



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

July 6, 2006

FLSA2006-17NA

Dear **Name***:

This responds to your letter on behalf of **Name*** asking for clarification on the application of the Fair Labor Standards Act (FLSA) to agricultural employers. Specifically, your client is interested in increasing the wages paid to its dairy farm workers, but only paying these workers straight time rates for all hours worked.

As described in your letter, your client intends to change the wage structure for employees involved in its farming and ranching operations. The activities of these employees range from growing alfalfa hay to housing, milking, and feeding the dairy herd. Your client proposes to increase these employees' wage rate, but to discontinue payment of time and a half for overtime, and instead pay straight time for all hours worked.

The FLSA is the federal law of most general application concerning wages and hours of work. This law generally requires that all employees be paid not less than the minimum wage of \$5.15 per hour for all hours worked, and that only deductions specified in the statute be made from workers' pay. Employees employed in "agriculture" (as defined in Section 3(f) of the Act) are exempt from the Act's overtime requirements under Section 13(b)(12) (See enclosed).

The FLSA defines "agriculture" as:

including "farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of U.S.C. Title 12), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any 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.

29 U.S.C. § 203(f). Section 13(b)(12) of the FLSA provides an exemption from the overtime requirements of the FLSA for any employee employed in "agriculture." You indicate that **Name*** employees are involved in growing alfalfa hay, and milking and feeding the dairy herd. All of these activities are included in the FLSA definition of "agriculture."

Therefore, based upon the representations you have made regarding your client's business and the activities of the dairy farm workers, it appears that the Section 13(b)(12) overtime exemption applies to these workers. However, please note that the Section 13(b)(12) exemption does not apply to any employee who, in a given workweek, engages in work that does not fall within the FLSA definition of "agriculture" (See 29 C.F.R. § 780.10).



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This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the questions presented. Existence of any other factual or historical background not contained in your request might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

Sincerely,

James Kessler
Office of Enforcement Policy
Farm Labor Team

Note: *The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C.552 (b)(7).