



October 28, 2021

Scott Moss
Director, Division of Labor Standards and Statistics
Colorado Department of Labor and Employment
633 17th Street, Suite 201
Denver, CO 80202

Dear Director Moss,

I am submitting this comment on behalf of Spring Institute for Intercultural Learning in response to the Colorado Department of Labor and Employment's proposed rule, COLORADO OVERTIME AND MINIMUM PAY STANDARDS ORDER (COMPS ORDER) #38.

While Spring Institute welcomes the adoption of new overtime rules for the agricultural sector, as required by SB21-087 Concerning Agricultural Workers' Rights, we wish to express our concern that the proposed overtime thresholds are not adequate to address the unfair standards imposed on agricultural workers and do not fully meet the intention of the act in providing "meaningful overtime" protections. The passage of the Agricultural Workers' Bill of Rights was intended to redress the historically discriminatory and damaging labor policies that, for nearly a century, have denied agricultural workers the same rights and protections afforded to workers in all other sectors in the United States. These include fundamental protections for their basic safety, health, and wellbeing.

It is important to note that the passage of the bill was not intended to either negatively impact the economic viability of the many small, medium, and large businesses operating in the agricultural sector, or to protect the economic viability of those businesses. It is incumbent upon all businesses that operate in the U.S. to determine means to achieve economic sustainability without the violation of the fundamental rights of its workers. The agricultural sector should not be exempted from these obligations any more than any other sector. This includes the other sectors that ensure the critical production and distribution of our food supply: equipment manufacturers, packaging companies, delivery and distribution companies as well as other highly seasonal sectors, such as tourism or construction.

In fact, given the often harsh and unsafe working conditions endured by many agricultural workers, the provision of fair remuneration, including overtime pay that starts at the same threshold of 40 hours/week or 12 hours/day as it does for workers employed in safe and comfortable office conditions, is long overdue. And while the provision of standard overtime protections should not be contingent on the potential negative economic impact on agricultural employers, research nonetheless shows that the impact would be minimal. Recent analysis by the Colorado Center on Law and Policy (CCLP) finds that the additional costs to agricultural employers in our state for providing overtime pay with the standard thresholds provided to workers in other industries are minimal, increasing farms' aggregate 2019 operating expenses by

approximately 0.8 percent, while increasing weekly wages for the average farmworker working overtime by 16.7 percent.¹

Moreover, given the increasing difficulty employers have in recruiting workers, as well as the rising average age of agricultural workers nationwide, it is in the long-term interest of employers to maintain a healthy and dedicated workforce by providing overtime and improving overall working conditions.

The continued exclusion of agricultural workers from the same overtime wage provisions as other workers amounts to a generous subsidy of the industry by exploiting its most vulnerable members—the hired laborers, three-fourths of whom are immigrants and over half of whom are undocumented. As I stated during my testimony at the Pre-Rulemaking Public Stakeholder meeting back in August, “We can debate at what levels we as a nation continue to subsidize an industry that is so critical to our national economy, health and wellbeing, but we should not be debating whether it’s fair or just to place one of the largest subsidies solely on the shoulders of the men, women, and children who labor in our fields.”

While some will argue that the proposed overtime rules issued by CDLE are adequate or even overly generous compared to other U.S. states, I would like to remind us that U.S. labor laws in regards to agricultural workers lag far behind those of other countries and do not meet international standards. The United States has ratified only two of the eight core conventions of the International Labor Organization and is one of only 14 countries that has not ratified the Equal Remuneration Convention (1951) of the ILO (along with Myanmar, Qatar, Somalia, Oman, Bahrain and small island nations, including the Marshall Islands, Cook Islands, Palau, etc.).²

Other developed countries such as the United Kingdom and the member states of the European Union set legal limits on the number of hours that can be worked before overtime pay is required, including for migrant and temporary workers, and also provide a range of other benefits, including greater flexibility in changing employers, paid time off, and health care. In the U.K., overtime pay, which varies according to the worker’s designation but represents at least an additional 40% of regular hourly wages, must be paid after 39 hours of work in a week, after eight hours in a day, and on public or bank holidays³. In the EU, which allows member states to set working hours for agricultural workers above and beyond what is allowed under other sectors prior to overtime requirements, country specific rules must still adhere to ILO standards and EU guidelines. Agricultural workers across the EU work an average of 46 hours/week (compared to 38 hours among other workers in the EU) and report similar levels of satisfaction with work-life balance as other sectors.⁴ Migrant workers are protected under the Seasonal Workers Directive,

¹ Colorado Center on Law and Policy (2021), found at:

<https://drive.google.com/file/d/1SQ9qERlQvy12dGmhEv2ONyR5M6ufZdSm/view>

² https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871 (2021)

³ <https://www.gov.uk/agricultural-workers-rights/pay-and-overtime> (2021)

⁴ European Foundation for the Improvement of Living and Working Conditions, *Agriculture Sector: Working Conditions and Job Quality* (13 March 2014), found at:

<https://www.eurofound.europa.eu/publications/information-sheet/2014/working-conditions/agriculture-sector-working-conditions-and-job-quality>

which guarantees these workers the right to equal treatment of nationals of the host country, including rights regarding pay, working hours, leave, holidays, and social security benefits tied to healthcare and old age.⁵

Yet even in countries with better legal protections in place, agricultural workers are often exploited for many of the reasons they are here in the U.S., including barriers to access to legal representation, language barriers, insecure legal status, physical isolation, and poverty. A recent report issued by the European Parliamentary Research Service notes that, “Labour inspectors repeatedly report violations of seasonal farm workers’ rights as regards working hours, remuneration, living conditions, and health and safety standards in the workplace,”⁶ conditions which mirror the situation in Colorado and the larger U.S. As such, the enforcement of new rules governing overtime, as well as minimum wage, safety conditions, and appropriate access to basic needs and services all must be accompanied by strong enforcement mechanisms in order for them to achieve the intended impact of improving workers’ rights.

Colorado has a unique opportunity to once again lead the country by positive example in setting progressive policies that improve the lives of its residents and make it one of the most attractive states in which to live. I strongly urge CDLE to adhere to the following recommendations:

Recommendations:

- The threshold for overtime pay should commence for all employers in January 2022 after a maximum of 60 hours/week and 12-hours/day
- Standard overtime pay with thresholds of 40 hours/week and 12 hours/day should commence in January 2023 regardless of the size of employer
- Adequate resources must be dedicated by CDLE to enforce provisions of the new rules, including both timely response to complaints and physical inspections of working conditions and repeat inspections of employers found to be in violation of rules

Sincerely,



Paula Schriefer
President and CEO

⁵ European Parliament, *Migrant seasonal workers in the European agricultural sector* (2021), found at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689347/EPRS_BRI\(2021\)689347_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689347/EPRS_BRI(2021)689347_EN.pdf)

⁶ Ibid.