

# Nurserymen and the Federal Labor Laws

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The U. S. Department of Labor, Wage and Hour Division is responsible for the enforcement of several employment-related Federal statutes. Those include the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act. Specific questions regarding the applicability of the laws may be addressed to the Wage and Hour district office, 4407 Bland Road, Raleigh, NC 27603. Wage Hour staff are available to answer telephone inquiries by calling (919) 790-2742, extension 19

## **The Fair Labor Standards Act (FLSA):**

Most employees engaged in agriculture are covered by the FLSA in that they produce goods for interstate commerce. Coverage also applies to any employer who does more than \$500,000 per year in business. Employees who are employed exclusively in agriculture as the term is defined by the Act are exempt from the overtime pay provisions. They do not have to be paid time and one-half their regular rates of pay for hours worked in excess of forty per week. Employment in nursery occupations may or may not be considered to be agriculture under the Act. Where a nursery is engaged only in the propagation and cultivation of plants from the juvenile stage to maturity, it is said to be engaged in agriculture. If the nursery purchases plants elsewhere and doesn't make a significant contribution to the growth of the plants before they are sold, that nursery is not engaged in agriculture under the FLSA, and the agricultural exemption from overtime would not apply.

Very small agricultural nurseries may also be exempt from the minimum wage provisions of the FLSA. Currently the Federal minimum wage is \$5.15 per hour. The small farm exemption applies to employees engaged in agriculture and who are employed by an employer who used less than 500 man-days of agricultural labor in each quarter of the prior calendar year.

The Fair Labor Standards Act also establishes standards which minors under the age of 18 may be employed in non-agricultural employment and under the age of 16 in agricultural employment. Children may not work in Hazardous Occupations. Children under 16 may not work during school hours, and the number of hours they work per day or per week may also be limited.

## **The Migrant and Seasonal Worker Protection Act (MSPA):**

All nurseries are covered by this statute even if they are not engaged in agriculture as it is defined by the Fair Labor Standards Act. Workers who are affected by this statute are all migrant workers. Other agricultural workers who are engaged in field work relating to planting, cultivating and harvesting operations are also covered. Like the FLSA, there are exemptions from the Migrant and Seasonal Worker Protection Act which may apply under certain circumstances.

The Act sets minimum standards for the condition of migrant worker housing. Housing for migrant workers needs to be inspected prior to occupancy and maintained according to the minimum standards during occupancy.

Migrant workers must be shown a written description of the conditions of employment at the time they are recruited for employment. This information has to be explained orally to seasonal workers. Any worker who requests a copy of the working conditions must be given one.

The MSPA has certain record keeping provisions applicable to employers. Records for each employee should include name, address and social security number, the number of hours worked each pay period, rate of pay, net pay, gross pay and the reason for any deductions made. Workers are entitled to a written pay statement at the end of each pay period. The pay statement should include the employer's name, address and tax ID number.

Where an employer transports workers or causes the transportation of the workers, the transportation must be in safe vehicles which are insured at minimum levels established by the MSPA.

The Act also requires that farm labor contractors must register with the Department of Labor before they begin any contracting activities.

The information provided here is intended only as an overview. To request copies of the statutes or the regulations, contact the office listed above.