

STATE OF NEW YORK

DEPARTMENT OF LABOR



Minimum Wage Order for Farm Workers

Part 190 of Title 12 of Official Compilation of Codes, Rules and Regulations

Based on Labor Law Changes Effective January 1, 2005

Promulgated by the Commissioner of Labor Pursuant to Article 19-A of the

New York State Labor Law

(07-05)

PART 190
MINIMUM WAGE ORDER FOR FARM WORKERS
(Statutory authority Labor Law, §§ 21[11], 673[2], 674)

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- Subpart 190-2 Minimum Wage, Piece Rate and Youth Rate**
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SUBPART 190-1
COVERAGE

Sec.

- 190-1.1 Coverage of order
- 190-1.2 Basis of wage payment
- 190-1.3 Definitions

§ 190-1.1 Coverage of order.

This order shall apply to every farm employer if, during the preceding calendar year, the cash remuneration paid to all persons employed on the employer's farms aggregated \$3,000 or more.

§ 190-1.2 Basis of wage payment.

Payment of the minimum wage provided by this order shall be required for each week of work or for each regularly established payroll period, whether the wage is paid on a commission, bonus, piece-rate, or other basis. An employee who has been terminated shall receive the full wages due not later than the regular payday for the payroll period in which the termination occurred and, if requested by the employee, such wages shall be forwarded by mail. A written summary of total gross and net earnings for the employment period and a listing of all deductions shall be furnished to the employee, or mailed to the employee's permanent address, not later than the regular payday for the payroll period in which the termination occurred.

§ 190-1.3 Definitions.

Wherever used in this order:

(a) *Employer* means any individual, partnership, association, corporation, cooperative, business trust, legal representative or organized group of persons acting as an employer of an individual engaged or permitted to work on a farm. If a farm labor contractor recruits or supplies farm workers for work on a farm, such farm workers shall be deemed to be employees of the owner, lessee or operator of such farm.

(b) *Employee* includes any individual engaged or permitted by an employer to work on a farm, except:

(1) the parent, spouse, child or other member of the employer's immediate family;

(2) a minor under 17 years of age employed as a hand harvest worker on the same farm as the minor's parent or guardian and who is paid on a piece-rate basis at the same piece rate as employees 17 years of age and over;

(3) an individual employed by the Federal, State or municipal government or a political subdivision thereof; and

(4) for that part of the working time covered by the provisions of another minimum wage order promulgated by the commissioner.

(c) *Commissioner* means the Commissioner of Labor of the State of New York.

(d) *Basic minimum hourly wage* means:

(1) \$5.15 per hour on and after March 31, 2000;

(2) \$6.00 per hour on and after January 1, 2005;

(3) \$6.75 per hour on and after January 1, 2006; and

(4) \$7.15 per hour on and after January 1, 2007, or, if greater, such other wage as may be established by Federal law pursuant to section 29 U.S.C. section 206 or any successor provisions.

(e) *Minimum hourly wage* means the basic minimum hourly wage less allowances and deductions permitted by this order.

(f) *Farm* includes stock, dairy, poultry, fur-bearing animal, fruit and truck farms; plantations; orchards; nurseries; greenhouses and similar structures used primarily for the raising of agricultural or horticultural commodities.

(g) *Employed on a farm* means the services performed by an employee on a farm in the employ of the owner, lessee or operator of a farm in connection with:

(1) cultivating the soil;

(2) raising or harvesting any agricultural or horticultural commodity, including the raising or hatching of poultry, the raising, shearing, feeding, caring for, training, management of livestock, bees, fur-bearing animals and wildlife;

(3) the production or harvesting of maple syrup or maple sugar;

(4) the operation, management, conservation, improvement or maintenance of a farm and its tools and equipment;

(5) the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for removing, supplying and storing water for farming purposes;

(6) the handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to market or to a carrier for transportation to market, of any agricultural or horticultural commodity raised on the employer's farm.

(h) *Employed on a farm* does not include services performed in connection with commercial canning, freezing, grading or other processing of any agricultural or horticultural commodity not raised on the employer's farm.

(i) *Migrant seasonal employee* means an individual whose employment is not on an all-year basis and who is housed in a farm labor camp as defined in section 212-c(3) of the Labor Law.

(j) *Meal* means the provision of adequate portions of a variety of wholesome, nutritious foods, including at least one of the types of food from each of all four of the following groups:

- (1) fruits or vegetables;
- (2) cereals, bread, pasta or potatoes;
- (3) eggs, meat, fish or poultry; and
- (4) milk, tea or coffee;

except that, for the breakfast meal, group (3) may be omitted if two foods from group (2) are provided.

(k) *Lodging* includes room, house or apartment and means living accommodations which meet generally accepted standards for protection against fire, and all structural, sanitation, and similar standards in State and local laws, codes, regulations and ordinances applicable to the premises.

(l) *Work agreement* means a job service recruitment or placement order; a farm labor contract or migrant labor registration; an agricultural employment contract executed by the employer or its representative with the Commonwealth of Puerto Rico or with the representatives of a foreign government; an agreement voluntarily entered into by the employer and the worker; or any comparable agreement.

(m) *Working time* means the hours that an employee is permitted to work or is required to be available for work at the assigned place of work, and shall include time spent in going from one field to another, in waiting for baskets, pickup or breakdown of machinery or equipment where the employer requires the employee to remain at the site of the breakdown during repairs. Time not worked because of weather conditions shall not be considered as hours worked. An employee who lives on the premises of the employer, or in comparable facilities at the work site, shall not be considered to have worked or to have been available for work:

- (1) during normal sleeping hours solely because the employee is required to be on call during such hours; or
- (2) at any other time when the employee is free to leave the place of employment.

SUBPART 190-2 MINIMUM WAGE, PIECE RATE AND YOUTH RATE

Sec.

190-2.1 Basic minimum wage rate

190-2.2 Piece rate

190-2.3 Youth rates

§ 190-2.1 Basic minimum wage rate.

The basic minimum wage rate for each hour worked shall be \$5.15 per hour on and after March 31, 2000; \$6.00 per hour on and after January 1, 2005; \$6.75 per hour on and after January 1, 2006; and \$7.15 per hour on and after January 1, 2007.

§ 190-2.2 Piece rate.

The piece rate must yield a wage for the payroll period at least equivalent to the basic minimum wage rate or, if the employer had been issued a youth rate certificate by the commissioner, a wage for the payroll period at least equivalent to the youth rate.

§ 190-2.3 Youth rates.

The following rates shall apply to youths under 18 years of age, provided the employer has been issued a youth rate certificate by the commissioner:

(a) *Harvest workers.* Sixteen- and seventeen-year-old youths working in or in connection with the harvesting of fruits and vegetables in their first harvest season for an employer may be paid \$2.85 per hour until January 1, 1991; \$3.25 per hour on and after January 1, 1991; and \$3.60 per hour on and after January 1, 1992. During their second harvest season with the same employer they may be paid \$3 per hour until January 1, 1991; \$3.40 per hour on and after January 1, 1991; and \$3.80 per hour on and after January 1, 1992. During their third season for the same employer they shall be paid the basic minimum wage rate.

(b) *Nonharvest workers.* Sixteen- and seventeen-year-old youths working in nonharvest work may be paid \$2.85 per hour during their first 300 hours of employment, until January 1, 1991; \$3.25 per hour on and after January 1, 1991; and \$3.60 per hour on and after January 1, 1992, \$3 per hour during their second 300 hours of employment for the same employer until January 1, 1991; \$3.40 per hour on and after January 1, 1991; and \$3.80 per hour on and after January 1, 1992 and the basic minimum wage rate thereafter when working for the same employer.

(c) *Youths under 16 years of age.* Youths under 16 years of age may be employed only if each such youth has been issued a farm work permit by the appropriate authorities and may be paid \$2.50 per hour until January 1, 1991; \$2.85 per hour on and after January 1, 1991; and \$3.20 per hour on and after January 1, 1992.

**SUBPART 190-3
ALLOWANCES**

§ 190-3.1 Allowances.

The following amounts may be considered as part of the basic minimum wage rate if the items shown below are provided to the employee:

(a) *Meals*--\$1.35 per meal until January 1, 1991; \$1.50 per meal on and after January 1, 1991; \$1.70 per meal on and after January 1, 1992. No allowance for meals shall be considered as part of the minimum wage if a migrant seasonal employee earns less than \$201 in a two-week period until January 1, 1991; \$227.00 in a two-week period on and after January 1, 1991; \$254.00 in a two-week period on and after January 1, 1992 other than by reason of voluntary absence.

(b) *Lodging and utilities.*

(1) Migrant seasonal employees. No allowance for lodging and utilities shall be considered as part of the minimum wage for a migrant seasonal employee.

(2) All other employees--\$15 per week until January 1, 1991; \$16.95 per week on and after January 1, 1991; \$18.95 per week on and after January 1, 1992 for single occupancy or \$10 per week until January 1, 1991; \$11.30 per week on and after January 1, 1991; \$12.65 per week on and after January 1, 1992 per employee for multiple occupancy. When a house or apartment and utilities are furnished by an employer to an employee, a fair and reasonable amount may be allowed for such facilities, which amount shall not exceed the lesser of either the reasonable value of comparable facilities in the locality, or \$2.70 a day until January 1, 1991; \$3.00 a day on and after January 1, 1991; \$5.00 a day on and after January 1, 1992 for an individual employee and \$6.00 a day on and after January 1, 1991; \$8.00 a day on and after January 1, 1992 when the employee's family resides with the employee.

(c) Payments in kind acceptable to the employee may be considered as a part of the minimum wage, but shall be valued at not more than the farm market value at the time such payments were provided.

§ 190-3.2 - 190-3.3 Repealed.

§ 190-3.4 Repealed.

§ 190-3.5 - 190-3.11 Repealed.

SUBPART 190-4 REHABILITATION AND VOCATIONAL EDUCATION PROGRAMS

Sec.

190-4.1 Rehabilitation and vocational education programs

§ 190-4.1 Rehabilitation and vocational education programs.

(a) For an individual employed as part of a rehabilitation program approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of this order.

(b) For a trainee enrolled in an organized vocational education training program in agriculture under a recognized educational, nonprofit or governmental agency or authority, including but not limited to programs such as the Farm Cadet, the Agricultural

Student Work program of the New York State College of Agriculture at Cornell University and high school agricultural vocational student-work programs, provided such program is approved by the commissioner, the payment of compensation under such program shall be deemed to meet the requirements of this order.

§ 190-4.2 - 190-4.9 Repealed

**SUBPART 190-5
DEDUCTIONS AND EXPENSES**

Sec.

190-5.1 Deductions and expenses

§ 190-5.1 Deductions and expenses.

(a) Wages shall not be subject to deductions, except for allowances authorized by this order and deductions authorized or required by law, such as withholding and social security taxes. Prohibited deductions include, but are not limited to:

- (1) deductions for spoilage or breakage;
- (2) deductions for cash shortages or losses; and
- (3) fines or penalties for tardiness, misconduct or quitting without notice.

(b) The minimum wage shall not be reduced by expenses incurred by an employee in carrying out duties assigned by an employer.

(c) An employee may give written authorization for deductions from gross pay pursuant to section 193 of the Labor Law.

**SUBPART 190-6
POSTING AND NOTIFICATION**

Sec.

190-6.1 Posting and notification

§ 190-6.1 Posting and notification.

(a) Every employer shall post, in a conspicuous place on the farm, a notice, issued by the commissioner, summarizing article 19-A of the Labor Law and this order, and shall post a copy of any generally applicable work agreement.

(b) In addition, every employer shall notify each employee, in writing, of the conditions of employment (work agreement) at the time of commitment to hire. Such conditions shall include but shall not be limited to:

- (1) the full name, address and telephone number of the employer;
- (2) the location and type of work;

- facilities;
- (3) housing arrangements, including cost, number of rooms, cooking
 - (4) allowances if any, for meals and lodging to be deducted from wages;
 - (5) benefits to be provided by the employer;
 - (6) wages to be paid and time of payment;
 - (7) period of employment;
 - (8) all other planned payroll deductions;
 - (9) noneconomic terms and conditions of employment; and
 - (10) overtime provisions.

**SUBPART 190-7
DENIAL OR REVOCATION OF CERTIFICATES OR APPROVAL**

Sec.

190-7.1 Denial or revocation of certificates or approval

§ 190-7.1 Denial or revocation of certificates or approval.

If the commissioner denies a certificate or approval authorized in this order, the aggrieved person shall be granted a hearing provided a request therefor is made within 30 days of such denial. A certificate or approval may be suspended or revoked by the commissioner after a hearing, for misrepresentation of facts, for violation of article 19-A of the Labor Law or of any provision of this order or for other good cause shown.

**SUBPART 190-8
EMPLOYER RECORDS**

Sec.

190-8.1 Statement to employee

190-8.2 Employer records

§ 190-8.1 Statement to employee.

For each payroll period every employer shall furnish to each employee a statement showing the following:

- (a) full name and address of the employer;
- (b) name of the employee;
- (c) hours worked by the employee;
- (d) when wages are based on piece rate, the size or weight of the piece-rate unit and the number of units produced during the pay period;
- (e) rates paid;
- (f) gross wages;

- (g) allowances and deductions; and
- (h) net wages.

§ 190-8.2 Employer records.

(a) Every employer shall establish, maintain and preserve for not less than three years, the following payroll records which shall show for each employee:

- (1) name and address;
- (2) social security number;
- (3) total hours worked daily and weekly;
- (4) when a piece-rate method of payment is used, the number of units produced daily and weekly;
- (5) gross wages;
- (6) deductions from gross wages;
- (7) allowances claimed as part of the minimum wage;
- (8) any cash advanced;
- (9) date of birth of individuals employed at the youth rate; and, for minors under 17 years of age, the name and address of the minor's parent or guardian; and, for minors under 16 years of age, the number of the farm work permit issued to such employee;
- (10) the wage rate; and
- (11) copy of applicable employee work agreement.

(b) Every employer shall make such records or sworn certified copies thereof available upon request of the commissioner at the place of employment.

SUBPART 190-9
OCCUPATIONS IN AGRICULTURE PARTICULARLY HAZARDOUS FOR
THE EMPLOYMENT OF CHILDREN BELOW THE AGE OF 16
(Statutory authority: Labor Law, § 133[5])

Sec.

- 190-9.1 Definitions
- 190-9.2 Occupations involved in agriculture
- 190-9.3 Exemptions

§ 190-9.1 Definitions.

As used in this Part:

(a) *Agriculture* includes farming in all its branches including the cultivation and tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing 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.

(b) *Employer* includes any person acting directly or indirectly in the interest of an employer, as defined in Labor Law, section 2, subd. 6, in relation to an employee, as defined in Labor Law, section 2, subd. 5, but shall not include the United States or any State or political subdivision thereof.

(c) *Employ* includes to suffer or permit to work.

(d) *Minor* means any person who has not attained the age of 16 years.

§ 190-9.2 Occupations involved in agriculture.

The following agricultural occupations are dangerous or injurious to the health of minors below the age of 16 and are therefore prohibited:

(a) Operating a tractor of over 20 power-take-off (PTO) horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(b) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(1) corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(2) feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self unloading wagon or trailer; or

(3) power post-hole digger, power post driver, or nonwalking type rotary tiller.

(c) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(1) trencher or earthmoving equipment;

(2) fork lift;

(3) potato combine; or

(4) power-driven circular, band, or chain saw.

(d) Working on a farm in a yard, pen, or stall occupied by a:

(1) bull, boar, or stud horse maintained for breeding purposes; or

(2) sow with suckling pigs, or cow with newborn calf (with umbilical cord present).

(e) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.

(f) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.

(g) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

(h) Working inside:

(1) a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;

(2) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(3) manure pit; or

(4) horizontal silo while operating a tractor for packing purposes.

(i) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagperson for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label.

(j) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.

(k) Transporting, transferring, or applying anhydrous ammonia.

§ 190-9.3 Exemptions.

The prohibited occupations listed in section 190-9.2 of this Subpart shall not apply to:

(a) Student-learners. Employment of any minor below the age of 16 as a vocational agriculture student-learner in any of the occupations described in section 190-9.2(a)-(f) of this Subpart when each of the following requirements are met:

(1) the student-learner is enrolled in a vocational education training program in agriculture under a recognized State or local educational authority, or in a substantially similar program conducted by a private school;

(2) such student-learner is employed under a written agreement which provides that:

(i) the work of the student-learner is incidental to his/her training;

(ii) such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction shall be given by the school and correlated by the employer with on-the-job training; and

(iv) a schedule of organized and progressive work processes to be performed on the job have been prepared;

(3) such written agreement contains the name of the student-learner, and is signed by the employer and a person authorized to represent the educational authority or school; and

(4) copies of each such agreement are kept on file by both the educational authority or school and by the employer.

(b) *Federal extension service*. Employment of a minor under 16 years of age in those occupations in which he/she has successfully completed one or more training programs described in paragraph (1), (2), or (3) of this subdivision, provided he/she has been instructed by the employer on safe and proper operation of the specific equipment to be used; is continuously and closely supervised by the employer where feasible; or, where not feasible, in work such as cultivating, his/her safety is checked by the employer at least at midmorning, noon, and midafternoon.

(1) 4-H tractor operation program. The minor below the age of 16 is qualified to be employed in an occupation described in section 190-9.2(a) of this Subpart provided:

- (i) he/she is a 4-H member;
- (ii) he/she is 14 years of age, or older;
- (iii) he/she is familiar with the normal working hazards in agriculture;
- (iv) he/she has completed a tractor safety training program administered by the Cornell Cooperative Extension Service;
- (v) he/she has passed a written examination on tractor safety administered by the Cornell Cooperative Extension Service, and has demonstrated ability to operate a tractor safely with a two-wheeled trailed implement on a course similar to one of the 4-H Tractor Operator's Contest Courses; and
- (vi) his/her employer has on file a copy of a certificate listing the employee's name, address and birth date, signed by the leader who conducted the training program and by an Extension Agent of the Cornell Cooperative Extension Service stating that the child has completed all the requirements specified in subparagraphs (i) through (v) of this paragraph.

(2) 4-H machine operation program. The minor below the age of 16 is qualified to be employed in an occupation described in section 190-9.2(b) of this Subpart provided:

- (i) he/she satisfies all requirements specified in subparagraphs (i)-(iv) of this paragraph;
- (ii) he/she has completed an additional training program on farm machinery safety, administered by the Cornell Cooperative Extension Service;
- (iii) he/she has passed a written and practical examination on safe machinery operation; and
- (iv) his/her employer has on file a copy of a certificate listing the employee's name, address and birth date, signed by the leader who conducted the training program and an Extension Agent of the Cornell Cooperative Extension Service, stating that the child has completed all of the requirements specified in subparagraphs (ii)-(iii) of this paragraph.

(3) Tractor and machine operation program. The minor below the age of 16 years is qualified to be employed in an occupation described in section 190-9.2(a) and (b) of this Subpart provided:

- (i) he/she is 14 years of age, or older;
- (ii) he/she has completed a four-hour orientation course familiarizing him/her with the normal working hazards in agriculture;
- (iii) he/she has completed a training program on safe operation of tractors and farm machinery, which covers all material specified in subparagraphs (1)(iv) and (2)(ii) of this subdivision;
- (iv) he/she has passed a written examination on tractor and farm machinery safety, administered by the Cornell Cooperative Extension Service and has demonstrated ability to operate a tractor with a two-wheeled trailed implement; and
- (v) his/her employer has on file a copy of a certificate listing the employee's name, address and birth date, signed by the leader who conducted the training program and an Extension Agent of the Cornell Cooperative Extension Service stating that all the requirements of subparagraphs (2)(i) through (iv) of this subdivision have been met.

(c) *Vocational agriculture training.* Employment of a vocational agriculture student under 16 years of age in those occupations in which he/she has successfully completed one or more training programs described in paragraph (1) or (2) of this subdivision and who has been instructed by the employer in the safe and proper operation of the specific equipment to be used, who is continuously and closely supervised by the employer where feasible or, where not feasible, in work such as cultivating, whose safety is checked by the employer at least at midmorning, noon, and midafternoon, and who also satisfies whichever of the following program requirements are pertinent:

(1) Tractor operation program. The minor below the age of 16 years is qualified to be employed in an occupation described in section 190-9.2(a) of this Subpart provided:

(i) he/she is 14 years of age, or older;

(ii) he/she is familiar with the normal working hazards in agriculture;

(iii) he/she has completed a training program in Safe Tractor Operation, administered by the Cornell Cooperative Extension Service;

(iv) he/she has passed both a written and a practical test on tractor safety administered by the Cornell Cooperative Extension Service including a demonstration of ability to operate safely a tractor with a two-wheeled trailed implement; and

(v) his/her employer has on file a copy of a certificate listing the employee's name, address and birth date, signed by the vocational agriculture teacher who conducted the program, stating that the student has completed all requirements specified in subparagraphs (i) through (iv) of this paragraph.

(2) Machinery operation program. The minor below the age of 16 years is qualified to be employed in an occupation described in section 190-9.2(b) of this Subpart provided he/she has completed the Tractor Operation Program described in paragraph (1) of this subdivision and:

(i) he/she has completed an additional training program in safe farm machinery operation administered by the Cornell Cooperative Extension Service;

(ii) he/she has passed both a written and a practical test on safe farm machinery operation administered by the Cornell Cooperative Extension Service; and

(iii) his/her employer has on file a copy of a certificate listing the employee's name, address and birth date, signed by the vocational agriculture teacher who conducted the program, stating that the student has completed all requirements specified in subparagraphs (i) and (ii) of this paragraph.

(d) Employment of a child below the age of 16 by his/her parent or a person standing in the place of his/her parent on a farm owned or operated by such parent or person.