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Agricultural Wage and Hour Update: AB 1066 – The Seventh-Day Rest Requirement

By: The Saqui Law Group

As agricultural employers know, AB 1066 was passed into law in 2016, and became effective January 1, 2017. The new law removed the exemption for agricultural employees from overtime and created a schedule phasing in overtime requirements for agricultural employees beginning in 2019. In addition to the new overtime rates, two large issues have arisen for agricultural employers: the seventh-day rest requirement, and the irrigator exemption. This article addresses the seventh-day rest requirement. An article discussing the irrigator exemption can be found [here](#).

Agricultural employers are now required to give one day of rest in every seven days to their employees. Before AB 1066, the California Labor Code specifically exempted agricultural employees from its requirement that no employer shall cause its employees to work more than six days in every seven. AB 1066 removed the exemption. As of January 1, 2017, the Labor Code now requires agricultural employers, like other employers in California, to give their employees one day's rest in a workweek.

The Labor Code allows exceptions to the one in seven days rest requirement; for example, when the work performed is protecting life or property from loss or destruction. Similarly, an employer may apply to the Division of Labor Standards Enforcement ("DLSE") for a hardship exception. In addition, employees may work seven or more consecutive days if the "nature of the employment reasonably requires" the employee to work, although employees must still receive the equivalent to one day's rest in seven within the month. In all of these situations, however, the burden will be on the employer to show that the exception should apply. A violation of the seventh-day rest requirement is a misdemeanor. Additionally, even where an employer qualifies for an exception, the Labor Code dictates overtime and double-time premiums which must be paid for a seventh day of work unless an employee is otherwise exempt from receiving overtime.

COUNSEL TO MANAGEMENT:

Given the change in the law, if at all possible, **employers should attempt to avoid working employees seven days, because if a Court determines that the employer does not meet an exception and that it caused its employees to work more than six out of seven days, there will be significant monetary penalties and even potential criminal charges.** At a minimum there is a risk that the company will be sued and have to pay expensive legal costs to fight off any such challenges.

If an employer cannot give its employees at least one in seven days off, the employer should apply for a hardship exception from the DSLE. An employer who has obtained this exception would have a defense against any litigation that the seventh day rule was violated, and would only have to ensure it is paying its employees the required overtime amounts for working the seventh day.

If an employer cannot get an exception, it may be permissible for employees to **volunteer** to work more than six out of seven days. Under the Labor Code, employers cannot "cause" employees to work more than six out of seven days. A case is currently pending in the California Supreme Court as to what "cause" means in this context. In the meantime, use of a volunteer sign-up sheet, like the one attached [here](#), although not an absolute defense to claims that an employer violated the seventh-day rest requirement, would provide an argument that the employee was not "caused" by the employer to work on the seventh day. However, employers should be mindful that in the past the DLSE has aggressively gone after employers where the DLSE believes the employer is attempting to secure the employee's waiver of a statutory right (e.g., using on-duty meal period agreements in situations where the employee could be relieved of duty).

An employer wishing to allow their employees to work more than six days in a workweek must be extremely careful to give employees this opportunity neutrally and without any hint of duress or coercion. For that reason, it is important that the sign-up sheet notify employees of their right to not work more than six out of seven days. Additionally, crew leaders should not hang around the sign-up sheet, as this could easily be seen as pressuring employees to work the seventh day. Instead the sign-up sheet should be placed in a neutral, easily accessed area.

Employers may then develop their own selection criteria (so long as it is not based on a discriminatory basis) as to how to schedule

those who sign up. Examples of suitable criteria include seniority, first-come-first-serve, merit, required skill set, having no history of disciplinary action, or experience working with particular crews, ranches, product, etc. Additionally, employers should use the sign-up sheet for all employees who volunteer to work on a seventh day, regardless of job classification. This would extend to irrigators who are still being treated as exempt employees until 2019 or until such time as the Wage Order is modified to explicitly remove the irrigator exemption.

Finally, if at all possible, the employer should still ensure that any employee who works on the seventh day still receives, within the month, the equivalent of one day off for every seven days. If the employer is not able to provide such equivalent time off then it will lose the ability to claim the “nature of the employment” exception in the event that the employer is sued.

If you have questions regarding the seventh-day rest requirement, or you would like to modify the volunteer sign-up sheet we have attached and have us review it, please contact the legal experts at The Saqui Law Group.

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