



Colorado Center
on Law and Policy

November 1, 2021

Michael Primo
Director of Operations
Division of Labor Standards and Statistics
633 17th St., Suite 600
Denver, CO 80202

Re: Rulemaking pursuant to SB21-081: Agricultural Rights and Responsibilities and COMPS Order #38

Dear Mr. Primo:

The Colorado Center on Law and Policy (CCLP) is a nonprofit, nonpartisan organization that advocates to advance the needs and legal rights of Coloradans facing poverty and economic insecurity. We understand that social and economic forces—such as labor laws—are at the root of economic insecurity, which in turn negatively impacts health and further diminishes social and economic well-being. We pursue policy objectives that mitigate the effects of poverty, support the health and economic security of Coloradans struggling to make ends meet, and move our state towards greater equity. Working towards equity requires correcting the influences of racism and other forms of oppression in our institutions and systems so that all people have a fair and just opportunity to live healthy and fulfilling lives.

CCLP submits these comments to the Division of Labor Standards and Statistics of the Colorado Department of Labor and Employment (CDLE) to express our concern with CDLE's proposed overtime rule for agricultural workers, as included in the COMPS Order #38. We are concerned that the rule as proposed does not meet the mandate for CDLE as set out in SB21-087 to provide "meaningful overtime and maximum hours protections to agricultural employees". We believe that CDLE should, at a minimum, include a 12-hour daily threshold for farmworkers in the final rule. And although the rule **does** set weekly hour protections for farmworkers, we do not believe that these are meaningful protections that will result in Colorado's farmworkers working fewer hours. Overtime protections are in place to prevent over-work and guarantee workers have time outside of work to attend to personal matters or necessities, such as sleeping. Our labor laws require employers to pay their workers a higher wage rate for overtime hours to disincentivize employers from overworking their employees. As with any financial incentive, the increased cost of requiring a worker to work more than what we as a society deem acceptable or safe must be high enough so that it has a meaningful impact on employers' behavior.

For example, the wage bill for a small employer with one farmworker who worked 60 hours per week at a wage of \$13.25 per hour¹ would increase by \$1,352 (\$26 x 52 weeks) per year with a 56-hour overtime threshold. On the other hand, if farmworker received the same overtime

¹ This wage rate is based on CCLP's estimates for the average wage paid to farmworkers in 2019, as featured in the pages following this comment.

protections at 40-hours, they would be \$6,916 more expensive to employ each year. Said another way, we discourage non-farm employers in Colorado from overworking their employees by making them pay \$7,000 per year for requiring a worker to work 60 hours per week, but this proposed rule would only require farm employers to pay \$1,325 per year for requiring a worker to work 60 hours per week, one-fifth of the amount other employers would pay.

If preventing overwork is the goal of overtime protections, then we should look at what kinds of work weeks a 56-hour threshold would allow for farmworkers. Under the proposed rule, most farmworkers would still work an average of 11.2 hours per day if split across five days or an average of 9.3 hours per day if split across six days before receiving overtime pay. It is hard to see how a rule that would still allow workers to work 11.2 hours during a 5-day work week will reduce overwork among farmworkers. This is compared to an average of 8.0 hours over 5 days and 6.7 hours over 6 days for workers who are eligible for overtime after 40 hours.

We encourage CDLE to reconsider the overtime thresholds for all types of farmworkers. Ideally, this would be 40 hours a week. We hope whatever the final threshold or thresholds are, they are set low enough to encourage meaningful change by agricultural employers and not just maintain the status quo.

There will be costs to farmers, but our estimates encourage us that these costs will not destroy the agricultural industry in our state. Just 22.5 percent of Colorado farms even had hired labor in according the USDA in 2017. We estimate that these farms would see their aggregate expenses increase by less than 1 percent to accommodate the increased labor costs this rule would create for farmers. Interestingly, the impact of a 40-hour overtime threshold would still be less than 1% small in terms of aggregate costs to farmers. We do not feel that these costs, regardless of overtime thresholds, would be significant enough to have a harmful effect on the agricultural industry in Colorado. On the other hand, a lower threshold would have a much larger effect in preventing overwork among farmworkers, the goal of overtime protection, and would likely to raise the wages paid to farmworkers, which is great news for a population of workers who experience poverty at nearly twice the rate of other workers in Colorado.

I've included a more detailed analysis of our estimates in the pages following this comment. It also contains data on farmworkers and agricultural industry that we feel are relevant to CDLE's rule making. If you have any questions on this our analysis and estimates, please contact Charles Brennan, Deputy Director of Research at the Colorado Center on Law and Policy at 303-573-5669 ext. 302 or cbrennan@cclponline.org.

Respectfully Submitted,

Charles Brennan
Deputy Director of Research
Colorado Center on Law and Policy