BRIEF LOOK

Farm Workers' Overtime Pay Is Affordable and Long Overdue

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INCLUDING FARM WORKERS IN NEW YORK STATE'S OVERTIME RULES, as is currently being considered by the state legislature, would be a good move for New York.

For the 56,000 or more farm workers in the state it would represent a significant increase in wages, ranging on average from $34 to $95 per week. That would be an important improvement in living standards for some of the lowest-paid and hardest-working workers in the state.

For farm owners, it would be a manageable increase in costs. Even accepting some of the most aggressive assumptions about the cost to farmers**, if *all* of the increase came out of the bottom line of farm owners it would represent nine percent of total farm income**. That is a significant increase, but it is manageable, especially if phased in over several years as is likely to be the case with any new law.

While farm owners would face added costs, they would also see clear benefits from increasing wages for their workers. Better pay would make workers easier to attract and easier to retain, a very significant challenge for farm owners, particularly at a time of increasing restrictions on immigration. Lower turnover also means lower training costs and more experienced workers. By the same token, higher pay and less extreme overtime hours lead to increases in productivity—more gets done per hour worked.

Overtime pay would raise wages for workers by $34 to $95 per week, with manageable costs for farm owners and concrete benefits to local communities.

Some observers have considered whether, rather than being absorbed into farm owners' costs, the increased cost would be passed along in higher prices for consumers. Whether or not farm owners can pass along prices to consumers depends on several factors, including how much of their produce they sell locally. Yet, even **if *all* of the added cost were passed on to consumers, it would represent just a two percent increase in prices**.

As the new rule is phased in, farm owners would have choices. They could continue to increase wages at a rate that is a dollar or two above the minimum wage as the minimum wage increases, as has been the trend in recent years. Alternatively, they could increase the base wage more slowly, and workers would still see increased wages through overtime pay. And, they could reduce the number of overtime hours by hiring additional workers. The most likely scenario combines these, increasing the base hourly wage gradually as they implement overtime pay, while hiring a few added workers to reduce the more extreme overtime hours. Some farm owners that truly cannot accommodate an overtime pay increase would also have the option of reducing the base wage and keeping weekly pay the same.

If *all* of the costs of overtime were absorbed by farm owners, it would represent **9% of net farm income.**

If *all* of the costs of overtime were passed on to consumers, it would be a **2% increase in prices.**

Increased wages are not just good for farm workers, they are also good for localities around the state. The more farm workers can afford a reasonable standard of living, the better it is for the entire community. Workers will be able to spend more in local stores, in turn spurring growth among local businesses. And the sales tax payments generated will contribute to paying for state and local services.

New York farms face very real pressures, from mechanization to immigration restrictions to trade wars. But farm owners have to face those pressures together with their workers—economic challenges cannot be an excuse for underpaying people for the crucial work they do. Paying overtime wages is a straightforward way to bring farm workers' wages into the 21st century at a manageable cost to farm owners and with concrete benefits to New York communities.

NEW YORK STATE IS HOME TO ONE OF THE LARGEST AGRICULTURE ECONOMIES in the country, generating $4.8 billion in annual revenue. It may come as a surprise to some, but in 2017, New York was among the top five states in the country for 15 popular farm products. New York is the number one producer of cottage cheese (providing more than 26 percent of the country's share), sour cream and yogurt; number two in maple syrup, cabbage, apples, and snap beans; and number three for milk and grapes. New York farms cover nearly one-fourth of the state's land area.[1]

Farming is hard work that often entails working long hours. Yet farm workers are left out of the federal and state labor laws that ensure rights to overtime pay, collective bargaining protections, and a day of rest.[2] The Farmworker Fair Labor Practices Act proposes amendments to New York's labor laws that would make sure farm workers have the same rights as other workers, removing archaic exceptions drawn into labor law almost a century ago. California, Hawaii, Minnesota, and Maryland have extended their labor laws to include overtime pay for farmworkers, and ten other states allow farmworkers collective bargaining protections. If New York follows suit, there will be benefits for workers, manageable costs for farm owners, and positive ripple effects in local communities across the state.

Worker Benefits

Including farm workers in the state's overtime laws would **give typical farm workers a raise of an estimated $34 to $95 per week**, according to our analysis. That would be a very concrete benefit to the 56,000 or more hired workers on New York's farms.[3]

In Northeast Region 1, which includes New York, the average wage for fruit and vegetable farm workers is $13.58, and for dairy workers it is $12.81, according to the best data available, from the USDA's National Agricultural Statistics Service.[4]

On fruit and vegetable farms, workers put in an average of 49 hours per week.[5] If overtime begins at 40 hours per week it would mean giving workers who earn the average wage a raise of $34 a week, from $665 to $699. To be conservative, this estimate already includes the assumption that farm owners might reduce the number of overtime hours by 15 percent.[6] In other words, fruit and

Giving Farmworkers a Raise of $34 to $95 per Week

	Fruit and Vegetable	Dairy
Average Wage	$13.58	$12.81
Average Current Hours Worked	49	67
Hours Worked with a 15% Reduction in Overtime Hours	47.7	63
Current Weekly Earnings	$665	$858
Weekly Earnings with **Overtime Pay and Fewer Hours Worked**	$699	$953
Added Weekly Earnings for Farm Workers	$34	$95

FIG. 1 Source: Fiscal Policy Institute calculations based on estimated average hours currently worked on vegetable farms and dairy farms (see footnotes 5 and 7). Wages based on October 2018 data from the USDA National Agricultural Statistics Service.

vegetable farm workers might work 47.7 hours instead of 49 hours per week, and still earn $34 more. (See Figure 1) It is also far from certain that farm owners could find additional workers, in which case the hours worked per week would remain at 49 and the pay differential would be higher. Overtime pay in other industries would likely lead to hiring additional workers rather than paying workers for overtime hours. This may happen to some degree if overtime pay is required for farm workers, but it is unlikely to be a big factor in the farm sector because of farm owners' difficulty finding workers. There are also per-worker costs, especially housing costs, that mean there are significant added expenses in hiring additional workers rather than paying the same workers for longer hours. In addition, there is evidence that farm laborers want to work long hours, both in seasonal crop picking and also in year-round dairy work.[7]

The biggest improvement in wages and working conditions is likely to be on dairy farms, where long hours and low wages are common. The best estimate of the average workweek is a grueling 67 hours.[8] At the average wage of $12.81, pay without overtime would be $858 per week. With overtime, dairy workers might see a 63-hour week and at the same time a pay increase of $95 per week. And, again, the pay increase would be higher if the number of hours worked is not reduced, a very real possibility considering the difficulty farm owners have in finding a labor force and the cost involved in housing additional workers.

In addition to direct increases in weekly earnings, all workers will benefit from being included in the same labor protections as others in New York State.[9] The benefits of overtime pay do not stop at the worker's paycheck. Workers report that the long history of being excluded from basic labor protections has normalized the sentiment that they are undeserving or treated as second class workers. Workers also report that the absence of overtime pay has led to other exploitative labor practices—in other words, exclusion from one labor protection paves the way for labor abuse. The passage of the Farmworkers Fair Labor Practices Act would demonstrate that workers' contribution to New York State's economy and food industry is recognized, respected, and valued.

Cost to Farm Owners is Manageable

Recognizing labor rights will entail some costs for farm owners, but history and research show that costs should be manageable and that the farm industry is able to adjust to change.

Any change to the overtime pay rules is likely to be phased in gradually, so farm owners will have some time to adjust to the new pay structure. In addition, farm owners paying workers more than the minimum wage will have choices.

As the new overtime rules phase in, farm owners could continue to increase wages at a rate that is a dollar or two above the minimum wage, as they have in the past. They could increase the base wage more slowly in coming years, and workers would still get a raise through overtime pay. And, they could reduce the number of overtime hours by hiring some additional workers. Even more likely, they might do some combination, increasing the base hourly wage gradually as they implement overtime pay, while hiring a few more workers to reduce the more extreme overtime hours.

Another alternative for farm owners is that they could decide to keep the weekly wage the same by reducing the base wage to accommodate paying overtime. In this scenario, workers would benefit from being covered by labor law but would not see an increase in pay, at least not in the short run.[10]

It is important to note that farm owners who raise wages will also see some offsetting cost savings that are not included in these calculations.

Where farm owners increase wages, they can expect to see improvements in recruiting and retaining workers—a constant concern for farm owners, and even more so at a time when restrictions on immigration have been particularly extreme. That should also make it easier for farmers to attract and retain workers, reducing training and overtime costs, while giving New York farmers an edge in being able to hire more experienced workers than states that do not pay overtime.[11]

If labor is more expensive, farm owners may also be incentivized to make investments in farm equipment that helps raise the productivity of workers. As farms become more mechanized—a process that is already underway—there will be increased output per worker.[12] The benefits from that increase in productivity can go to profits, or it can go to wages, or it can go to both. The Farmworkers Fair Labor Practices Act would help ensure that farm workers share in the benefits, and that increased productivity leads to increased wages.

Higher labor standards in New York State can also be marketed to consumers. The increasing consumer desire for locally sourced produce can be underpinned by a positive feeling among consumers about supporting enterprises that pay fair wages.

Even more significant, at a time when attracting workers to farm work is challenging all across the country, having labor protections in New York would make our state more appealing to the workers that are available, putting New York on an equal footing with the states that have passed protective labor laws, and at a competitive advantage with respect to other states in the Northeast.

Community Benefits

Paying and treating workers fairly translates to less stressful and more decent living standards for the workers. These benefits reverberate throughout the community. With overtime pay, farmworkers would have more money to spend at local stores, which in turn boosts businesses in the community, spurring growth in small towns, downtown areas, and commercial strips in rural areas of the state.

In addition, the sales taxes from farmworker's increased local spending contributes to paying for state and local services. And, in general, the more workers can afford a reasonable standard of living, the better it is for the entire community.

Farms are good for New York. As a recent report from the state comptroller put it, "New York's farms remain an essential part of the State, contributing to all levels of the economy through the jobs they support and the income they generate. Agriculture enhances New Yorkers' quality of life in other ways as well, including providing access to fresh, locally sourced food and preserving open space."[13] But, getting the full economic and social benefit of farms to our communities requires that both workers and farm owners can thrive.

Exaggerated Concerns

Representatives of business interests have a long history of opposing legislation to raise wages, and in exaggerating the likely outcomes of such efforts. Opponents of the Farmworkers Fair Labor Practices Act are no exception.

A misleading 2019 Farm Credit East (FCE) report provides the underpinning for much of the opposition to the measure.[14] The headline number in the report—$299 million—is what Farm Credit East asserts will be the overall increase by 2021 in the amount paid by all farmers. This is both vastly overstated, and not as scary a number as it seems.

Keeping Costs in Perspective

Aggregated Overtime Increase (FCE)	$118,191
Net Farm Income (FCE)	$1,278,023
Percent decrease in net farm income if *all overtime costs* come out of profit	9%
Value of Farm Production	$5,514,909
Percent rise in prices if *all* overtime costs are passed to consumers	2%

FIG. 2 Source: Fiscal Policy Institute calculations based on Farm Credit East report.

The estimate of $299 million is not just for overtime pay, but also for an already legislated increase in the minimum wage. In fact, Farm Credit East itself reports its estimated increase due to the overtime rule to be $118 million, not $299 million. These projected increases assume an average wage of $16.05 per hour for 2021 Farm Credit East assumes that farm owners will continue to pay well above the minimum wage, even as they also are required to pay overtime—this is far from certain. And they do not take into account potential gains from paying a higher wage discussed above, such as lower turnover or higher productivity, that should reduce the actual impact on wages.

However, even using these assumptions, and even if *all* of these costs come out of the bottom line for farmers, $118 million is nine percent of the net farm income. This is an impact that is significant, but hardly devastating, especially if it is phased in over time, as any bill is likely to require.

Some observers have suggested that overtime pay would lead to increased prices for farm goods. The Farm Credit East report assumes farm owners have no power to set prices for their products. While it is reasonable to assume farmers have limited power to set prices, it is not reasonable to assume their ability to set prices is zero. In any event, concerns about prices seem misplaced: even if *all* of the aggressively estimated added costs of overtime were to be passed through to consumers, prices would rise by just two percent.

Net Farm Income Is Down from a Recent High But Stabilizing
(thousands of 2019 dollars)

FIG. 3 Source: Fiscal Policy Institute Analysis of data from the USDA adjusted for inflation. New York scale is shown on right axis.

The Farm Credit East report also overstates the fragility of New York's agricultural economy. The year 2016 was a tough year, in New York and around the country. As a USDA brief on current farm sector financial health reports, "Slowing global demand, a strengthening dollar, and large inventories depressed crop as well as animal and animal product prices and contributed to the decline in 2016 net cash farm income."[15] When viewed over the longer term, however, the USDA concludes that after a drop in 2016, the national farm economy seems to be returning to something like the norm prior to the highpoint of 2013, and there is no reason to believe New York would be different. Farming is a difficult business, with ups and downs that can be challenging to manage. But, the past five years of data reflect a higher-than-normal level of volatility and a sense of decline that is already abating.

Conclusion

There is good reason for New York State government to pay close attention to the farm economy. But, supporting farming means supporting both farmers and farm workers. Exemptions that exclude farm workers from the labor laws were codified at a time when the Jim Crow system was enforced. It is long past time to remove these archaic exceptions and apply the same labor law to farm workers as to other workers. There will be manageable challenges in adjusting, and substantial benefits to workers and communities as well as to some farmers. The rationale for including farm workers in the same overtime pay rules as other workers is simple: People who work long, hard hours should be paid fairly. There can no longer be a reason that a different set of standards should apply for farm workers than for other workers.

By David Dyssegaard Kallick, Margaret Gray, and Olivia Heffernan.

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[1] "Agriculture in New York State," Office of the New York State Comptroller, September 2018.

[2]Anastasia Christman, "Ending Injustice in our Fields and Dairies: New York State Should Extend Basic Labor Protections to Farm Workers," National Employment Law Project, May 2019.

[3] The number of workers is reported in the 2017 Census of Agriculture, Table 7 "Hired Farm Labor - Workers and Payroll: 2017." Washington DC: USDA. The USDA explains hired farm labor, "Data are for total hired farm workers, including paid family members, by number of days worked. Data exclude contract laborers." This number is reported by the farm owners rather than a direct count of workers. This can be considered a minimum estimate; there is good reason to believe the number of agricultural workers in the state may be higher.

[4] Data are for the week of October 7-13, 2018. Fruit and vegetable workers also include other field workers; dairy workers also include other livestock workers. Wages are for Northeast Region I, which includes New York and the states north and east of New York. See USDA Agriculture Counts Farm Labor Report, November 15, 2018, available at: www.nass.usda.gov/Publications/Todays_Reports/reports/fmla1118.pdf, page 7. Smaller, New York-specific studies are consistent with these figures, showing wages for farm workers being typically a dollar or two above the minimum wage.

[5] See Margaret Gray and Emma Kreyche, "The Hudson Valley Farmworker Report," (Annandale-on-Hudson, NY: Bard College, 2007), which finds the average work week for fruit and vegetable farm workers to be 49 hours. Another study shows results that are in line with these finding; see Thomas R. Maloney and Nelson L. Bills, "Survey of New York Fruit and Vegetable Farm Employers 2009," (Ithaca: College of Agriculture and Life Sciences, 2011), which found that 69 percent of laborers on fruit farms worked fewer than 50 hours a week and for those on vegetable farms, 62 percent worked fewer than 50 hours a week.

[6] The projected reduction in the number of hours follows the estimate for hours offset by new hires that is offered in "The Economic Impact of Mandatory Overtime Pay for New York State Agriculture," (Farm Credit East, February 2019). As that report acknowledges, it will be difficult for farm owners to hire many more workers at the rate without overtime pay.

[7] See Thomas Maloney, Libby Eiholzer, and Brooke Ryan, "Survey of Hispanic Dairy Workers in New York State 2016," (Ithaca: Cornell University, College of Agriculture and Life Sciences, 2016).

[8] Maloney, Eiholzer and Ryan, 2016, found that their average work week was 67.2 hours per week. See Maloney, Eiholzer, and Ryan. Fox, Fuentes, Ortiz Valdez, Purser, and Sexsmith describe interviews with 88 workers who report confirm working very long hours, most typically 12 hours a day and six days a week.

[9] See Steven J. Trejo, "The Effects of Overtime Pay Regulation on Worker Compensation," American Economic Review, vol. 81, no.4 (September 1991), pp. 719-740 and Steven J. Trejo, "Does the Statutory Overtime Premium Discourage Long Workweeks?," *Industrial and Labor Relations Review*, vol. 56, no. 3 (April 2003), pp. 530-551.

[10] Owners paying at or close to the minimum wage would have fewer choices about how to handle the increased cost, but the level of wage increases would be about the same as for other farmers, and would be higher as the minimum wage increases. Even farm owners paying minimum wage may have some room to reduce labor costs if they currently pay for housing or other expenses.

[11] Studies of minimum wage increases in general—studying the overall labor market and not the farm economy in particular—have found that higher wages translate into significant offsetting savings for employers in lower turnover and higher productivity. See, for example, Michael Reich, Silvia Allegretto, Ken Jacobs, and Claire Montialoux, "The Effects of a $15 Minimum Wage in New York State," Center on Wage and Employment Dynamics, Institute on Labor and Employment, University of California, Berkeley, March 2016.

[12] For a national study of farm labor and mechanization, see Philip Martin, "Farm Exports and Farm Labor: Would a Raise for Fruit and Vegetable Workers Diminish the Competitiveness of U.S. Agriculture?," Economic Policy Institute, March 21, 2011.

[13] "Agriculture in New York State," September 2018.

[14] Farm Credit East, February 2019.

[15] Nigel Key, Carrie Litkowski, and James Williamson, "Current Indicators of Farm Sector Financial Health," USDA Economic Research Service, July 2018. Data for Figure 3 are from the USDA Economic Research Service Farm Income and Wealth Statistics, available at: https://data.ers.usda.gov/reports.aspx?ID=17830#Pa29a1dbe9b8740c3bf1f62ba6b33725d_9_109iT0R0x0