

## Testimony to House Agriculture, Food Resiliency & Forestry Committee re: H.403

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Thank you, Chair Durfee and committee members for taking the time to hear from me today regarding H.403, an act relating to fair labor standards and housing standards for agricultural workers. For the record, my name is Maddie Kempner and I'm the policy and organizing director at NOFA-VT.

We're grateful for the committee's attention to this legislation that takes important steps toward repairing longstanding injustices in farm labor law whose history is based in, and whose present day application too often reinforces, structural racism. As an organization working for an economically viable, ecologically sound, and socially just Vermont agricultural system, we see the wellbeing and just livelihoods of farmworkers as inextricably linked to the health and vitality of our communities, farm businesses, and the land on which we all depend.

Our policy steering committee, made up of seven Vermont farmers across a variety of farm types, scales and geography, guides our policy work as an organization. They have considered the provisions in H.403 and provided input that is directly informing my testimony today.

First, on the question of removing the exemption for minimum wage for farm employees, input from the committee signaled clear support and NOFA-VT formally supports this provision of H.403 as an organization. Normalizing agricultural wages and aligning them with modern labor expectations is a bare minimum step, and the alternative is to continue to devalue the labor of our farmers and farmworkers. Some quotes from our steering committee members on the topic of minimum wage:

*"As far as I can tell from our experience this is what farms need to offer to be competitive enough to find folks to work for them."*

*"Almost everyone I know is paying considerably higher [than minimum wage] already to compete with other jobs."*

*"Like others have said, to have the capacity to actually find people to hire, we have been paying substantially above that for a while."*

*"Even the high school kids expect at least \$15."*

Regarding eligibility for overtime pay, our committee's feelings are slightly more nuanced. In general, the farmers we spoke to want to be able to pay overtime and believe that this standard should also be updated to align with labor laws outside of farming. At the same time, there was broad acknowledgement that the realities of profitability, especially for small scale farms, make overtime pay challenging or impossible to afford for many farm business owners. As one farmer put it, "...we are often trying to fix one aspect in isolation, when really the entire food system needs to be overhauled to elevate farmers, farm workers, eaters, and the earth."

Our committee members also expressed concern about the creation of a two-tier system wherein H2A workers are treated differently, and recommended that the legislature be savvy about the H2A program in order to avoid negatively impacting seasonal workers who also deserve fair treatment, and who are critical to so many Vermont farms.

While there are concerns about farm employers' ability to pay overtime, several farmers on our steering committee expressed that 60 hours feels like too high a threshold for overtime to kick in. As one farmer put it, "...finding a number of hours that is fair to folks who are asked to work extra when things get crazy and is doable to a farmer who has a slim margin is a hard one. The fact that lots of farming involves doing all the work at certain times also makes it hard."

Part of the challenge farmers have expressed, and many are already working around voluntarily, regarding overtime pay is the dynamic that farm employers may choose to hire more employees at fewer hours each if overtime pay were required (at least at certain thresholds) as a way to keep labor costs down, thereby potentially reducing an individual employee's take-home pay.

Our committee members also looked at overtime rules for farm employees in a number of other states, and came across a couple of examples I wanted to share with you all today.

Wondering whether it made sense to advocate for seasonal exceptions to overtime pay during peak harvest season, or a higher hour threshold during peak season and a lower threshold for the rest of the year, we came across a Colorado law that puts specific overtime rules in place for "highly seasonal agricultural employers." In Colorado, as of 2024, highly seasonal agricultural employers (meaning employers with at least twice as many employees in an up to 22-week peak season compared to the rest of the year) are required to pay overtime after 56 hours worked per workweek during any up to 22-workweek period, or [multiple periods totaling up to 22 weeks], that the employer designates as its peak labor period(s), and otherwise after 48 hours worked per week." This system at least attempts to account for the seasonally higher workloads on certain farms, while ensuring workers are paid overtime if they're regularly working more than 48 hours outside of non-"highly seasonal" situations.

Another farmer was imagining a system where the cost of paying overtime during peak periods was spread out across broader society to reflect the essential nature of the work and the ways in which we currently undervalue farm labor. This led us to look at New York's Farm Employer Overtime Credit, which requires overtime pay for farm employees at thresholds starting at 56 hours (in 2024-2025), decreasing to 52 hours in 2026, and gradually phasing down to 40 hours in 2032. Eligible farmers paying overtime receive credits for that overtime that they submit for when filing tax returns, and an advance payment can be requested in some circumstances.

Both of these examples struck us as meeting particular needs or addressing particular challenges that were surfaced by the committee in our conversation, and as such we wanted to make sure you were aware of them in considering the overtime issue.

Lastly, on the question of farm workers being surveyed about the safety and adequacy of their housing during regular farm inspections, our committee expressed support. There was also a desire for some type of financial support or other incentives for farmers who need to make upgrades to employee housing, in addition to and including continued funding of the worker housing loan/grant program. Beyond the scope of this bill but worth mentioning, was also a desire for support from non-regulatory Agency of Agriculture staff who could support farms and answer questions related to things like HR, payroll, and OSHA standards, including tackling schedule F questions, and basics like earned paid time off for full time employees.

The issues raised by H.403 are ones that farmers in our membership and community are thinking about all the time, and again I appreciate your committee's attention to this bill and your time hearing my testimony today.