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How New York Farmers Adapted to New Farm Labor Overtime Requirements

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NY FARM WORKFORCE IN TRANSITION

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INTRODUCTION

New York state government passed the Farm Laborer Fair Labor Practices Act (FLFLPA) in 2019, which took effect on January 1, 2020. FLFLPA required overtime pay at 1.5 times the regular rate of pay for any hours worked more than 60 hours per week. It also required a weekly day of rest and mandated overtime pay for any employees who voluntarily worked on their day of rest.

These overtime rules applied to most farm employees who were not in management positions or members of the owner's immediate family. These state employment changes occurred in the context of significant, long-term changes in the farm labor market driven by a declining supply of willing and available farm labor, and overall upward pressure on farm wages.

As part of a multi-year research project, Cornell Agricultural Workforce Development is studying how farm employers are adapting to rapidly changing labor markets and regulations. The research objectives are to help farmers adapt in ways that will support farm profitability, increase employee productivity, and encourage employee retention. This report focuses on how New York farm employers adapted to the overtime requirements under FLFLPA.

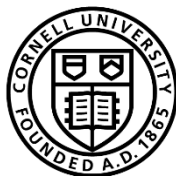
METHODS

We used a mail survey, with optional online completion, to reach a broad group of New York (NY) farm businesses. About 30 of the farms received farm visits from project researchers to complete the survey.

These farm businesses can be categorized into two broad groups:

- specialty crop farms, including fruit, vegetable, and greenhouse operations
- dairy, livestock, and field crop operations

These farm types were chosen because they represent the largest farm employers in the state by total number of employees (NASS, 2019). The vast majority of respondents in the latter group were from dairy farms, so "dairy" is used to refer to this group.



Lists of farm businesses were assembled from multiple sources: farm organization memberships, extension contacts, participating farms in the H-2A seasonal worker program, and from commercially available business lists. The lists were merged and checked for duplicates.

This survey was conducted during the COVID-19 pandemic, and multiple COVID challenges forced delays. Ultimately, the survey was distributed in the fall of 2021, during the busy harvest season for all types of New York farms. This circumstance undoubtedly depressed the survey response rate. Further, none of the farm employer lists used included an accurate way to select for larger farms that were more likely to have employees, so farms of all sizes were included in the survey. It is possible that most small farms without employees simply discarded the survey concluding it was irrelevant to them.

A total of 3,119 surveys were mailed, 110 were undeliverable, 62 responded that they had no employees, 27 indicated they were not a farm, and 21 others refused to respond to questions on this topic, leaving 2,899 farms from the initial mailing. Out of this initial group of 2,899, 162 valid survey responses were received, yielding an overall response rate of 5.6 percent.

Farmers were asked to provide information about the years 2019 and 2020 because January 1, 2020 represented the beginning of significant changes to NY farm employment regulations. This report is focused on the overtime-related questions from the survey. Response categories for these questions were based on earlier analysis by Eiholzer et al. (2019) who articulated the requirements of FFLPA and possible management strategies that farms could use to adapt.

How did farm employers adapt to overtime?

One of our survey questions asked farm employers: “How did your farm adapt to the new overtime requirement for farm laborers implemented by New York State in 2020? This is the requirement that overtime (1.5 times regular pay) must be paid for any hours worked more than 60 hours per week.” Table 1 summarizes the responses of specialty crop and dairy farms to this question, and the results are described below.

SPECIALTY CROP FARMS

By far the most frequent response from over 70 percent of specialty crop employers was that they “implemented tighter control of employee performance and hours worked.” The next most common response, at 43 percent, was from farms that continued employment as usual and just paid for any overtime hours worked. It’s important to note here that most specialty crop employers, even before the new overtime regulations, rarely had employees work more than 60 hours per week, so overtime pay was not typical under normal conditions (Wolf et al., 2021).

Other common responses indicated that farms invested in machinery or equipment to boost labor productivity (38 percent), or simply eliminated certain production tasks that were non-essential (31 percent). An “other” option was provided so that employers could write in any other strategies they used that the survey did not specifically list. Multiple specialty crop growers responded that they eliminated crops or left them in the field, and that they used “hard stops” to work to avoid paying any overtime. In other words, work stopped regardless if it was complete.

TABLE 1

Farm employer strategies to adapt to overtime

	Specialty Crop (n=65)		Dairy (n=74)	
	Count	Percent*	Count	Percent*
Implemented tighter control of employee performance and hours worked	46	71%	49	66%
Continued employment as usual and just paid for overtime hours worked as required	28	43%	25	34%
Invested in machinery or equipment to improve labor productivity	25	38%	34	46%
Eliminated or reduced non-essential production tasks	20	31%	13	18%
Hired additional employees to reduce or eliminate overtime hours worked	19	29%	19	26%
Other	13	20%	27	37%
Outsourced existing tasks to reduce labor needs	7	11%	17	23%
Reduced employee benefits to offset the cost of overtime	4	6%	6	8%
Reduced base employee pay to offset the cost of overtime	3	5%	5	7%

* Respondents could choose more than one strategy, so column adds to more than 100. Percent indicates the percent of respondents who chose that strategy.

DAIRY FARMS

Dairy crop farmers also implemented tighter management of employee performance and hours worked, with about 66 percent using that strategy, with results from 74 farms presented in Table 1. Almost half of dairy employers were able to invest in machinery or equipment to improve productivity. This is considerably more than specialty crop employers and may reflect more opportunity to use this strategy for dairy employers. Also, for both employer groups, investments in labor saving machinery and equipment may take some time to plan and implement. This survey covering the first two years of overtime may have occurred before employers could make these types of investments.

Several strategies were written in by dairy respondents with the following two appearing multiple times:

- No change was required as the farm already paid overtime or overtime was not required due to family labor
- Owners, salaried, and part-time workers picked up more work so that hourly employees could stay below the 60-hour threshold

It is important to note that a significant number of both farm employer groups (specialty crop 29 percent, dairy 26 percent) indicated that they “hired additional employees to reduce or eliminate overtime hours worked.” This is the time-honored employer strategy to minimize the cost of overtime by spreading total work hours from a smaller group of employees working many hours, to a larger group working a reduced number of hours intended to stay under the overtime threshold.

Also notable is that relatively few employers attempted to offset the cost of overtime by reducing employee pay or benefits. This strategy, of course, would likely cause serious employee dissatisfaction and possibly workforce disruption.

How did overtime affect recruiting new employees?

On our survey we asked farm employers: “How has overtime affected your ability to recruit new employees for your farm?” The response options for this question included: “made it easier, made it harder, or no noticeable difference.” Respondents were also asked to share any other comments about how overtime at the 60-hour threshold affected their ability to recruit new employees.

Among the 65 specialty crop employers, none indicated that overtime made recruiting easier, while 32 percent said it made it harder, and 68 percent said it made no noticeable difference. Among the 72 dairy employers, about three percent said overtime made recruiting easier, 26 percent said it made it harder, and 72 percent said it made no noticeable difference.

Specialty crop employers wrote a great number of comments about the effects of overtime on recruiting employees. The overwhelming message was that employees expect and demand to work more hours than the 60-hour overtime threshold enables. This theme was followed in frequency by comments about how farms lack the financial ability to pay overtime. One employer noted “We are not able to provide the extra hours for extra pay anymore. We must also be careful with hourly wages so we can afford the unavoidable overtime in the busy season.” Another wrote “We are under extreme competition for employees with industries that can afford to pay higher base wages than farmers can.”

Dairy employers also had much to write about 60-hour overtime’s effect on recruiting. Their most frequent comment was that overtime had not affected recruiting because they have little turnover and little need to recruit. This was followed by comments about how employees demand to work more hours. Others noted specifically that overtime at 60 hours has little effect on recruiting, but they expected overtime at a lower threshold to make recruiting much more difficult.

How did overtime affect retaining current employees?

Another interesting question that we included asked farm employers to indicate “How has overtime affected your ability to retain current employees on your farm?” Again, respondents could choose: “made it easier, made it harder, or no noticeable difference,” and they could write in other comments.

No specialty crop employers said that overtime at 60 hours made retention easier, 26 percent said it was harder, and 74 percent said it made no difference. Among dairy employers we saw a similar pattern: three percent said easier, 26 percent said harder, and 72 percent said it made no noticeable difference.

Specialty crop growers noted that overtime at 60 hours has little impact on retaining current employees, but they expect any lower thresholds to make it harder to retain employees. Another often repeated comment was that employees want and need more hours. One employer put it this way: “The H2A workers who work for us from May to November want and need to work as many hours as possible to care for their families back home. If we limit their hours, they will leave our farm and NY state to seek employment in a state without overtime restrictions.” Another farmer wrote: “Two employees I’ve had for 20 plus years are not returning this year because they want and need more hours. Small farms like mine don’t have the ability to increase wages as other fixed costs keep us strapped down.”

Dairy employers had similar comments to share about employees wanting more hours: “Employees just want to know how many hours they will get before coming to work for us.” Another shared this anecdote: “We attempted to slightly reduce milker’s hours in 2021 and had several employees leave. We heard feedback from potential recruits that we couldn’t offer enough hours. Current schedule for milkers is 66 hours per week. We had tried changing to average of 58 hours per week and met with resistance.”

DISCUSSION

FLFLPA initiated the 60-hour overtime threshold for most farm employees in NY. That same 60-hour threshold was maintained from 2020 until the time of this report in 2022. Farm employers were able to adapt in a variety of ways to the new 60-hour overtime requirement. By far the most common strategy to adapt, used by both specialty crop and dairy farms, was to simply adjust management practices to tighten up control of employee performance and hours worked. In this and previous research (Wolf et al., 2021), employers mentioned a variety of methods to tighten management approaches: stricter scheduling, hard stops for daily work, increased supervision, additional training, etc. Some managers also mentioned that owners and other overtime-exempt employees worked more hours to be sure that overtime-eligible employees did not exceed 60 hours per week. Despite these efforts to control labor costs, Karszes and Wolf (2021) found that labor costs per worker hour for NY farms increased by 5.7 percent from 2019 to 2020, the fastest increase they found over a seven-year period from 2014 to 2020.

Regarding the recruitment of new employees and the retention of current employees, most farm employers said that overtime at 60 hours did not make a noticeable difference. It is not surprising that most farms could adapt to 60-hour overtime without making radical changes because most farm employees already worked close to 60 hours per week. Farm employee compensation studies conducted in 2017 and 2020 (Stup, 2019; Stup, Smith, and Karszes, 2022) found that farm managers worked on average about 54 hours per week in 2017, while frontline employees worked about 56 hours per week in 2017, and 58 hours per week in 2020. A notable exception to this was some dairy farm employees who frequently worked from 60 to as much as 80 hours per week. Maloney et al. (2016) focused specifically on Hispanic dairy farm workers in NY. They found that 38 percent of this group worked 61 to 70 hours per week, 39 percent worked 71 or more hours per week, and the remainder worked less than 60 hours per week. The 60-hour overtime threshold, then, was higher than what farm employees worked on average, and not much lower than what even the group with the highest weekly hours typically worked.

The 60-hour overtime threshold had no significant impact on recruiting and retention of farm employees according to about three quarters of employers who responded to this survey. About one quarter of respondents said overtime made recruiting and retention harder. Again, this is an understandable finding given that the 60-hour threshold was close to the weekly

hours that most farm employees already worked. Employers were quite clear, however, that an overtime threshold below 60 hours would be received very differently. Assuming that employers used strategies to minimize overtime use, effectively capping employee hours at the overtime threshold, overtime thresholds lower than 60 hours would have a meaningful effect of reducing employee earning potential. Employers frequently commented that “employees want more hours.” This is in reference to employers who already had problems with recruiting and retention at the 60-hour overtime threshold, and from employers who predicted such problems at lower threshold levels.

LOOKING AHEAD

The survey research discussed here took place between August 2021 and February 2022. Since that time a few important policy changes have occurred. First, NY state created a refundable tax rebate to enable farm employers to seek reimbursement from the state for the cost of farm employee overtime premiums between the state-required overtime threshold level and 60 hours per week (Stup, April 18, 2022). Second, the NY Commissioner of Labor accepted a farm laborer wage board report recommending the reduction of the farm worker overtime threshold incrementally to 40 hours per week by 2032. This will now be required employment regulation in the state. The net effect of these policy changes is that the overtime threshold will decline, requiring more overtime payments for farm employees, but farm employers will be able to claim reimbursement from the state to offset the cost of these overtime payments (Stup, October 3, 2022).

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