



Rocky Mountain Farmers Union

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Factsheet for SB21-087

http://leg.colorado.gov/sites/default/files/2021a_087_signed.pdf

-Note- As interpreted by RMFU staff. This document does not constitute legal guidance.

Retaliation/Whistleblower Protection

Effective immediately, ag employees are protected against retaliation including within ninety days after an employee has asserted a claim or has sought protected rights under this bill. Retaliation could include such things as a demotion, reduced compensation, denial of a promotion, employment termination or anything else that adversely affects the employee.

The ag employee or someone with a familial-type relationship to that employee can bring forward a claim either in district court or through reporting a violation to the CO Division of Labor and Employment (CDLE).

Organizing/Unionizing (effective immediately)

Ag employees are now included in the CO Labor Peace Act and can now organize and unionize. They must follow guidelines for providing notice and going through mediation/arbitration before striking.

Minimum wage

Effective Jan 1, 2022, ag employees will receive at least the state's prevailing minimum wage and wages will be adjusted annually based on inflation measured through the Consumer Price Index (CPI). Colorado's 2022 minimum wage is \$12.56 per hour.

Range worker weekly salary will be \$515 **starting Jan 1, 2022** and will also be adjusted with CPI **starting Jan 1, 2023**.

Workers must receive a 30 minute uncompensated meal break for every shift of 5 hours or more. There is an option for an on-duty, compensated meal break, however. They also must receive 10 minute rest breaks every 4 hours.

Livestock haulers and combine harvester operators are exempt from required meal breaks.

Overtime

Ag employees are exempt from both 40 hour weekly and 12 hour daily overtime pay requirements when the following conditions are met:

Effective 11/1/2022, weekly overtime pay, at one and one-half times their regular rate of pay after 60 hours worked per workweek from 11/1/22 through 12/31/23. In lieu of a 12 hour daily requirement, employers must provide a 30 minute paid rest break after 12 hours worked per

day and lump sum payment equal to the prevailing minimum wage (2022 is \$12.56/hr) after 15 hours consecutively worked.

Starting 1/1/24 through 12/31/24:

- A highly seasonal ag employer will pay a worker overtime after 56 hours during any 22-workweek period or any two or three periods of at least 4 workweeks totaling up to 22 weeks.
- A non-highly seasonal ag employer will pay a worker overtime after 54 hours per workweek.
- A small ag employer must pay overtime after 56 hours per workweek.

Beginning 1/1/25 and thereafter:

- Highly seasonal ag employers remain the same as 2024 standards.
 - Non-highly seasonal ag employers must pay overtime after 48 hours worked per workweek.
 - The small ag employer category ceases and these employers will either qualify as a highly seasonal or non-highly seasonal ag employer.
- A small ag employer is a business that employed fewer than 4 employees on average over the three prior calendar years and had an average adjusted gross income of no more than \$1 million dollars over those same calendar years.
 - A highly seasonal ag employer is a business that, in the prior calendar year, had any up to 22 week period (or any 2 or 3 periods of at least four weeks each totaling up to 22 weeks) in which it employed at least twice as many employees as the rest of the year. There are disclosure requirements that must be provided to employees to notify them that they will be receiving overtime under the highly seasonal ag employer category.
 - Employees shall be counted based on their average hours worked in all weeks in the preceding year and categorized as a 1.0 for 35 hours per week or more, 0.5 between 15 and 35 hours per week and 0.0 for less than 15 hours per week.

Family members are exempt from overtime pay.

Ag employers must pay overtime after 40 hours per week and 12 hours per day if 50% or more of their sales are direct to the public.

Decision-Making Managers at Livestock Employers may qualify for a salaried position where overtime rules would not apply if their salary meets the minimum pay requirement (\$45,000 in 2022) and they are year-round and they 'routinely exercise independent judgement and discretion in matters of significance' and either supervises 2 or more full-time employees or reports directly to an executive level employee.

Right of Access to Service Providers

Effective immediately, employers cannot restrict reasonable access for invited guests to visit employees at their provided housing.

Employers cannot interfere with reasonable access of key service providers (a healthcare worker including a promotora, clergy, educational provider, an attorney, legal advocate, government official, consular representative or any other service provider) with the employee at any location and any time the employee is not working or during a paid break or unpaid rest or meal breaks. And with respect to healthcare providers, during any time, whether or not the employee is working.

Rules have been adopted and will be **effective May 1, 2022** for additional access for key service providers when employees are on the clock and working in excess of 40 hours per week. The proposed rules call for employees to have access to phone and internet either while on break or while not working. If accessing phone or internet are not possible, the employer must provide an alternative. In any workweek in excess of 40 hours, an employee may be permitted to extend a break or meal period an additional 30 minutes (unpaid) to meet with key service providers. In any workweek exceeding 60 hours, the employer must provide 1 hour paid break for key service provider communication. In a workweek exceeding 70 hours the employer must provide 2 hours paid break.

Employers can establish visitation protocols regarding food safety and livestock practices as long as that applies to all third-party visitors on a work site.

Effective immediately, employees who are dependent on their employer for transportation must be provided transportation into town where they can conduct necessary business transactions and access important services at least once per week. Range workers must be provided this service at least once every three weeks. If a worker has their own vehicle and if they are allowed to park on-site, the employer is not required to provide transportation.

Notice of worker rights and protections must be clearly posted on-site and at employer provided housing as well as electronically if there is regular electronic communication.

Heat Stress, Short-handled Hoe and Hand Weeding/Thinning

Rules for heat related stress have been adopted, and will be **effective May 1, 2022**. The rules call for different triggers based on the forecasted high temperature of the day. On any day with an 80 degree forecast or higher, employers must provide 32 ounces per hour of clean, cool (60 degrees or cooler) water. In addition, artificial or natural shade (or other cooling alternatives such as air conditioning or individualized cooling items) must be provided during meal, rest, cool-down and other breaks. During shifts of 'increased risk conditions' (95 degrees or higher, unhealthy air quality (AQI of 151 or higher), shifts over 12 hours, the requirement of heavy clothing or the employee's first four days of work for the employer in over a month) an employer must provide 10 minutes of rest every 2 hours and provide notice to their employees of the increased risk conditions. There are other safety procedures that must be implemented by employers such as a plan for communication, monitoring and emergency response as well as an annual heat stress training.

The use of a short-handled hoe for weeding/thinning in a stooped, kneeling or squatting position is prohibited **effective immediately**.

Beginning Jan 1, 2022, a worker may only hand weed or thin for up to 20% of their weekly time unless the farm fits into the following categories:

- Thinning of high density crops planted less than 2 inches apart
- Hand weeding/thinning at a certified organic farm
- Hand weeding/thinning/tending seedlings
- Hand weeding/thinning/tending crops in planters or tubs where the opening does not exceed 15 inches
- Seeding, planting, transplanting, harvesting by hand or with a hand tool
- Hand weeding/thinning/tending crops in plastic mulch

CO Dept of Ag has promulgated rules for two other categories for a hand weeding/thinning exemption; farms transitioning to organic and individual farm variances if they don't fit within the above categories but can demonstrate the need to hand weed/thin more than 20% of a weekly workers time. They will be **in effect on Jan 31, 2022**. Proposed rules include a variance that can be obtained when an employer demonstrates that additional hand weeding or thinning is not prolonged or unnecessary, there is no suitable alternative and they have an integrated weed management strategy that utilizes processes in addition to hand weeding and thinning. There is also a proposed rule for a variance for operations that are transitioning to certified organic.

Employers must provide 5 minute paid rest periods for workers while hand weeding/thinning. These breaks should occur in the middle of work periods and there should be at least 15 minutes of rest every 4 hours.

Employers shall provide gloves and knee pads as necessary.

Employer Provided Housing (effective immediately)

During a public health emergency an employer must provide each worker with:

80 square feet of living space for single occupancy units

120 square feet sleeping quarters and 120 square feet cooking/eating areas for combined housing

All housing shall have screened windows or have an air filtration system

Allow Public Health and Environment to routinely inspect housing

Employers must provide training for safety during a public health emergency including printed information that includes contact info for Migrant Farmworker Division of CO Legal Services and state and federal guidance concerning the public health emergency.