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**END OVERTIME
POLICY EXEMPTIONS FOR
PROPOSAL: FARMWORKERS**

Fact Sheet: *Ending the FLSA Overtime Exemption for Farmworkers*

Problem Most workers in the U.S. are entitled to receive 1.5 overtime pay after 40 hours/week under the national Fair Labor Standards Act (FLSA). Farmworkers are excluded from this protection due to a legacy of discrimination. Eliminating this overtime exemption would:

- Raise wages for this low-income population and ensure that future national minimum wage increases equally benefit farmworkers
- Strengthen the competitiveness of the agricultural workforce as it is losing workers
- Not significantly impact businesses or increase food costs because the share of consumer food prices received by farmworkers is negligible.

Farmworker wages cost the average household just \$38 per year.

Farmworkers in the U.S. As a whole, farmworkers are low-income and would benefit from the increase in wages that fair overtime compensation would bring. Many farmworkers are currently Mexicans or Mexican-Americans who may reside year round or part time in the U.S. However, as Mexico improves its own agricultural economy, fewer Mexican workers are willing to come to the U.S.

Average Proportion of U.S. Farmworkers Who Are:

Undocumented	52%
Seasonal Migrants	26%
Hispanic	82%
Receiving Public Assistance	41%
Below Federal Poverty Line (Family)	25%
Annual Income <\$20,000 (Individual)	65%

Call to Action:

Eliminate the FLSA agricultural overtime exemption. As a U.S. Congressperson, your support for farmworkers is critical.

Abstract

Farmworkers in the U.S. are currently excluded from mandatory 1.5 overtime pay starting after 40 hours are worked in a week. This right is available to the majority of workers nationally under the Fair Labor Standards Act (FLSA), a piece of legislation that dates to 1938. Farmworkers were completely excluded from the FLSA when it was created, a legacy of discrimination based not just on economic concerns, but also on the racial status of farmworkers. Farmworkers have since won the rights to minimum wage and other labor protections, but remain excluded from the overtime provision. This exclusion has no place in the modern U.S., and contributes to low incomes for farmworkers and their families. It also decreases the competitiveness of the agricultural workforce, a significant concern as the pool of inexpensive labor from Mexican immigrants is shrinking. Eliminating this exemption is important to maintain a viable agricultural workforce and to appropriately support farmworkers and is unlikely to significantly increase food costs because the share of consumer food prices received by farmworkers is negligible.

Policy Background Analysis

The U.S. is experiencing a mass movement to raise minimum wages across the country. From the initiatives of individual cities such as Seattle and San Francisco to set higher wages, to the nationwide “fight for \$15” among fast food employees, this movement is influencing the national conversation of what a living wage is and who is entitled to one. As this movement develops, though, it’s important to consider the workers who are not legally entitled to certain minimum wage standards. The Fair Labor Standards Act (FLSA) is responsible for guaranteeing the current federal minimum wage of \$7.25 to workers in the U.S., as well as setting regulations around labor practices, such as providing overtime pay at 1.5 normal rates after 40 hours are worked in a week.¹ However, the FLSA contains a number of exemptions, notably excluding workers who are employed in the critical sector of agriculture from the right to receive overtime pay.² Eliminating this agricultural exemption for overtime standards in the FLSA is an important policy to pursue for improving the wellbeing of agricultural workers, making sure all workers benefit equally from advances in the national minimum wage, and ensuring that the U.S. continues to be able to attract a sufficient workforce to maintain agricultural production.

The FLSA was first written in 1938 and originally excluded agricultural workers from all the labor protections it established. These exclusions were championed by legislators from Southern states whose agricultural workforce was largely African American at the time.³ One such legislator was Representative J. Wilcox of Florida, who was documented in the 82nd Congressional Record of 1937 saying of proposals for wage equality in the FLSA: “[T]hose of us who know the true situation know that it just will not

work in the South. You cannot put the Negro and the white man on the same basis and get away with it.”³ Farmworkers were first included in some FLSA provisions in 1967, and they gained equal rights to minimum wage protections in 1978.⁴ A number of exemptions were maintained, however, including overtime provisions and also the need for agricultural operations using less than 500 hired wo/man-days of labor per year to accord with any of the wage standards.² The exclusion of farmworkers from equal overtime protection is a historical artifact rooted in discriminatory attitudes that has no place in the U.S today, and contributes to low incomes for these workers and their families.

As of 2010, approximately 52% of farmworkers in the U.S. were undocumented, 26% migrated seasonally,⁵ and 82% were Hispanic.⁵ The average hourly wage for all farmworkers as of 2012 was \$9.42, although many among this group likely had low annual incomes due to the seasonal nature of agricultural work and the wide range of earnings represented in this group. As of 2010, 25% of farmworker families were living below the federal poverty line, 65% of farmworkers earned less than \$20,000 annually, and 41% of farmworkers were receiving public assistance.⁶ It’s possible that these figures underreport undocumented and migratory immigrants’ earnings and whether they qualified for public assistance, due to the difficulty of sampling these populations. Based on these indicators, farmworkers as a group receive low incomes and would benefit from increased wages. Particularly given the physically demanding nature of agricultural work, farmworkers who put in overtime hours should be compensated equally to other workers.

Eliminating the FLSA overtime exemption is also important to maintain the viability and competitiveness of the agricultural workforce in the U.S. The pool of workers willing

to perform farm work for low wages is shrinking, due to a growing international market for farm labor and barriers to immigration.⁷ As Mexico (the country that supplies the majority of agricultural workers in the U.S.) increases its wealth, fewer laborers are coming to the U.S. to work. A team of agricultural economists at the University of California at Davis recently analyzed this labor stream and found not only that the pool of workers is shrinking, but that it is attributable to increasing development in Mexico and not to factors in the U.S., such as the economic recession or changes to immigration policies.⁷ Native U.S. citizens are also largely unwilling to perform farm labor, even when unemployment is high.⁸ For these reasons, increasing wages is essential to attract a sufficient workforce.

It is likely that this policy will result in higher wages for farmworkers overall since many work overtime hours at some point during the year. Although the amount of overtime worked is not tracked nationally, its prevalence is indicated by the fact that the average number of weeks worked per year is only 33.4 and the average hourly wage is \$9.42,⁵ which together would yield an annual wage of \$12,585.12 if 40 hours per week were worked. Because the average wage is above that level, it is probable that the average farmworker puts in significant overtime, likely due to the seasonal nature of much farm work. However, there is the potential that this policy could encourage employers to adjust schedules to minimize overtime, employing more workers for fewer hours apiece. While this may occur to some extent, there are other possible costs associated with hiring employees that may deter this practice, including administrative expenses, benefits, training, transportation, or housing costs. Given the decreasing availability of workers and these additional costs, it is likely that employees will receive higher compensation overall.

Another argument against this reform is that it could cause smaller agricultural operations to go out of business or struggle due to increased labor costs. Given the narrow profit margins and limited ability to influence market prices that small growers face today, this would be a real possibility if they had to pay 1.5 overtime rates. However, under the FLSA provision that exempts agricultural operations hiring less than 500 wo/man-hours of labor per year from most labor protections, the smallest and most at-risk employers would remain exempt from this policy. As the smallest class of farms by income represented only 10% of all U.S. farms in 2014,⁹ this is a reasonable compromise that preserves the livelihoods of small employers and their employees while improving wage equity for the vast majority of agricultural workers.

The most politically significant argument against this policy change is that it could increase costs for consumers and businesses. While it seems logical that increasing the costs of production would increase the costs of the final product, in actuality there is a low risk that prices would rise significantly. This is because the proportion of the consumer price of foods that actually goes towards paying farmworker wages is negligible. For fresh fruits and vegetables, the foods that rely the most on manual farm labor to produce, a recent analysis estimated that between 25% and 30% of the price goes to the farm owner, but only around 30% of what the farm owner receives goes to workers' wages.¹⁰ Overall, based on 2009 spending, "for a typical household, a 40 percent increase in farm labor costs translates into a 3.6 percent increase in retail prices." Clearly, even large increases in farmworker wages passed on to consumers will not raise produce costs significantly.

A recent example of farmworker wage increases that did not harm consumers or businesses is the Campaign for Fair Food by the Coalition of Immokalee Workers (CIW). By working directly with large retailers and chain restaurants, the CIW was able to increase wages by 1 cent/pound for Florida tomato workers. Such a tiny increase was enough to make a meaningful difference to workers' wages, while also improving the brands' images.¹¹ While some of the main stakeholders opposed to increases in farmworker wages are likely to be industry groups such as the National Restaurant Association and the Western Growers Association, the CIW's successes have shown that these stakeholders can be engaged, and that paying slightly higher wages will not cause harm to large businesses.

While these groups and others advocating for less government regulations and an end to minimum wage increases have a prominent voice in the national media, most public discussion around wages and labor practices for farmworkers tends to frame the issue as one in need of reforms. Reports often present farmworkers as struggling and examine the need for policies to better support this group. Many articles frame the issues in terms of social justice and point out that farmworkers do some of the hardest and most essential work. Overall, there is favorable media support for improving farmworker livelihoods.

Eliminating the FLSA overtime exemption for agricultural workers is a necessary first step towards ensuring a living wage is provided to everyone in this population. This is the best strategy for this particular group because it will allow them to effectively catch up to other workers, and to benefit equally from any future wage advances that are won. As the U.S. moves towards adopting policy solutions to make food systems more sustainable and equitable, removing existing barriers to farmworker health is an essential step.

Appendix I: Annotated Bibliography of Stakeholders

American Farm Bureau Federation (AFBF) <http://www.fb.org>

The AFBF is the national umbrella organization representing local Farm Bureau chapters around the country. It promotes a mainstream agricultural agenda and is very unlikely to be in favor of eliminating farmworker overtime exemptions based on its political history.

Coalition of Immokalee Workers (CIW) <http://ciw-online.org>

The CIW is likely to be in favor of legislation that raises farmworker wages and fights discrimination, as these are its core issues. It has conducted one of the most successful farmworker support campaigns in history and would be a powerful ally.

Farmworker Justice <http://farmworkerjustice.org>

Farmworker Justice is a prominent national organization working to improve conditions for farmworkers. It could an important partner in eliminating farmworker overtime exemptions.

Food Chain Workers Alliance (FCWA) <http://foodchainworkers.org>

The FCWA is a coalition of many organizations representing workers from all parts of the food chain, including farmworkers. It's size and prominent role in the fight to raise the minimum wage make it a valuable potential ally.

National Restaurant Association (NRA) <http://www.restaurant.org/Home>

The (other) NRA is a trade industry group representing many large restaurant chains, and as such may oppose any legislation that has the potential to raise food prices.

United Farm Workers (UFW) <http://www.ufw.org>

The UFW is the farmworker union started by Cesar Chavez and allies, which played a large role in repealing many of the FLSA exclusions for farmworkers. However, when the issue of eliminating the overtime exemption came up in the California state legislature, the UFW had some reservations about immediately endorsing it out of fear that employers would cut farmworker hours to avoid paying overtime.

Western Growers Association (WGA) <http://www.wga.com>

The WGA is a Western states specialty crop trade association that has recently advocated for regulations that preserve existing interpretations of the piece-rate payment system, in order to keep farmworker wages lower. It is likely to pursue a similar agenda with regard to agricultural overtime exemption changes to the FLSA.

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