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Effects of NY Overtime Laws on Agricultural Production Costs and Competitiveness

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A Report to the New York Department of Agriculture and Markets

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Summary

Effects of 60 Hour Overtime in 2020

Dairy Farms

- Hired labor accounted for 17.1% of total operating expenses on dairy farms
- On average, total payroll increased 7.8% and cost per hired labor hour increased 5.7% in 2020 over 2019 on farms participating in the Cornell Dairy Farm Business Summary
- Shifted compensation to overtime and wages and away from benefits to maintain total compensation levels where feasible
- Invested in labor saving technologies where possible but this works better with some herd size and production technology packages than others (i.e., often better on larger herds)
- Moved some enterprises, such as replacement heifers, off the farm
- Significant investment is on hold awaiting the potential for future changes in labor regulation
- Pandemic related government payments helped offset some of the labor cost increases in 2020 but are not a permanent solution

Fruit and Vegetable Farms

- On fruit farms, employee expenses accounted for 52% of cash operating expenses in 2020 using Cornell Fruit Farm Business Summary data
- Employee expenses increased 4.4% in 2020 over 2019
- Tightened up management over labor use and allocation to focus on most profitable tasks and crops
- The biggest challenge on many operations was the required day of rest which often resulted in overtime
- Farm Credit East fruit farm total wage expenses increased 6.8% in 2020 relative to 2019
- Farm Credit East vegetable farm total wage expenses increased 10.1% in 2020 compared to 2019

Potential Effects of 50 Hour Overtime

Dairy Farms

- Increase in cost will be more significant than adapting to 60 hour limit
- Tighten up labor management, hire more employees to spread hours if possible
- Utilize custom services where available (heifer raising, crop harvesting)
- Thirty percent (6 of 20) interviewed indicated they would move out of milk production, direct future investment to other states or industries, or exit agriculture entirely

Fruit and Vegetable Farms

- Most consistent response was desire to hire additional labor (local and/or H-2A workers) to spread hours and avoid overtime. However, most do not believe labor is available.

- Farm managers were very concerned H-2A workers will not come to NY if contract hours are reduced to stay below 50 (or 40) hour OT threshold
- If available, hiring additional H-2A workers will also require significant new investment in housing
- Enterprise diversification will decrease as operations reduce or eliminate labor intensive crops
- Many mentioned exploring grains and other crops that require less labor if they could be profitable

Potential Effects of 40 Hour Overtime

Dairy Farms

- Two thirds of farms (13 of 20) interviewed indicated they would move out of milk production, direct future dairy investment to other states, invest outside of dairy, or exit agriculture entirely

Fruit and Vegetable Farms

- Half of farms interviewed indicated they would shrink enterprises or exit the industry

H-2A Workers

- Seventy-two percent of workers indicated that they would be less likely to do their current job if hours were capped at 40 per week
- Seventy percent of workers indicated that they would consider going to another state without capped hours if hours were limited in New York

Introduction

The Farm Laborer Fair Labor Practices Act (FLFLPA) regulating New York farm employers went into effect on January 1, 2020. Under the FLFLPA, overtime, day of rest, collective bargaining, and increased insurance requirements were put in place for most non-supervisory, non-family farm employees. This meant that the overtime threshold for hired employees in New York agriculture begins at 60 hours. In addition, the minimum wage for upstate New York continues to increase.

The New York Farm Labor Wage Board decided in late 2020 to keep the threshold at 60 hours for 2021 with the intention to revisit the policy with more data and analysis. This project examines the economic effects of New York overtime laws on farms in 2020 as well as assesses potential effects of lowering the limit. The objectives were to:

1. Understand the effect on labor costs and availability from the 60-hour overtime in 2020.
2. Examine implications of the 60-hour overtime on competitiveness of New York agricultural production focusing on key industries.
3. Estimate the potential effects of a 50 or 40-hour overtime threshold on agricultural production costs and competitiveness.
4. Survey H-2A agricultural workers about how New York overtime thresholds affect willingness to seek employment in the state

In order to accomplish these objectives, farm business summary data, farm payroll data, a set of farm interviews, and a survey of farm workers were used.

The report proceeds as follows: the next section discusses research methods and data sources; the third section examines the farm cost implications of the 60-hour overtime and day of rest regulations in 2020; the fourth section examines potential farm responses to lower overtime thresholds; the fifth section presents results of a survey of H-2A workers on New York farms; the sixth section discusses industry competitiveness; finally, the seventh section summarizes and concludes.

Methods and Summary Data

This analysis includes both secondary data collected by Cornell personnel as part of farm business analysis summary reports as well as primary data collected specifically for this project. The secondary data sheds light on the impacts that the overtime regulation that began in 2020 had on farm costs and profitability. Additionally, secondary data from Farm Credit East Financial Services was used to provide further evidence of impacts of the labor changes in 2020. The primary interview data included detailed interviews with 40 New York farm operations using a combination of a structured survey instrument and the ability to address issues in an open-ended fashion. Interviews were conducted in July, August and September of 2021.

In order to assess the impacts of farm labor regulations including the 60-hour overtime limit, mandatory day of rest, and minimum wage, farm financial data were utilized. The Cornell Dairy Farm Business Summary data from multiple years describes in detail the farm financial

performance of a set of New York dairy farms. The data include accrual adjusted income statements and balance sheets and allow a detailed look at costs, revenues and profit as well as solvency and liquidity on these farms. Cornell has been collecting and summarizing data for decades to facilitate extension, research and teaching related to the dairy farm industry. These farms volunteer to participate in this project and tend to be better performing financially than the average dairy farm. They should be viewed as representative of well-managed, commercial dairy farms in New York.

Similar to the dairy farm business summaries, the Lake Ontario Fruit Program 2019 and 2020 Fruit Farm Business Summaries (Wiltberger, 2020 and 2021) were utilized to examine the cost impacts of labor regulation. These reports summarize the financial performance of apple farms in Niagara, Orleans, Wayne, Orange and Clinton counties. As with the dairy farms, these fruit farms are not randomly selected and should also be viewed as representative of well-managed New York farm operations.

Payroll data that was provided by Farm Credit East Financial Services was examined for changes in regular and overtime hours and wages. Twenty each of dairy, fruit and vegetable farms (as defined by the primary farm enterprises) were randomly drawn from the farms that utilize the payroll service. In addition, 50 employees from each type of farm were drawn to examine individual hours and wages.

The survey/interview instrument was built utilizing an existing survey for a longer-term assessment of agricultural labor issues led by Dr. Richard Stup of Cornell. The survey included questions about the types of employment on New York farms and the ways in which the farm managers adapted to the changing overtime regulations. A team of Cornell researchers modified the survey to add questions about the potential farm operational and management implications in the event that the overtime threshold was lowered to 50 or 40-hours per week. Dairy, fruit and vegetable farms (many with a diversified mix of crop enterprises) were contacted by Cornell Cooperative Extension and PRO-DAIRY personnel to solicit participation in the interview. The farms were sent a paper copy of the survey instrument in case they wanted to gather information to facilitate answers. The interview took approximately two hours on each farm and the data were verified by Cornell personnel before inclusion in the report. Each farm manager responding had the option to decline any particular question. Farmers were also encouraged to expand on their answers in an open-ended discussion whenever they were so inclined.

Twenty dairy farms and twenty total fruit and vegetable farms (about 10 of each but many were diversified) were interviewed to assess how they responded to the overtime threshold and how they might respond to a hypothetical lower overtime threshold. The farm respondent characteristics and responses will be discussed in summary form. Tables 1 and 2 below report the average and standard deviation of gross cash farm income of the two groups of farms for 2019 and 2020. Gross cash farm income is a measure of farm revenue that can be used as a proxy for farm size. The dairy farms averaged \$5.6 million in sales in 2020 but the large standard deviation indicates a wide range across farms (Table 1). One half of the farm respondents reported less than one million dollars in gross cash farm income and one-half reported more. The fruit and vegetable farms interviewed

were of similar size also averaging \$5.6 million in gross cash farm income (Table 2). In this case, however, only eight of the 20 farm respondents had less than one million in sales in 2020.

Table 1. Gross Cash Farm Income, Dairy Farm Respondents

	2019	2020
	\$	
Average	5,807,565	5,631,797
Standard Deviation	9,121,780	9,226,981
	%	
< \$1,000,000	50	50

Table 2. Gross Cash Farm Income, Fruit and Vegetable Farm Respondents

	2019	2020
	\$	
Average	4,946,177	5,606,019
Standard Deviation	7,571,710	9,163,604
	%	
< \$1,000,000	45	40

Another summary measure of these farms is the number and types of hired employees. Table 3 displays the average numbers of employees on the 20 dairy farm respondents. These farms employed about 15 permanent full-time employees, five permanent part-time employees and two seasonal employees (e.g., planting and harvest) for a grand total of about 23 employees in 2020. Table 4 displays the average number of hired employees on the fruit and vegetable farm respondents. Those farms averaged about 55 employees composed of eight permanent, full-time, four permanent, part-time, eight seasonal, domestic and 35 H-2A, foreign workers.

Table 3. Hired Employees, Dairy Farm Respondents

Employee Type	2019	2020
	Average	
Permanent, full-time	14.7	15.4
Permanent, part-time	4.5	5.0
Seasonal, US based	2.3	2.4
Total	21.5	22.8

Table 4. Hired Employees, Fruit and Vegetable Farm Respondents

Employee Type	2019	2020
	Average	
Permanent, full-time	7.6	7.7
Permanent, part-time	3.3	3.8
Seasonal, US based	10.2	8.5
Seasonal, H-2A	35.0	35.5
Total	55.4	54.6

Because of the importance of H-2A workers on fruit and vegetable farms in New York as well as the frequent response from the survey that farm managers desired to hire more H-2A workers, an in-person survey of H-2A workers in New York on H-2A permits was undertaken. The sample of farms was taken from the 2020 U.S. Department of Labor disclosure list of New York participants in the H-2A program. Farms were chosen from those located in western, central and Hudson Valley areas of the state. These regions were chosen for several reasons, including: high concentrations of agriculture and of H-2A employers, and proximity to bilingual enumerators cooperating in the project. Selection was also limited to farms that still had H-2A workers on site between October 20 and November 12, 2021. Farms provided access to employees both in the workplace and at their living quarters. Farm employees participated in the interviews voluntarily, independently, and without any interference from employers. All interviews were completely anonymous. This was not a random sample of farms, rather it was a convenience sample based on farms that we could quickly access primarily based on previous relationships with the researchers and interviewers. Interviews were conducted on site by interviewers who were fluently bilingual in Spanish and English. One interviewer was employed by Cornell University, one was an independent contractor, and three were employees of the New Yorker Center for Agricultural Medicine and Health (NYCAMH) and contracted through that organization to work with Cornell on the project. The details and results are discussed later in this report.

Farm Effects of Overtime in 2020

As discussed above, beginning January 2020, New York farms were subject to overtime pay at 60 hours of weekly work as well as a mandatory day of rest and other implications. Thus, at the conclusion of 2020 there was an entire year under these requirements that was reflected in year-end financial statements. To examine the effects that these regulations had on farm finance in New York, Cornell farm business summaries for dairy and apple farms were utilized. Additional

information was examined from Farm Credit East payroll data on dairy, fruit and vegetable farms and employees.

Dairy Farms – Financial Data

For most farms participating in the Cornell Dairy Farm Business Summary and Analysis Project (DFBS), hired labor is the second largest expense category after purchased grain and concentrates. With farms participating in the DFBS project for multiple years, an analysis of costs and efficiencies associated with hired labor and how they have changed over the last 10 years was recently summarized (Karszes and Wolf, 2021).

In 2019, on 159 New York farms participating in the Dairy Farm Business Summary and Analysis Program (DFBS), hired labor sources provided an average of 85.7% of the labor hours used to work the farm (Karszes, Augello, and Knoblauch, 2020). Table 5 displays farm and labor summary statistics for 125 dairy farms that participated in the DFBS in both 2019 and 2020. 2020 had the highest annual percent increase in hired labor costs per hour over the last 10 years (5.7% over 2019). Hired labor cost per hour increased by 5.7 percent to \$17.40. This increase was driven by a combination of higher gross wages including overtime as well as increasing business share of employment taxes, workers' compensation, and other benefits provided to employees. Along with this increase in cost per hour, additional hired hours of labor were utilized with an increase of 2.0% in hired worker equivalents. This led to an increase of total payroll on participating farms of 7.8%.

Table 5. Summary of Labor Cost, Cornell Dairy Farm Summary

Measure	2019	2020	% change
Descriptive Statistics			
Herd size (milk cows)	1,147	1,190	3.8
Milk sold (lbs/cow/year)	26,348	26,422	0.3
Hired worker equivalents ¹	19.8	20.2	2.0
Labor Efficiency			
Cows per worker	50.6	51.7	2.1
Milk Sold per worker	1,334,417	1,365,956	2.4
Labor Costs			
Total payroll (\$)	899,075	969,270	7.8
Cost per hour hired labor (\$/hour)	16.46	17.40	5.7
Cost per hundredweight of milk sold (\$/cwt)	2.98	3.08	3.6

Source: Karszes and Wolf, 2021. Same 125 farms. New York Dairy Farm Business Summary

¹ Hired worker equivalent defined as 2760 hours per year.

The increase in additional hired labor utilized on the farms was associated with an increase in farm size. From 2019 to 2020, farm size increased by 3.8% to an average of 1,138 milking and dry cows. With the increase in herd size greater than the increase in hired labor utilized, labor efficiency as measured by cows per worker equivalent increased by 2.1 percent to 51.7. If cows

per worker had stayed the same in 2020 as 2019, the farms would have had to increase hired labor by an additional 4.3% versus the 2.0% that was needed with the increase in cows per worker equivalent. This increase in cows per worker coupled with a small increase in milk sold per cow resulted in an increase of 2.4% in milk sold per worker equivalent, a second measure of labor efficiency.

Total labor cost per hundredweight of milk sold increased 3.6 percent to \$3.08. This increase in cost per hundredweight was less than the increase in cost per hired hour of labor due to the improvement in labor efficiency, measured by the 2.4 percent increase in milk sold per worker. If the farms had not been able to improve labor efficiency, the increase in cost per hired hour would have resulted in a cost of \$3.21 per hundredweight, an increase of 14 cents more than what actually occurred.

Fruit Farms – Financial Data

The Lake Ontario Fruit Business Summary describes the annual financial performance of farms that were primarily apple farms (both for fresh and processing markets). Many of these farms also included other fruit enterprises such as peaches, cherries, pears, and berries. There were 12 farms in the 2019 summary and 13 in the 2020 summary. Table 6 displays descriptive statistics about the farms and expenses for 2019 and 2020. Labor was the largest expense accounting for 52% of cash operating expenses in 2020. Employee expenses increased 4.4% in 2020 over 2019 composed of a 4% increase in wages and a 6% increase in other employee expenses.

Table 6. Summary of Labor Cost, Cornell Fruit Farm Summary

Measure	2019	2020	% change
Descriptive Statistics	n=12	n=13	
Average total fruit acres	236	301	N/A
Apple yield (bu/ac)	831	826	-0.6
Hired worker equivalents ¹	19.8	20.2	2.0
Expenses			
Wages/Salary (\$/bearing acre)	2,758	2,867	4.0
Other employee expenses (\$/bearing acre) ¹	623	663	6.0
Total employee expenses (\$/bearing acre)	3,381	3,530	4.4

Source: Wiltberger, 2020 and 2021. Lake Ontario Fruit Business Summary

¹ Other employee expense included workers' compensation, unemployment, SS/Medicaid, housing, travel, insurance and other benefits.

Farm Credit Payroll Data

The data from Farm Credit East offer evidence from a different set of farms. The data are from payrolls for hired labor on the farm. Data were collected using two different methods. First, farm-level payrolls for 2018, 2019 and 2020 were randomly sampled with 20 farms chosen based on primary enterprise including dairy, fruit and vegetable. Tables 7, 8 and 9 summarize the average farm level hours and wages.

Table 7. Average Hired Labor Hours and Wages, Farm Credit East Dairy Farms*

	2018	2019	2020	% Change 2019-2020
Total Regular Hours	19,104	19,208	19,352	0.8
Total OT Hours	23	0	1,366	--
Total H-2A Hours	0	0	0	--
Total Labor Hours	19,128	19,208	20,717	7.9
FTE Employees	6.9	7.0	7.5	15.5
Total Regular Wages (\$)	228,720	239,643	252,611	5.4
Total OT Wages (\$)	373	4	25,215	--
Total H-2A Wages (\$)	0	0	0	--
Total Wages (\$)	229,093	239,647	277,826	15.9

*20 randomly drawn dairy operations from Farm Credit East payroll data.

Overtime hours on these dairy farms went from 0 in 2019 to 1,366 in 2020 when they constituted 7% of total labor hours. Total labor hours increased by about eight percent in 2020 relative to 2019 but total wages increased by 15.9% due to increased regular wages and overtime costs. On an hourly basis, the average cost increased 7.5% which is of a similar magnitude with the farm data from the Cornell DFBS and reflects increases in minimum wage and overtime costs.

Table 8. Average Hired Labor Hours and Wages, Farm Credit East Fruit Farms*

	2018	2019	2020	% Change 2019-20
Total Regular Hours	26,202	26,793	26,976	0.7
Total OT Hours	539	644	837	30.0
Total H-2A Hours	7,886	7,439	7,192	-3.3
Total Labor Hours	26,741	27,437	27,813	1.4
FTE Employees	9.7	9.9	10.1	10.2
Total Regular Wages (\$)	349,069	375,543	401,990	6.6
Total OT Wages (\$)	9,552	12,049	14,051	14.3
Total H-2A Wages (\$)	110,480	107,470	109,541	1.9
Total Wages (\$)	358,621	387,592	416,042	6.8

*20 randomly drawn fruit operations from Farm Credit East payroll data.

On fruit farms, regular hours were flat from 2019 to 2020 but overtime hours increased 30% and costs increased 14%. Total wages increased by almost 7%. Again, this was similar to the Cornell Fruit Farm Summary cost increases in 2020.

Table 9. Average Hired Labor Hours and Wages, Farm Credit East Vegetable Farms*

	2018	2019	2020	% Change 2019-2020
Total Regular Hours	33591	33140	34241	3.3
Total OT Hours	756	640	1,197	87.0
Total H-2A Hours	4,912	4,436	4,937	11.3
Total Labor Hours	34,347	33,780	35,438	4.9
FTE Employees	12	12	13	8.6
Total Regular Wages (\$)	471,780	490,453	533,419	8.1
Total OT Wages (\$)	14,783	12,898	26,217	50.8
Total H-2A Wages (\$)	67,065	67,300	74,094	9.2
Total Wages (\$)	486,563	503,351	559,636	10.1

*20 randomly drawn vegetable operations from Farm Credit East payroll data.

On vegetable farms regular hours increased 3.3% on average while overtime hours increased 87%, H-2A hours increased 11.3% and total hours increased five percent. Overtime wages increased by 51% and total wages increased on average by 10%.

Individual employee hours and wages were also available from the Farm Credit East farm payrolls. Fifty employees were randomly drawn across the three primary enterprises to examine employee-level hours and wages. Importantly, while these employees may be from the farms summarized in the previous tables, they may also be from farms that were not drawn as part of that sample. Tables 10, 11 and 12 summarize the average employee hours and wages

Table 10. Average Hours and Wages, Farm Credit East Payroll Dairy Farm Employees*

	2019	2020	% Change 2019-2020
Regular Hours	2,553	2,267	-11.2
Overtime Hours	0	170	--
Total Hours	2,553	2,437	-4.5
Regular Wages (\$)	31,880	30,811	-3.4
Overtime Wages (\$)	0	3,125	--
Total Wages (\$)	31,880	33,936	6.4
Average Wage (\$/hr)	12.69	13.90	9.5

*50 randomly drawn employees on dairy operations from Farm Credit East payroll data.

Dairy farm employees experienced a decrease on regular hours from 2019 to 2020 on average while overtime hours increased but did not result in an increase in total hours. Considering wages, regular wages decreased by more than three percent but total wages increased by six percent. Average wage rate received, not considering other benefits, increased by almost 10% from 2019 to 2020.

Table 11. Average Hours and Wages, Farm Credit East Payroll Fruit Farm Employees*

	2019	2020	% Change 2019-2020
Regular Hours	1,322	1,194	-9.7
Overtime Hours	0	11	--
Total Hours	1,322	1,205	-8.9
Regular Wages (\$)	17,813	17,206	-3.4
Overtime Wages (\$)	0	258	--
Total Wages (\$)	17,813	17,464	-2.0
Average Wage (\$/hr)	13.15	14.22	8.1

*50 randomly drawn employees on fruit operations from Farm Credit East payroll data.

Fruit farm employees sampled realized a decline in regular hours but only a very small average increase in overtime hours. Total wages declined but the average hourly wage rate increased by more than eight percent.

Table 12. Average Hours and Wages, Farm Credit East Payroll Vegetable Farm Employees*

	2019	2020	% Change 2019-2020
Regular Hours	1,116	963	-13.7
Overtime Hours	42	97	131.0
Total Hours	1,158	1,059	-8.5
Regular Wages (\$)	17,797	16,190	-9.0
Overtime Wages (\$)	1,287	3,033	135.7
Total Wages (\$)	19,084	19,223	0.7
Average Wage (\$/hr)	15.12	15.93	5.4

*50 randomly drawn employees on vegetable operations from Farm Credit East payroll data.

Similar to fruit farm employees in the Farm Credit East payroll data, employees on vegetable farms realized an average decrease in regular hours from 2019 to 2020. Overtime hours increased but total hours declined on average. Regular wages declined, while total wages were essentially flat from 2019 from 2020 as overtime wages offset the decline on average. Average wage rate increased five percent.

Dairy Farms – Survey Data

The survey instrument collected information on the farm operational and management changes. Table 13 describes the general categorical answers of the 20 dairy farms that participated in the detailed interviews. Note that multiple responses were possible with respondents able to select any or all options.

Table 13. Dairy Farm Responses to 60-Hour Overtime Threshold*

Response	Number Respondents	% Respondents
Continued employment as usual and pay overtime as required	7	35
Implemented tighter control of employee performance and hours	13	65
Hired additional employees to reduce or eliminate overtime hours	5	25
Reduced employee benefits to offset overtime cost	1	5
Reduced employee base pay to offset overtime cost	1	5
Eliminated or reduce non-essential production tasks	2	10
Outsourced existing tasks to reduce labor needs	6	30
Invested in machinery or equipment to improve labor productivity	7	35
Other	2	10

Note: "Other" included building housing for more workers and purchasing cooperative milk base.

*20 New York dairy farm operations.

The most common response was implementing tighter control of employee performance and hours with sixty percent of respondents using this as a response. This included strict scheduling, performance monitoring, reorganizing positions and roles, additional training, and limiting hours below the 60-hour threshold in some cases. A couple of farm managers mentioned that they took on additional tasks themselves as owner/managers to minimize overtime hours.

Another common response included continuing employment as usual and paying overtime which was feasible on some farms because the average hired employee work week was between 50 and 55 hours. Thus, continuing employment as usual was the response on about one-third of the farms under a 60-hour overtime threshold. More than one-third of farms also invested in machinery or equipment to either supplement or substitute for labor. Examples of this investment included equipment intended to speed up planting and harvesting, automatic feed pushers or manure scrapers, and activity monitors for cattle.

A quarter of respondents indicated that they hired additional employees to reduce or eliminate overtime hours. These employees were part-time. Many other farms indicated that they would have preferred to hire additional employees but were unsuccessful in finding candidates. Other issues related to adding employees include the potential need for housing which is a long-term investment and management time for starting, training, and monitoring new employees.

A quarter of respondents also indicated that they outsourced existing tasks to reduce labor needs. Examples included hiring custom crop planting or harvesting as well as manure hauling. Less common were farms decreasing base pay or benefits for employees although both did occur. Many farm managers mentioned the competitive nature of labor in New York today and the need to maintain workforce.

Fruit and Vegetable Farms – Survey Data

From the interviews of fruit and vegetable farms, the biggest challenge on many operations was the required day of rest which necessitated tighter controls of crews and activities. Table 14 displays the responses to the 60-hour overtime threshold in 2020. The most common response, 11 of the 20 respondents, was to tighten up management over labor use and allocation to focus on most profitable tasks and crops. Farms mentioned the use of time tracking software, alternating work crews and reexamining productivity expectations.

Thirty-five percent of respondents (7 farms) described switching to less labor intensive crops. One example was to plant soybeans which are a machine-harvested crop rather than labor intensive vegetables which had been planted previously.

Six farms (30%) hired additional employees to keep the overtime expense down by spreading the work hours each week to more employees. Both H-2A and local workers were hired. Many farms discussed the desire to hire more employees but an inability to find workers. Thirty percent also responded that they invested in machinery and equipment to improve labor productivity. These long-term investments included harvest platforms, sprayers, and auto steer technology.

One-quarter of respondents left at least some crop in the field that they would have harvested in past years. Economic theory advises this decision when the cost to harvest is greater than the expected revenue from the crop, this will happen more frequently with higher labor costs. The result is that increasing labor costs resulted in increased on-farm food waste.

One-quarter responded that they paid overtime as necessary. This is a short-term response but may not be sustainable in the longer-term as costs increase with wages. Twenty percent eliminated non-essential tasks while smaller numbers of respondents reduced wage rates or benefits to offset overtime costs or outsourced farm tasks.

Table 14. Fruit and Vegetable Farm Responses to 60-Hour Overtime Threshold*

Response	Number Respondents	% Respondents
Continued employment as usual and pay overtime as required	5	25
Implemented tighter control of employee performance and hours	11	55
Hired additional employees to reduce or eliminate overtime hours	6	30
Reduced employee benefits to offset overtime cost	1	5
Reduced employee base pay to offset overtime cost	1	5
Eliminated or reduce non-essential production tasks	4	20
Outsourced existing tasks to reduce labor needs	1	5
Invested in machinery or equipment to improve labor productivity	6	30
Switched to a less labor-intensive crop	7	35
Left at least some of a crop in field (e.g., less harvesting passes)	5	25

*20 New York fruit and vegetable operations.

Potential Impacts of Lowering Overtime Threshold

There was interest in examining the potential management and operational changes to a lower overtime threshold. Specifically, 50 and 40-hours per week. The interview included several questions about the potential response. This exercise was hypothetical but illuminating. As is expected, the simple changes were largely made in response to the initial overtime regulation. The result being that future reductions of the overtime threshold are likely to be more difficult and expensive to adapt to than was the 60-hour threshold in 2020.

Dairy Farm Responses

A comprehensive list of management, operational and investment responses were provided to the farm managers along with the opportunity to expand and explain or provide alternatives. Table 15 displays the number of responses for dairy farms to a potential 50-hour overtime threshold. Farm managers could—and did—provide multiple responses. Forty percent of respondents (8 farm managers) replied that they would need to pay overtime as required. Forty percent responded that they would continue to tighten control including cutting hours of higher paid employees, using human resource consultants, and changing work shifts.

Table 15. Responses to Potential 50-Hour Overtime Threshold, Dairy farms*

Response	Number Respondents	% Respondents
Continue employment as usual and pay overtime as required	8	40
Implement tighter control of employee performance and hours	8	40
Hire additional employees to reduce or eliminate overtime hours	7	35
Reduce employee benefits to offset overtime cost	1	5
Reduce employee base pay to offset overtime cost	3	15
Eliminate or reduce non-essential production tasks	3	15
Outsource existing tasks to reduce labor needs	2	10
Invest in machinery or equipment to improve labor productivity	7	35
Invest in/remodel current facilities	4	20
New expansion	3	15
Relocating farm business outside of New York	5	25
Delay or cancel planned capital investments	4	20
Downsize or exit farm enterprise(s)	6	30
Expand farm enterprise(s)	1	5

*20 New York dairy farm operations.

Thirty five percent of dairy farm respondents (7 farms) indicated that a 50-hour overtime threshold would necessitate investment in machinery and equipment to increase labor productivity. Specific investments mentioned included robotic milking machines and robotic feed pushers. These are major investments that would require long-term capital commitments.

Thirty-five percent of respondents indicated that they would endeavor to hire more employees to spread hours and avoid overtime. Many farms that would hire more employees were skeptical that they would be able to find employees.

Thirty percent of respondents indicated that they would downsize or exit the dairy farm industry if the overtime threshold was 50 hours. Twenty-five percent indicated they would look to relocate outside of New York. Specifically, Texas and South Dakota were mentioned as states with a growing dairy industry and less regulation. Finally, twenty percent of respondents would delay or

cancel planned investment in the dairy enterprise. Correcting for double counting, eight individual farms mentioned at least one of relocate, delay, or downsize/exit.

Table 16 displays dairy farm responses to a potential 40-hour overtime threshold. In this case, there were less respondents that indicated they would be able to continue employment and pay overtime as required (only 2 farms). The most common response was delaying or canceling investment plans (45% of respondents). Uncertainty of labor and lower or negative returns tends to limit investment. While the move to forty hours would eliminate the risk of future overtime policy changes, it would put in place another set of uncertainty around labor availability, management and cost. Other common responses, with forty percent each, included downsizing the dairy enterprise or exiting altogether. After accounting for multiple responses across farms, 13 individual farm managers mentioned at least one of relocate, delay, or downsize/exit. These farms were also likely to mention locating outside New York for at least future investment in the dairy enterprise under this labor regime outcome.

Forty percent responded that they would hire additional employees to spread hours and avoid overtime. Again, farms doubted their ability to find employees particularly in the current labor environment. Outsourcing tasks to help with labor costs were mentioned by 35 percent of respondents. Dairy farms commonly outsource heifer raising and crop enterprises as they grow. Tighter control over labor hours and investing in labor saving machinery and equipment were also common responses. There are at some point diminishing returns to the management time and expense to exercising more control over labor use and allocation.

Table 16. Responses to Potential 40-Hour Overtime Threshold, Dairy farms*

Response	Number Respondents	% Respondents
Continue employment as usual and pay overtime as required	2	10
Implement tighter control of employee performance and hours	6	30
Hire additional employees to reduce or eliminate overtime hours	8	40
Reduce employee benefits to offset overtime cost	0	0
Reduce employee base pay to offset overtime cost	2	10
Eliminate or reduce non-essential production tasks	1	5
Outsource existing tasks to reduce labor needs	7	35
Invest in machinery or equipment to improve labor productivity	6	30
Invest in/remodel current facilities	1	5
New expansion	0	0
Relocating farm business outside of New York	5	25
Delay or cancel planned capital investments	9	45
Downsize or exit farm enterprise(s)	8	40
Expand farm enterprise(s)	8	40

*20 New York dairy farm operations.

Fruit and Vegetable Farm Responses

Similar to dairy farms, New York fruit and vegetable farms were queried about their responses to lower overtime thresholds. Table 17 summarizes the responses to a potential 50-hour overtime threshold for New York fruit and vegetable farms. One-half (10 farms) responded that they would hire additional employees to reduce or eliminate overtime hours. As has been discussed above, the ability to do so is tenuous given the current labor market. Unlike dairy farms, however, fruit and vegetable farms can utilize H-2A workers. Many farms indicated that they would likely seek to hire more H-2A workers. They also were concerned that if they capped weekly hours to control overtime costs, these H-2A workers might be less willing to accept positions. This is examined in more detail using a survey of H-2A workers in the next section. Another aspect of increasing H-2A employment is the requirement that farms provide housing for these workers. Thus, increasing H-2A workers not only means a change in operational costs but also a major investment in housing.

The second most common response, from 35 percent of farms, was to continue to tighten control of employee hours. One-quarter also indicated they would invest in machinery and equipment to increase labor productivity. Twenty percent indicated that they would look to expand enterprises that used less labor per unit or were of higher value. This means in some cases farms were looking to move away from fruit and vegetables towards row crops.

Thirty percent (6 farms) would delay or cancel capital investment. One-quarter would downsize or exit the fruit and vegetable enterprises which may be related to investing in row crops as an alternative. Finally, ten percent indicated that they would look to relocate production outside of New York. After correcting for double counting across farms, 11 individual farms would consider at least one of relocate, delay, or downsize/exit.

Table 17. Responses to 50-Hour Overtime Threshold, Fruit and Vegetable farms*

Response	Number Respondents	% Respondents
Continue employment as usual and pay OT as required	5	25
Implement tighter control of employee performance and hours	7	35
Hire additional employees to reduce or eliminate overtime hours	10	50
Reduce employee benefits to offset overtime cost	2	10
Reduce employee base pay to offset overtime cost	0	0
Eliminate or reduce non-essential production tasks	3	15
Outsource existing tasks to reduce labor needs	1	5
Invest in machinery or equipment to improve labor productivity	5	25
Invest in/remodel current facilities	2	10
New expansion	1	5
Relocating farm business outside of New York	2	10
Delay or cancel planned capital investments	6	30
Downsize or exit farm enterprise(s)	5	25
Expand farm enterprise(s)	4	20

*20 New York fruit and vegetable operations.

Table 18 displays the responses to a potential 40-hour threshold from fruit and vegetable farms. The single largest response from these farm managers was to hire additional employees if feasible as discussed with regard to the 50-hour threshold above. In this case, however, fully half of farm respondents indicated that they would delay or cancel investments. While relocating and downsizing or exiting received one-quarter of the respondents. Twelve individual farms mentioned at least one of relocate, delay, or downsize/exit.

Table 18. Responses to 40-Hour Overtime Threshold, Fruit and Vegetable farms*

Response	Number Respondents	% Respondents
Continue employment as usual and pay OT as required	1	5
Implement tighter control of employee performance and hours	4	20
Hire additional employees to reduce or eliminate overtime hours	11	55
Reduce employee benefits to offset overtime cost	1	5
Reduce employee base pay to offset overtime cost	1	5
Eliminate or reduce non-essential production tasks	1	5
Outsource existing tasks to reduce labor needs	1	5
Invest in machinery or equipment to improve labor productivity	1	5
Invest in/remodel current facilities	1	5
New expansion	1	5
Relocating farm business outside of New York	5	25
Delay or cancel planned capital investments	10	50
Downsize or exit farm enterprise(s)	5	25
Expand farm enterprise(s)	0	0

*20 New York fruit and vegetable operations.

H-2A Worker Survey Results

Sixty-nine respondents from farm operations across New York completed the brief survey of H-2A workers. Of the 69, 88% had heard about the recent changes to New York laws including overtime and day of rest. The majority (55%) of these respondents had heard of the laws from their employer, 23% from news sources, 13% from a worker advocacy or service group and 30% from another source (note that they could hear from multiple sources). Seventy-four percent of respondents had received overtime pay from their employer in 2021. Only 48% of respondents had their weekly hours capped at the current time.

When asked about why they came to work at this farm, the most common reasons were wage rate and connections with co-workers or family each of which was indicated by 57% of respondents.

Thirty-five percent of respondents indicated that housing was a reason they chose that farm operation. One-third indicated the presence of good management, 28% hours available, 16% location, and 6% bonuses to explain their choice of farm employment.

If hours were capped at 50 hours per week, 56% indicated they would be less likely to continue at their current job while 39% indicated that it would not affect the likelihood they would continue and five percent more likely. Considering a potential 40 hour per week cap on hours, 72% indicated that they would be less likely to continue at their current job while 28% said it would not matter.

Finally, respondents were asked “If work hours were not capped (limited) in other U.S. states, while they were in New York, would you consider going to that state instead of New York for work?” 70% of respondents indicated that they would consider going to a state without limits on weekly hours. This result is consistent with concerns of the farm managers interviewed who worry about their continued competitive ability to attract workers while managing labor costs. Given a chance to make further comments there were many reactions. The most common set of sentiments was that, while they appreciate their current job and the farms they work with, the primary motivation for taking this job is to maximize income during their time in the U.S. and it would be necessary for many H-2A workers to look elsewhere if hours were limited because of overtime wages.

Implications for Industry Competitiveness and Communities

From both a management and policy perspective, a significant concern of labor regulations is that they increase the costs of agricultural producers relative to competitors in other locations with less costly regulations. Farmers are very much price-takers in commodity markets. That is, other than some limited ability to ask for premiums for specialty or niche products, farmers receive market prices that are set regionally or even nationally. Labor is the second largest expense on dairy farms and the largest expense on fruit and vegetable farms. Therefore, increasing these expenses will have significant impact on farm profitability.

There are several states that now have overtime laws for agriculture. These include California, Maryland, Minnesota, and Washington. None of these states neighbor New York so that, while they compete in national commodity markets, they do not necessarily compete directly in the regional fresh markets that are key to dairy, fruit and vegetable producers.

Longer-term, the cost and regulatory environment is a consideration in farm location and investment. Many farm respondents indicated that they would reconsider or halt further investments in New York agriculture and even seek to move future investments to other states if the overtime threshold were lowered. Further, many respondents indicated that they are currently pausing investments in their farm operations pending the resolution of uncertainty around the New York overtime threshold.

Community impacts are also a consideration as farm consolidation will increase in response to the new regulations. The loss of farm numbers affects employment and spending in the local

economy in rural areas. Further affecting local labor markets is the move to adopt labor-saving technology or less labor-intensive enterprises.

Finally, another competitive aspect is the ability to attract workers. As this analysis revealed, farmers with many different enterprises were seeking to hire more workers both seasonal and permanent, in an effort to avoid costly overtime hours. If New York farmers cap or limit hours to correspond with lower overtime thresholds, they are potentially reducing workers' earning capability and putting themselves at a disadvantage in attracting workers with employment options and potentially higher earning capability in other states. Seventy percent of H-2A workers surveyed indicated that a limit on their hours would prompt them to consider working outside of New York.

Conclusions

When an input to a production process, such as hired labor, becomes more expensive it creates an incentive for management changes such as substituting capital (technology) for labor where possible. The implementation of overtime laws in New York agriculture in 2020 resulted in managers tightening the allocation of labor and substituting labor-saving technology where possible. On average, total payroll costs increased 7.8% and cost per hour increased 5.7% on Cornell Dairy Farm Business Summary operations from 2019 to 2020. Similarly, fruit farm wages increased by 4% in 2020 over 2019. When considering their response to potential overtime thresholds lower than 60 hours, many farms would look to hire more employees but worry about availability and cost. A 40-hour threshold would cause many farm managers to reconsider labor-intensive crops and enterprises in favor of crops and enterprises that are easily mechanized. Further, a 40-hour threshold would prompt farmers to curtail investments in New York agriculture, and lead some to invest in other states. Finally, if managers cap hours in response to lower overtime thresholds, the ability to attract H-2A workers is a concern.

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OTHER A.E.M. EXTENSION BULLETINS

EB No	Title	Fee (if applicable)	Author(s)
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2021-03	2020 New York Berry Price Information		Yang, Z., Park, K.S., and Gómez, M.I.
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2021-01	“Six Year Trend Analysis 2019, New York State Dairy Farms, Selected Financial and Production Factors”, Dairy Farm Business Summary		Karszes, J. and Augello, L.
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