



WISCONSIN FERTILIZER, ALGIME AND PEST MANAGEMENT CONFERENCE

JANUARY 22, 2003

WAGE AND HOUR ISSUES FACING AGRA BUSINESS

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GENERALLY WAGE AND HOUR ISSUES ARE GOVERNED BY FEDERAL FLSA.

- ⌚ FLSA - 70 years , does not reflect modern way in which agra business is conducted.
- ⌚ FLSA - governed by U.S. Dept. of Labor.
- ⌚ Failure of employer to meet wage & hour standards can include back pay.
- ⌚ Wisconsin has own standards which mirror federal standards, but more demanding.



COVERAGE UNDER FLSA IS VERY BROAD

⌚ FLSA COVERS ALL EMPLOYEES IF:

- Business meets Enterprise Coverage test.
- Company not found to be covered by FLSA, employee may be covered if engaged in commerce on behalf of employer.

FLSA GENERAL OVERTIME REQUIREMENTS

- Employers must pay non-exempt employees at time and a half for hours worked over 40 in a workweek.
 - Workweek - 168 hours of seven consecutive 24-hour days.
 - Workweek need not coincide with calendar week.
 - Regular rate - hourly, piecemeal, salary, commission or bonus.



TREATMENT OF INCENTIVE PAYMENTS.

- ⌚ Non-discretionary bonuses and incentive payments must be included to determine regular rate.
- ⌚ Truly discretionary gift or bonus determined by employer without prior promise of agreement to make payment.


EXEMPTIONS FROM OVERTIME REQUIREMENTS ARE NARROWLY CONSTRUED.

- ⌚ Typical exemption for professional, executive, administrative employees, or outside salespersons.
- ⌚ Exemption applies to employees under Motor Carriers Act -- Three-factor test:
 - Subject to U.S. Secretary of Transportation.
 - Activities directly affect operational safety of motor vehicles.
 - Vehicles transport passengers or property on public highways.

EXEMPTIONS FROM OVERTIME REQUIREMENTS ARE NARROWLY CONSTRUED.

⌚ Certain agricultural employees exempt:

- Activities must be in "agriculture" which includes farming or performed by a farmer or on a farm.
- Includes practices performed by a farmer or on a farm.
- "Farmer" includes employees of a farmer.
- Employees whose activity consists of the application of fertilizer are NOT farmers under the FLSA.



EXEMPTIONS FROM OVERTIME REQUIREMENTS ARE NARROWLY CONSTRUED.

- If activity not performed by farmer, must be performed on a farm.
- Practices performed by a farmer must be in connection with farm.
- Farming operations does not generally apply to independent business which supports farming operations.

EXEMPTIONS FROM OVERTIME REQUIREMENTS ARE NARROWLY CONSTRUED.

- ⌚ When an employee performs work in the same workweek that is exempt under one section of the Act, but not exempt under some other section, that employee is not exempt for that week.
- ⌚ Narrow exception if employee is employed by an employer who did not use more than 500 man days of agricultural labor, or employee is parent, spouse, child or other member of immediate family.



APPLICATION OF EXEMPTIONS

- ⌚ Look at Motor Carrier Exemption carefully to meet three provisos of exemption.
- ⌚ Agricultural exemptions should be examined because certain activities of employees may not fit exemption.



PRACTICAL IMPLICATIONS ARE PAYING OVERTIME ON COMMISSIONS OR BONUS RELATED TO PRODUCTION.

- ⌚ Use all earnings attributed to workweek.
- ⌚ Consider alternatives and incentives carefully before abandoning system that seems to work.
- ⌚ Not in compliance with wage and hour laws and want to change, seek counsel first.