responsibilities that accompany the employer’s responsibilities. Employers must withhold the proper amount from the employee’s paycheck (although there is a possible exception for agricultural employees) and must pay both the employer and the employee’s portion on a timely basis. In order to comply with all the withholding and payment requirements, the farmer and practitioner are advised to obtain copies of the following IRS publications:

- Circular A, Agricultural Employer’s Tax Guide (IRS Pub. 51); and

FICA tax is made up of the “social security” tax (at 6.2%) and the Medicare tax (at 1.45%). The “social security” component applies to remuneration up to a limit, e.g., $80,400 in 2001. The remuneration subject to the Medicare component has no limit. Precise wage bases should be ascertained by consulting the current year’s Circular E.