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Agricultural Wage and Hour Update: AB 1066 – The Irrigator Exemption

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, among other things, removed the exemption for agricultural employees from overtime and created a schedule for phasing in overtime requirements for agricultural workers beginning in 2019. In addition to the new overtime rates, two major issues have arisen for agricultural employers: the seventh-day rest requirement, and the irrigator exemption. This article addresses the irrigator exemption. An article discussing the seventh-day rest requirement can be found [here](#).

Within the industry there is a question as to whether the irrigator exemption under Wage Order 14 still exists. As currently written in Wage Order 14, the overtime rules do not apply to any employee that spends more than half of their time during the workweek performing the duties of an irrigator. However, the new overtime phase-in provisions of AB 1066 apply to “any person employed in an agricultural occupation.” Though AB 1066 instructs the Department of Industrial Relations (“DIR”) to update Wage Order 14 to comply with AB 1066, it does not specifically address Wage Order 14’s irrigator exemption and the Wage Order has not yet been rewritten.

As a result, irrigators will be entitled to overtime when the new overtime requirements begin to phase-in in 2019, or even earlier if the Wage Order is rewritten before then to not include the irrigator exemption. What is less certain until the wage order is rewritten is whether irrigators are currently included in the overtime rules governing all other agricultural employees or if they will only be entitled to overtime starting in 2019 or when the wage order is rewritten.

Given that the legislative intent of AB 1066 is to provide “any person employed in an agricultural occupation in California” an “opportunity to earn overtime compensation,” there is little doubt that plaintiffs’ attorneys will argue that the irrigator exemption went away when AB 1066 went into effect January 1, 2017. Additionally, irrigators are now subject to the seventh-day rest requirement under statute, and therefore would be entitled to specific overtime pay if they work on the seventh day; this would be a strange anomaly if irrigators were exempt from regular overtime pay. Therefore, even if a court eventually rules that the irrigator exemption will not go into effect until 2019, litigation on the issue is essentially a foregone conclusion.

COUNSEL TO MANAGEMENT:

Employers wishing to be cautious should begin paying their irrigators using the same overtime rules that apply to all other agricultural employees under Wage Order 14. It is worth noting that some employers are already paying irrigators overtime similar to other Wage Order 14 employees. As a result, employers may gain a competitive edge in hiring by offering the overtime now instead of waiting until 2019.

On the other hand, employers can choose to not pay their irrigators overtime until Wage Order 14 is rewritten or until January 1, 2019, whichever comes first. Employers electing to continue not paying irrigators for overtime should be aware of the significant risk of potential challenges by plaintiff attorneys who will argue that the irrigation exemption ended on January 1, 2017.

Ultimately, this decision is one of risk tolerance for each employer to make until the phase-in begins or until Wage Order 14 is rewritten. If you need help determining what decision may be best for your situation or if you have any other questions regarding AB 1066 or Wage Order 14, contact the legal experts at the Saqui Law Group.

Sacramento

- 1410 Rocky Ridge Drive, Suite 330
- Roseville, CA 95661
- Tel: (916) 782-8555
- Fax: (916) 782-8565

Central Coast Office

- 512 Pajaro Street, Suite 14
- Salinas, CA 93901
- Tel: (831) 443-7100
- Fax: (831) 443-8585