

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 26-121

BY SENATOR(S) Rodriguez and Simpson, Pelton B., Bright, Catlin, Frizell, Kirkmeyer, Liston, Pelton R., Rich;
also REPRESENTATIVE(S) Martinez and Winter T., Barron, Bottoms, Bradfield, Bradley, Brooks, Caldwell, DeGraaf, Duran, Garcia Sander, Gonzalez R., Hartsook, Johnson, Keltie, Mauro, Richardson, Slaugh, Soper, Suckla, Taggart, Weinberg, Woog, McCluskie.

CONCERNING THE ESTABLISHMENT OF A THRESHOLD OF FIFTY-SIX HOURS IN
A WORKWEEK FOR WHEN AN AGRICULTURAL EMPLOYER IS REQUIRED
TO PAY OVERTIME TO AN AGRICULTURAL EMPLOYEE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **repeal and reenact, with amendments**, 8-6-120 as follows:

8-6-120. Overtime wages for agricultural employees - definitions - rules.

(1) AS USED IN THIS SECTION:

(a) "AGRICULTURAL EMPLOYEE" HAS THE MEANING SET FORTH IN

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SECTION 8-2-206 (1)(b).

(b) "AGRICULTURAL EMPLOYER" HAS THE MEANING SET FORTH IN SECTION 8-3-104 (1).

(c) "DECISION-MAKING MANAGER" MEANS AN INDIVIDUAL PRIMARILY ENGAGED IN AGRICULTURAL WORK WHO:

(I) IS PAID AT LEAST THE MINIMUM SALARY THRESHOLD FOR CERTAIN EXEMPTIONS CONTAINED IN THE PROVISIONS CONCERNING AGRICULTURAL WORKERS IN THE DIRECTOR'S RULES RELATED TO COLORADO OVERTIME AND MINIMUM PAY STANDARDS;

(II) IS NOT EMPLOYED ON A SEASONAL OR TEMPORARY BASIS; AND

(III) HAS PRIMARY DUTIES THAT REQUIRE THE ROUTINE EXERCISE OF INDEPENDENT JUDGMENT AND DISCRETION IN MATTERS OF SIGNIFICANCE AND WHO EITHER:

(A) SUPERVISES TWO OR MORE FULL-TIME EMPLOYEES; OR

(B) REPORTS DIRECTLY TO AN OWNER OR TO AN EXECUTIVE-LEVEL EMPLOYEE WHO REPORTS DIRECTLY TO AN OWNER WHO ROUTINELY EXERCISES INDEPENDENT JUDGMENT AND DISCRETION IN MATTERS OF SIGNIFICANCE IN MANUAL OR IN NONMANUAL LABOR.

(d) "FAMILY MEMBER" MEANS A CHILD, SIBLING, SPOUSE, PARENT, AUNT, UNCLE, NEPHEW, NIECE, FIRST COUSIN, GRANDCHILD, OR GRANDPARENT BY BLOOD, ADOPTION, OR MARRIAGE.

(2) BEGINNING JANUARY 1, 2027, AN AGRICULTURAL EMPLOYER SHALL PAY AN AGRICULTURAL EMPLOYEE AT AN OVERTIME RATE FOR ANY TIME WORKED IN EXCESS OF FIFTY-SIX HOURS IN A WORKWEEK, EXCEPT FOR AN AGRICULTURAL EMPLOYEE WHO IS:

(a) PRINCIPALLY ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK ON THE OPEN RANGE, AS DESCRIBED IN 29 CFR 780.323 TO 780.329;

(b) A DECISION-MAKING MANAGER WHO IS EMPLOYED BY AN AGRICULTURAL EMPLOYER; OR

(c) A FAMILY MEMBER OF A FAMILY OWNER OF AN AGRICULTURAL EMPLOYER.

SECTION 2. In Colorado Revised Statutes, 8-4-113, **amend** (1)(a)(I); and **add** (1)(a)(I.5)(E) and (1)(a)(I.5)(F) as follows:

8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created - administrative lien and levy of employer assets - wage claim payments from the fund - definition - rules.

(1) (a) (I) (A) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(I)(B) OF THIS SECTION, if a case against an employer is enforced pursuant to section 8-4-111, any employer who without good faith legal justification fails to pay the wages of each of the employer's employees shall forfeit to the people of the state of Colorado a fine in an amount determined by the director or hearing officer but no more than the sum of fifty dollars per day for each such failure to pay each employee, commencing from the date that such wages first became due and payable.

(B) FOR AN AGRICULTURAL EMPLOYER, AS DEFINED IN SECTION 8-3-104(1), WHO, WITHOUT A GOODFAITHLEGALJUSTIFICATION, WILLFULLY FAILS TO PAY THE WAGES OF EACH OF THE AGRICULTURAL EMPLOYER'S EMPLOYEES AT LEAST THREE TIMES IN A FIVE-YEAR PERIOD, THE TOTAL AMOUNT FORFEITED TO THE PEOPLE OF THE STATE OF COLORADO PURSUANT TO SUBSECTION (1)(a)(I)(A) OF THIS SECTION MAY BE INCREASED BY TEN PERCENT.

(I.5) An employer found to have misclassified an employee as a nonemployee in a way that may affect a wage and hour payment or reporting obligation under a state, federal, or local law, rule, or regulation shall pay a fine in the following amounts, increased by the director by rule by January 1, 2028, and by rule by January 1 every other year based on the prior two years' increase, if any, in the United States department of labor's bureau of labor statistics consumer price index, or a successor index, for Denver-Aurora-Lakewood for urban wage earners and clerical workers, per employee, in addition to any other relief ordered:

(E) FOR AN AGRICULTURAL EMPLOYER, AS DEFINED IN SECTION 8-3-104(1), WITH A THIRD OR SUBSEQUENT WILLFUL VIOLATION WITHIN FIVE YEARS, THE FINE UNDER SUBSECTION (1)(a)(I.5)(C) OF THIS SECTION IS

INCREASED BY TWENTY THOUSAND DOLLARS; AND

(F) FOR AN AGRICULTURAL EMPLOYER, AS DEFINED IN SECTION 8-3-104(1), WITH A THIRD OR SUBSEQUENT WILLFUL VIOLATION THAT IS NOT REMEDIED WITHIN SIXTY DAYS AFTER THE DIVISION'S FINDING, THE FINE UNDER SUBSECTION (1)(a)(I.5)(D) OF THIS SECTION IS INCREASED BY FORTY THOUSAND DOLLARS.

SECTION 3. Applicability. This act applies to time worked and contracts entered into or renewed on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO