Report of the Agricultural Worker Labor and Employment Law Study Committee
December 2024

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I. Introduction

Historically, agricultural workers have not been granted the same employment protections and collective bargaining rights as other groups of employees. In 2024 Acts and Resolves No. 117, Sec. 3, the General Assembly created the Agricultural Worker Labor and Employment Study Committee to examine the application of Vermont's labor relations and employment laws to agricultural workers in Vermont and to identify potential legislative action to provide additional coverage to agricultural workers under those laws.

The Study Committee is composed of eight members, four current members from the House and four current members from the Senate. Two members are from the House Committee on Agriculture, Food Resiliency, and Forestry and two are from the House Committee on General and Housing. Two members are from the Senate Committee on Agriculture and two are from the Senate Committee on Economic Development, Housing and General Affairs. The Committee was provided with funding for six meetings.

In pertinent part, S.102 (2023), as introduced, proposed to permit agricultural workers to collectively bargain.[1] This would have been accomplished by repealing the exclusion for individuals employed as agricultural laborers from coverage under the State Labor Relations Act.[2] The bill passed the Senate on March 31, 2023.[3] It was taken up by the House on April 5, 2023 and referred to the Committee on General and Housing.[4] A year later, following input from the House Committee on Agriculture, Food Resiliency, and Forestry, the Committee on General and Housing recommended retaining the exclusion of agricultural workers from coverage under the State Labor Relations Act and creating an Agricultural Worker Labor and Employment Laws Study Committee.[5] The bill, as amended, passed the House on May 7, 2024.[6] The Senate concurred in the House's amendments to the bill.[7] The Governor allowed the bill to become law without his signature.[8]

II. Background

A. Vermont's Agricultural Sector

The most recent U.S. Department of Agriculture (USDA) Census of Agriculture, taken in 2022, provides a snapshot of Vermont's agricultural sector.[9] The University of Vermont's Extension Service summarized the 2022 USDA Census data as follows:[10]

- Vermont has 6,537 farms, covering 1,173,890 acres of farmland.

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[1] *See* S.102, as introduced.
[2] *See* 21 V.S.A. §§ 1501–1624.
[3] *See* Journal of the Senate, March 31, 2023.
[4] *See* Journal of the House, April 5, 2023.
[5] *See* House Calendar, May 2, 2024.
[6] *See* Journal of the House, May 7, 2024.
[7] *See* Journal of the Senate, May 9, 2024.
[8] *See* Journal of the House, May 10, 2024, with Governor's explanation for his action.
[9] *See* https://www.nass.usda.gov/AgCensus/.
[10] *See* Committee document, UVM Extension, Census Captures Changes in Vermont Agriculture.

- Vermont has 105,514 milk cows and the fluid milk produced by its 528 cow dairies accounts for 58% of all agricultural sales in Vermont.
- There were approximately the same number of farms (6,571) in 2020 as in 2002 but nearly a thousand farms have shifted from dairy to other products, making agriculture more diverse.
- There are 744 farms selling vegetables, 471 farms selling berries, 507 farms in the greenhouse and nursery business, 441 orchards, and 266 farms selling Christmas trees.
- There are 1,345 farms with laying hens, 222 farms selling broilers, and 123 selling turkeys. There are 1,526 farms with beef cows, 1,012 farms with horses, 419 farms with goats, and 300 farms with pigs.
- Vermont leads the nation in maple production. Vermont's 1,433 sugar makers produced 3.1 million gallons of syrup worth $112 million from 8.5 million taps.

Most farms in Vermont are small. "The Census requires only $1,000 in annual agricultural sales to qualify as a farm. Over half of Vermont's farms sell less than $10,000 of products a year, and only 19% of farms report sales over $100,000. The average sales per farm is $159,373, but only 43% of farms report net gains."[11] While agriculture in Vermont may be diverse, it is also consolidated, with 3% of farms accounting for two-thirds of all agricultural sales.

B. Vermont's Agricultural Workers

Data provided by the 2022 USDA Census of Agriculture also shows that out of the 6,537 farms in Vermont, less than one-third employ agricultural workers.[12] Of those farms that do employ agricultural workers:

Size of Workforce	**# of Farms**	**Total # of Workers**
1–4 workers	1,274 farms	2,600 workers
5–9 workers	369 farms	2,316 workers
10+ workers	170 farms	3,415 workers
TOTAL	1,813 farms	8,331 workers

Approximately 69% of agricultural workers work on farms with five or more employees and approximately 30% of farms with hired labor have five or more employees.

Of the 1,813 farms employing agricultural workers, 714 farms (covering 2,026 workers) employed their workers for fewer than 150 days, while 541 farms (covering 4,499 workers)

[11] *See* Committee document, UVM Extension, Census Captures Changes in Vermont Agriculture.
[12] *See* Committee document, Statistical Overview of Vermont Farm Labor.

employed workers for a mixture of both more and fewer than 150 days. The remaining 558 farms (covering 1,806 workers) employed workers for more than 150 days.[13]

According to the 2022 USDA Census of Agriculture, 852 migrant workers were employed on Vermont farms, with 10 farms using exclusively migrant labor and 187 farms using a mixture of migrant and nonmigrant labor.[14] These numbers do not reflect the number of undocumented agricultural workers in Vermont. The definition of a "migrant worker" in the Census is a "farmworker whose employment requires international or domestic travel that prevents the worker from returning to his or her permanent place of residence the same day."[15] This definition would not apply to undocumented agricultural workers who have made Vermont their home and who reside here year-round. The definition would cover H-2A workers, as well as seasonal crop pickers. This report uses the term "migrant worker" to refer to farmworkers who do not reside in Vermont on a permanent basis and the term "undocumented worker" to refer to workers who lack legal authorization to work in the United States.

Witnesses from Migrant Justice testified that Vermont's dairy farms rely heavily on undocumented workers.[16] The witnesses described challenging working conditions with many workers working long hours (12 or more hours/day), six or seven days a week, regardless of the weather, for low pay. Based on a survey conducted by Migrant Justice, the median wage for undocumented dairy workers is $11.67/hour ($2/hour less than Vermont's 2024 minimum wage), with some earning below $10/hour.[17] The survey showed that undocumented workers face accidents, injuries, and health issues on the job, as well as inadequate and unsafe employer-provided housing. Dairy farms operate 24/7 throughout the year, resulting in long shifts with limited opportunities to take time off.[18]

The Committee also received testimony from the Vermont Dairy Producers Alliance (VDPA) on a survey it conducted in which 68% of respondents reported that workers are paid at least the state minimum wage and, those who do not pay the state minimum, provide other employee benefits, such as housing, transportation, and time and a half pay for holidays, bringing the total compensation value above $23/hour.[19] The summary of the VDPA survey notes that most workers receive holiday pay, uniforms, vacations after one year, and either transportation to appointments and grocery stores or a car is provided. Other farm employers indicated that they pay their employees above minimum wage given the tightness of the current labor market.

The Committee was concerned by the apparent conflict between the wage information provided by Migrant Justice and the VDPA and believes that additional information is needed with respect to working conditions on Vermont's dairy farms. In particular, the Committee

[13] *See* Committee document, Statistical Overview of Vermont Farm Labor.
[14] *See* Committee document, Statistical Overview of Vermont Farm Labor.
[15] *See* Instruction Sheet for completing the 2022 Census of Agriculture.
[16] While the Committee asked other witnesses about the use of undocumented workers in the dairy industry, the Committee did not receive testimony from other sources that either corroborated or disputed this testimony.
[17] *See* Committee document, Labor and Housing Conditions on Vermont Dairy Farms, 2024 Survey Results, Migrant Justice. The survey was conducted on 212 Spanish-speaking immigrant dairy workers in Vermont.
[18] The Migrant Justice survey found that 95% of the surveyed workers reported working 6–7 days a week and 97% worked more than eight hours/day.
[19] *See* Committee document, VDPA Survey Results.

believes that additional information needs to be provided regarding the survey methodology and sample size relied on by each group, as well as the location of the farms covered by the reports and the size and makeup of the workforces on the included farms.

According to the 2022 USDA Census of Agriculture, 75 farms in Vermont applied to use H-2A workers and a total of 425 H-2A visa holders were employed in Vermont.[20] The federal H-2A visa program allows nonimmigrant workers to provide temporary or seasonal agricultural labor in the United States for positions where there are not enough qualified and available U.S. workers.[21] Representatives of the Vermont Agency of Agriculture, Food and Markets testified that the H-2A visa program currently serves apiaries, fruit orchards, diversified fruit and vegetable farms, maple farms, poultry farms, hop farms, and logging operations in Vermont. The H-2A visa program is heavily regulated at the federal level and requires that visa holders receive a detailed employment contract and be paid at least the Adverse Effect Wage Rate, which is set at $17.80/hour in Vermont for 2024. H-2A visa holders are guaranteed to receive a certain minimum number of work hours and receive housing and transportation at no cost to the worker.[22] The Study Committee heard testimony that dairy farms typically do not use the H-2A program because their business is not seasonal. Witnesses also testified that H-2A workers prefer to work as many hours as possible when in the United States to maximize their earnings before returning to their home countries.

III. Legislative Charge

The General Assembly established the Agricultural Worker Labor and Employment Law Study Committee to study how Vermont's employment and labor relations laws apply to Vermont's agricultural workers and to identify potential legislative action to provide additional coverage to agricultural workers under those laws. Specifically, the Study Committee was charged with studying the following issues:

A. the existing employment rights for agricultural workers under Vermont and federal law;
B. the Vermont and federal employment and collective bargaining laws that do not apply to some or all Vermont agricultural workers;
C. the laws in other states that provide employment protections or collective bargaining rights to agricultural workers that Vermont agricultural workers do not have;
D. the structure of collective bargaining rights for agricultural workers in other states that provide such rights, with particular attention given to states with agricultural economies similar to that of Vermont;
E. the structure of Vermont's existing labor relations laws;
F. the capacity of the Vermont Labor Relations Board to administer collective bargaining in Vermont's agricultural sector;
G. a possible framework for collective bargaining for Vermont's agricultural workers; and

[20] *See also* Committee document, Vermont Agency of Agriculture, H-2A Information (noting that approximately 70 Vermont agricultural business participate in the H-2A program, and approximately 600 H-2A workers petitioned to work in Vermont in 2024).
[21] *See* Committee document, Federal Fact Sheet on H-2A visa program.
[22] *See* Committee document, Vermont Agency of Agriculture, H-2A Information.

H. other potential changes to Vermont's employment laws to provide additional rights and protections to agricultural workers.

Following its examination of these issues, the General Assembly directed that the Study Committee prepare a written report for submission to the General Assembly with the Committee's findings and recommendations for legislative action. In addition to including recommendations for legislative action to amend Vermont's employment laws with respect to agricultural workers, the General Assembly directed that the Study Committee provide a proposal for permitting agricultural workers to collectively bargain, and that the proposal address the following:

A. whether to provide for collective bargaining by agricultural workers under the State Labor Relations Act or in a separate agricultural workers' labor relations act;
B. the minimum size of agricultural employer to be covered;
C. whether, and if so how, to differentiate between covered employers based on their size;
D. the minimum number of employees who may form a bargaining unit;
E. how to address seasonal, migratory, and temporary workers;
F. procedures for selecting and certifying an exclusive representative for a bargaining unit;
G. mandatory subjects for bargaining;
H. procedures for resolving bargaining impasses, including whether to permit strikes or contract imposition;
I. unfair labor practices;
J. the role, if any, of the Vermont Labor Relations Board in administering the proposed law;
K. whether to provide State resources to assist parties during the process of determining a bargaining unit, certifying an exclusive representative for a bargaining unit, negotiating a contract, and resolving a bargaining impasse; and
L. any other issues the Study Committee deems to be appropriate.

IV. Summary of Study Committee Activities

The Study Committee met four times to hear testimony from stakeholders and experts on the issues within its jurisdiction.[23] It met two additional times to discuss and finalize its report.

The Committee took testimony on and discussed the following subjects:

- employment laws and collective bargaining rights applicable to agricultural workers in Vermont under State and federal law;
- collective bargaining rights generally in Vermont and the administrative capacity of the Vermont Labor Relations Board;
- state-by-state overview of employment laws and collective bargaining rights for agricultural workers nationally;
- federal H-2A visa program use in Vermont;
- farm and labor statistics in Vermont; and
- the perspectives of agricultural workers and farm employers on potential legislative action.

[23] See Appendix 2: Witness List.

V. Agricultural Workers and Collective Bargaining Laws

A. Collective Bargaining Rights Applicable to Agricultural Workers

Agricultural workers in Vermont are currently excluded from coverage under both the federal National Labor Relations Act (1935)[24] and Vermont's State Labor Relations Act (1967).[25] Because the National Labor Relations Act has ceded jurisdiction over agricultural workers, if it so chooses, the General Assembly can extend the right to collectively bargain under the State Labor Relations Act or create a separate labor relations statute specifically for agricultural workers.[26]

Fourteen states allow agricultural workers to bargain collectively. There is significant variety in the coverage provided, such as the types and number of employees covered, the process for unit certification, the dispute resolution procedures, and the oversight entity.[27] Some states, such as Arizona, California, Kansas, Louisiana, and New York, have separate labor relations statutes for agricultural workers. Others, such as Colorado, Hawaii, Kentucky, Massachusetts, Nebraska, Oregon, Washington, and Wisconsin, provide coverage for agricultural workers (or do not explicitly exclude agricultural workers) under other broader labor relations statutes. Meanwhile, the Supreme Court of New Jersey has recognized that its state constitution gives agricultural workers the right to organize and bargain collectively.[28]

The nature and scope of the agricultural sectors in those states that do allow agricultural workers to organize and bargain collectively vary widely. This is reflected in the contrasting definitions of agriculture.[29] The statutes also vary in their definitions of a covered agricultural worker and the minimum number of workers required to form a bargaining unit.[30] Among the states that allow agricultural workers to organize and collectively bargain, the minimum number of eligible employees is two in Hawaii, four in Massachusetts, six in Arizona and Kansas, eight in Colorado, and 25 in California.[31] For comparison purposes, Vermont's State Labor Relations Act covers employers with five or more eligible employees. Arizona, California, Kansas, and Oregon also require that workers be employed for a certain period to qualify as covered employees.[32]

Of the states that permit agricultural workers to organize and bargain collectively, the procedures for selecting and certifying an exclusive representative include by secret ballot (Arizona, California, Colorado, Hawaii, Kansas, Massachusetts, Nebraska, New York, and Wisconsin), as well as by majority signup (California, Hawaii, Massachusetts, and New York).[33]

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[24] *See* 29 U.S.C. § 152(3) (excluding any individual employed as an agricultural laborer from the definition of "employee" under the Act).
[25] *See* 21 V.S.A. § 1502(6)(A) (excluding agricultural laborers from the definition of "employee" under the Act).
[26] *See* 21 V.S.A. § 1505 (explaining Act's jurisdictional reach).
[27] *See* Appendix 3, Overview of Agricultural Collective Bargaining Statutes in Other States, and Appendix 4, Matrix of State-by-State Comparison of Employment Laws Applicable to Agricultural Workers.
[28] *See Comite Organizador de Trabajadores Agricolas v. Molinelli,* 114 N.J. 87, 552 A.2d 1003 (1989).
[29] *See* Appendix 5 for examples of different definitions of agriculture and farming.
[30] *See* Appendix 6, Statutory Examples of Covered Agricultural Workers.
[31] *See* Appendix 3 and Appendix 6.
[32] *See* Appendix 3 and Appendix 6.
[33] *See* Appendix 3.

As of July 1, 2024, many of Vermont's labor relations statutes provide for secret ballot elections and majority signup, which is also known as card check.[34]

Of the five states with separate labor relations statutes for agricultural workers, three have created agricultural labor relations boards (Arizona, California, and Kansas).[35] The oversight entity in other states is the same entity that oversees labor relations between other employers and employees. The Committee received testimony about New York's Public Employment Relations Board (PERB) and Massachusetts' Department of Labor Relations, both of which oversee labor relations involving public employers and their represented employees, as well as agricultural employers and employees.

The dispute resolution procedures in states that allow agricultural workers to organize and bargain collectively vary, with many requiring mediation and arbitration before strikes may be permitted.[36] Several states have statutory language expressing concern over the risks to food security and animal welfare in the event of strikes.[37] New York and Louisiana prohibit agricultural workers from striking or other concerted stoppage or slowdown of work or for an agricultural employer to lockout employees.[38] Of the states that do permit agricultural workers to strike, some require a lengthy notice period. For example, Arizona requires a majority vote by secret ballot before calling for a strike and the continuation of the contract in full force without a strike or lockout for a period of 60 days after notice is given or expiration of the contract, whichever is later.[39] California also requires written notice of not fewer than 60 days before the existing contract expires or, if there is no contract expiration date, before seeking termination or modification of the contract, as well as notification to the state's Conciliation Service.[40]

B. Collective Bargaining Rights for Agricultural Workers in States with Agricultural Economies Similar to Vermont

In studying Vermont's agricultural sector, the Committee also considered the number of farms, farm acreage, market value of agricultural products, number of farm workers, size of farms' workforce, and use of H-2A workers in the states that allow agricultural workers to organize and collectively bargain.[41] Based on the USDA's 2022 Census of Agriculture, the states with agricultural economies closest in size to Vermont were Hawaii, Massachusetts, and New Jersey, as well as Maine. Maine was included because an Agricultural Employees Labor Relations Act passed the Maine House and Senate in June 2021.[42] The bill was vetoed by the governor in January 2022 and the veto was subsequently sustained.[43] Given the similarities in the nature and

[34] *See* Act 117 (2024), § 4 (State Employees Labor Relations Act), § 5 (Labor Relations Act for Teachers and Administrators), §§6-7 (State Labor Relations Act), and § 8 (Municipal Labor Relations Act).
[35] *See* Appendix 3.
[36] *See* Appendix 3.
[37] *See e.g.*, Az. Rev. Stat. § 23-1381 and § 1393; Haw. Rev. Stat. § 377-12; Kan. Stat. Ann. § 44-818; Neb. Rev. St. § 48-901(2); and Or. Rev. Stat. Ann. § 662.810.
[38] *See* NY Labor Law § 703 and § 704-b; La. R.S. § 23:884.
[39] *See* Arizona's Agricultural Employment Relations Act, 23 A.R.S. § 23-1385(B)(13) and (E).
[40] *See* California's Agricultural Labor Relations Act, Cal. Lab. Code § 1155.3.
[41] *See* Committee document, Statistical Overview of Vermont Farm Labor.
[42] *See* Committee document, Maine's Proposed Agricultural Employees Labor Relations Act.
[43] *See* Committee document, Governor Mills' Veto Letter, dated January 7, 2022.

size of the agricultural economies of Maine and Vermont, the Committee considered a side-by-side comparison of Vermont's State Labor Relations Act and State Employees Labor Relations Act with Maine's proposed act, focusing specifically on those elements of a potential labor relations statute that the Committee has been asked to consider in formulating a proposed framework for Vermont's agricultural employees.[44]

The Committee also received testimony from Phillip Roberts, the Director of Massachusetts' Department of Labor Relations. Mr. Roberts testified that Massachusetts' labor relations law was amended in 1970 to allow agricultural workers to unionize. However, he is not aware of any units for farm workers being certified until 2020 when the Department began receiving petitions to unionize cannabis growers' employees. A total of nine bargaining units were certified, but three have since been decertified, leaving only six units.[45] The units were certified on an individual employer basis and the size of the bargaining units ranged from smaller units with 10–20 employees to larger units with up to 50. With respect to the cannabis grower bargaining units, there have been 23 unfair labor practices charges over the past four years, all but one of which was settled pre-investigation or was withdrawn prior to a hearing. The remaining case was dismissed following an investigation. Mr. Roberts advised that public employees are prohibited from striking in Massachusetts, but private employees are allowed to do so, although there is an exception for situations where a strike would have disastrous consequences.

C. Structure of Vermont's Existing Labor Relations Laws and the Administrative Capacity of the Vermont Labor Relations Board

The Committee received an overview of Vermont's seven labor relations acts, which provide bargaining rights to most public sector workers and some private workers who are not covered by the federal National Labor Relations Act of 1935 or the federal Railway Labor Act of 1926.[46] Judith Dillon, Executive Director of the Vermont Labor Relations Board (VLRB), testified that the Board currently has 1.5 employees (herself and a part-time assistant). She advised that the Board's workload is increasing, and it would benefit from having an additional lawyer on staff, as well as making the stipend for Board members more attractive. The Board has six lay members, five of whom are retirees.

Ms. Dillon did not express an opinion on whether the VLRB or another entity should oversee an agricultural labor relations act but noted that, under the Municipal Employee Relations Act, either party may petition the Commissioner of Labor to appoint a mediator and factfinder if the parties reach impasse. When asked whether a separate agricultural labor relations board would make sense, Mr. Roberts of Massachusetts' Department of Public Relations opined that he did not think so given that the same labor relations principles apply regardless of the employer. He also noted that, given the likely small number of unionized agricultural workplaces, a separate board would be impractical.

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[44] *See* Committee document, Side-by-Side Comparison of Vermont's and Maine's labor relations acts.
[45] Massachusetts allows employers to voluntarily recognize a union and so, unless labor relations issues arise, the Department may not be aware of their existence.
[46] *See* Committee document, Overview of Vermont's Collective Bargaining Laws.

D. Proposed Amendment to Vermont's Constitution

The Committee discussed Proposal 3, a proposed amendment to the Vermont Constitution, that would add Article 23 establishing a right for employees to collectively bargain with their employer. The Committee specifically discussed its anticipated impact were it to be passed by each chamber in the upcoming biennium and approved by a majority of voters in November 2026. Proposal 3 would amend the Constitution of the State of Vermont to provide, in pertinent part, that "employees have a right to organize or join a labor organization for the purpose of collectively bargaining with their employer through an exclusive representative of their choosing for the purpose of negotiating wages, hours, and working conditions and to protect their economic welfare and safety in the workplace."[47] The proposal does not exclude agricultural workers and, if adopted, could potentially be construed by the Vermont courts to grant collective bargaining rights to agricultural workers regardless of whether the General Assembly enacts a law providing collective bargaining rights to them.

VI. Employment Laws Applicable to Agricultural Workers

A. Overview of Employment Laws Applicable to Vermont's Agricultural Workers[48]

Minimum Wage

Agricultural workers are explicitly excluded from coverage under Vermont's minimum wage and maximum hours laws.[49] This means that agricultural workers in Vermont must be paid not less than the federal minimum wage, which is currently set at $7.25/hour and has not been updated since 2009. However, the minimum wage established by the federal Fair Labor Standards Act does not apply to certain small farms (*i.e.* those using not more than 500 man-days of labor in any calendar quarter in the past year),[50] immediate family members, certain seasonal hand-harvest workers paid on a piece-rate basis, children under 16 years of age who work on the same farm as their parents and are employed as hand harvesters paid on a piece-rate basis, and employees engaged in "range production of livestock." The Fair Labor Standards Act defines agriculture to include primary farming activities.[51] Workers who are involved in manufacturing or processing agricultural products may not be considered agricultural employees under the Fair Labor Standards Act.

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[47] *See* Proposal 3 to add Article 23 to Chapter I of the Vermont Constitution, as adopted by the Senate in 2024.
[48] *See generally* Committee document, Overview of Employment Laws for Agricultural Workers. *See also* Vermont Farm Employee Fact Sheet (issued by the Vermont Agency of Agriculture, Food and Markets in 2023) and U.S. Department of Labor Guide to Federal Labor Law for Agriculture.
[49] *See* 21 V.S.A. § 383 (excluding "any individual employed in agriculture" from the definition of employee).
[50] A man-day is defined as any day in which an employee performs agricultural labor for not less than an hour. 500 man-days are approximately the equivalent of seven employees employed full-time in a calendar quarter. A farmer who hires temporary or part-time employees during the harvesting season may exceed the man-day test even though the farmer has only a couple of full-time employees. 29 C.F.R. § 780.305.
[51] *See* Appendix 5, FLSA definition of farming, 29 U.S.C. § 203.

Maximum Hours

Agricultural workers in Vermont are excluded from the federal Fair Labor Standards Act's overtime requirements, as well as those in Vermont.[52]

Child Labor Laws

Children can work on farms subject to the requirements of Vermont's child labor laws[53] and the federal Fair Labor Standards Act's provisions governing child labor in agriculture.[54]

Occupational Safety and Health

Employers have a general duty to provide a workplace free from hazards likely to cause death or serious physical harm to employees under both Vermont law and the federal Occupational Safety and Health Act (OSHA). Vermont employers, including farms, are subject to the OSHA requirements.[55] For example, under OSHA,[56] farms that employed 11 or more "hand labor" workers on any day in the past 12 months must provide field sanitation facilities.

Discrimination Protection

Vermont's Fair Employment Practices Act applies to farms and agricultural workers without exception.[57] Agricultural workers are also covered by federal discrimination laws, including the Equal Pay Act, Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.[58]

Workers' Compensation

Farms with an aggregate payroll of more than $10,000 per year must provide workers' compensation insurance for all employees under State law.[59]

Unemployment Insurance

Vermont's unemployment program is subject to federal requirements, and it applies to farms that either pay $20,000 or more to agricultural workers in any calendar quarter during the current or preceding calendar year or that employ 10 or more individuals in agricultural labor on at least one day in 20 different calendar weeks during the current or preceding calendar year.[60]

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[52] 29 U.S.C. § 213(b)(12) (exempting "any employee engaged in agriculture" from the FLSA's maximum hours requirement). The list of exemptions also includes employees engaged in the processing of maple sap and those engaged in the preparation and transportation of fruits and vegetables.
[53] 21 V.S.A. §§ 430–453.
[54] *See* Federal Fact Sheet on Youth Employment in Agricultural Occupations.
[55] 21 V.S.A. § 201(c).
[56] 29 U.S.C. §§ 651–678. *See also* 29 C.F.R. Part 1910.
[57] 21 V.S.A. §§ 495–496.
[58] Each act has its own definition of a covered employer based upon the size of its workforce.
[59] 21 V.S.A. Ch. 9, Employer's Liability and Workers' Compensation.
[60] 21 V.S.A. § 1301, Definitions.

Other Vermont Workplace Protections

Agricultural workers in Vermont are also covered by other State workplace protections, including earned sick leave,[61] parental and family leave,[62] nursing mothers in the workplace,[63] and Vermont's Residential Rental Housing and Safety Code.[64]

Other Federal Workplace Protections

The federal Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors to register with the U.S. Department of Labor and protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and record-keeping.[65] The Act excludes H-2A farm workers from coverage, and it does not provide minimum wage or maximum hour protection. As previously discussed, the federal H-2A program permits farmers to employ temporary, nonimmigrant workers if they do not displace U.S. workers.[66] The H-2A program does have minimum wage requirements, which are currently above Vermont's minimum wage, and a guaranteed minimum number of work hours.

B. Minimum Wages for Agricultural Workers in Other States[67]

Individual states can enact their own minimum wage requirements that exceed the federal $7.25/hour rate. Many of the states that have enacted higher minimum wages, like Vermont, specifically exclude agricultural workers from receiving the state minimum wage. Some states, like Massachusetts and New Jersey, have set an agricultural wage that is below the state's minimum wage for other employees but above the federal minimum wage. Others, like Maine and Pennsylvania, apply the state minimum wage to only a subset of agricultural workers. Several states, such as Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, Ohio, Oregon, South Dakota, and Washington, do not exclude agricultural workers from receiving the state minimum wage. The minimum wage in these states vary significantly with the highest rates in

[61] Vermont's Earned Sick Leave law applies to all employers and covers all employees, except those who work an average of fewer than 18 hours a week, who work in a job that is scheduled to last fewer than 20 weeks, or who are under the age of 18. 21 V.S.A. §§ 481–487.

[62] Vermont's Parental and Family Leave Act applies to employers with 10 or more individuals who are employed for an average of at least 30 hours per week during a year for the purposes of parental leave and employers with 15 or more individuals for an average of at least 30 hours per week during a year for the purposes of family leave. Covered employees are those who have been continuously employed by the same employer for a period of one year for an average of at least 30 hours per week. 21 V.S.A. §§ 470–474. The federal Family and Medical Leave Act applies to employers with 50 or more employees over 20 calendar workweeks and covers employees who have worked for the employer for at least one year and worked at least 1,250 hours in the past year. *See* 29 U.S.C. §§ 2601–2654.

[63] 21 V.S.A. § 305 (applies to all employers and requires the provision of a reasonable time and a private space in which to express breast milk for three years after the birth of a child). Federal law provides for breastfeeding accommodations in the workplace for one year after the birth of a child. 29 U.S.C. § 218d.

[64] *See* Residential Rental Housing Health and Safety Code at § 4.2 (including "housing provided as a benefit of farm employment" in the definition of "dwelling").

[65] *See* 29 U.S.C. §§ 1801–1872 and Federal Fact Sheet on the Migrant and Seasonal Agricultural Worker Protection Act.

[66] *See* Committee document, Federal Fact Sheet on H-2A visa program.

[67] *See generally* Appendix 4.

California ($16.50/hour as of January 1, 2025)[68] and Washington ($16.66 as of January 1, 2025).[69]

C. Overtime Provisions for Agricultural Workers in Other States[70]

The federal Fair Labor Standards Act does not require that employees who are employed in agriculture receive the federal overtime payment of time and one-half their regular rate of pay for hours worked above 40 hours/week. Individual states can enact their own overtime (or maximum hour) protections and choose whether to mandate overtime pay for agricultural workers. Some of the states that have chosen to do so, like California, Colorado, New York, Oregon, and Washington have taken a phased approach by, for example, starting at 60 hours/week and gradually working towards providing overtime at 40 hours/week. In addition, California has set a different schedule for smaller agricultural employers, with 25 or fewer employees, giving them more time to implement the changes. Hawaii and Minnesota provide that agricultural workers are eligible for overtime at 48 hours/week.[71]

The Committee received testimony on the challenges of providing overtime pay to agricultural workers, given the long work hours required and the financial fragility of many farming operations.[72] One witness testified that the State of New York has a farm employer overtime credit program that provides tax credits to eligible farmers for the increased cost of providing overtime to farmers. The program is intended to reduce the financial burden on farmers as New York phases in overtime for agricultural workers over an eight-year period.[73]

VII. Recommendations of the Study Committee

The Committee unanimously agreed that the General Assembly should prioritize consideration of the Committee's recommendations for legislative action related to minimum wage and overtime protections for agricultural workers over proposals to permit agricultural workers to collectively bargain. However, Senators Brock and Collamore did not agree with the majority's recommendations on minimum wage and overtime, and Representative Bartley did not agree with the recommendation on overtime, as discussed in greater detail in subsection B below.

A. Framework for Collective Bargaining for Agricultural Workers

The Committee was charged with providing a proposal for permitting agricultural workers to collectively bargain. The Committee felt it lacked sufficient data to determine the potential

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[68] *See* Update on Minimum Wage in California (noting that the minimum wage may be higher in certain municipalities).
[69] *See* Washington Minimum Wage Announcement.
[70] *See generally* Appendix 4.
[71] *See* Appendix 4. Agricultural employers in Hawaii may pick 20 weeks out of the year when overtime pay is exempt up to 48 hours. After 48 hours/week, overtime is required. During the other weeks of the year, overtime compensation must be paid for hours worked over 40 hours/week. Haw. Rev. Stat. § 387-3(e). Overtime compensation applies for employment in excess of 48 hours/week. Minn. Stat. Ann. § 177.25(1).
[72] *See generally* Committee document, Effects of NY Overtime Laws on Agricultural Production Costs and Competitiveness (2021).
[73] *See* https://www.tax.ny.gov/pit/credits/farm-employer-overtime-credit.htm.

impact that such a change to Vermont's collective bargaining laws would have upon its agricultural sector. Nevertheless, the Committee reviewed the elements of a framework for collective bargaining pursuant to its charge and provides the following recommendations in the event that the General Assembly elects to consider legislation to grant collective bargaining rights to agricultural workers.

(i) Whether to provide for collective bargaining by agricultural workers under the State Labor Relations Act or in a separate agricultural workers' labor relations act?

Recommendation: In the event that the General Assembly chooses to consider legislation to grant collective bargaining rights to agricultural workers, the Committee recommends the creation of a separate agricultural labor relations act because of the unique nature of agriculture and the agricultural labor force.

(ii) The minimum size of agricultural employer to be covered?

Recommendation: The Committee was unable to reach consensus on this issue. Some members of the Committee found the testimony advocating that the minimum employer size should be set at farms with two or more employees to be compelling. That approach would cover the largest number of workers and would not distinguish between farms based on size. Other members of the Committee expressed an interest in receiving more information as to the rationale for setting the minimum size for agricultural employers at two or more employees, particularly because employers must have five or more employees to be covered by the State Labor Relations Act and the Municipal Labor Relations Act. Other members of the Committee suggested that the committees of jurisdiction consider whether allowing for sectoral bargaining or providing State resources to offset the costs of collective bargaining could be viable options for extending coverage to Vermont's smaller farms.

In addition, given the seasonal nature of many farming operations in Vermont and the resulting fluctuations in the number of farm employees, the Committee concluded that any potential future legislation should include specific language regarding how to determine the number of farm employees, such as determining the number of employees at a specific point in time or during a certain period of time.

(iii) Whether, and if so how, to differentiate between covered employers based on their size?

Recommendation: The Committee was unable to reach consensus on this issue and recommends that, if the General Assembly considers legislation to grant collective bargaining rights to agricultural workers, the committees of jurisdiction examine this issue more closely.

(iv) The minimum number of employees who may form a bargaining unit?

Recommendation: The Committee found that this issue could come into play at larger farms where there is a possibility that more than one bargaining unit of employees might

be eligible to organize. The Committee also recognized that any decisions made by the General Assembly with respect to the size of employers covered, as well as whether and how to differentiate between smaller and larger employers, could impact the General Assembly's conclusions on this issue. For those reasons, the Committee was unable to reach consensus on this issue and acknowledged that additional investigation would be needed by the committees of jurisdiction if the General Assembly considers legislation to grant collective bargaining rights to agricultural workers.

(v) How to address seasonal, migratory, and temporary workers?

Recommendation: Because of the differences between permanent, seasonal, temporary, and migrant workers, the Committee recognized that it would be important for the General Assembly to determine which types of workers would be covered by any potential future labor relations act and which would not. One member suggested that if both full-time and part-time employees are eligible to organize, they should not be included in the same bargaining unit as their interests would differ.

The Committee also received testimony on the federal H-2A visa program for agricultural workers, which is subject to significant federal regulation. Some states that allow agricultural workers to collectively bargain specifically exclude H-2A workers from coverage, while others do not. Further investigation is recommended as to whether H-2A workers should be included in or excluded from any potential future collective bargaining law for agricultural workers.

While considering this issue, the Committee discussed the applicability of the *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board* decision of the U.S. Supreme Court in 2002.[74] In that case, the U.S. Supreme Court considered whether an undocumented worker was entitled to an award of backpay under the National Labor Relations Act after the worker was terminated by their employer in violation of the Act. The decision held that the National Labor Relations Act cannot be read to conflict with federal immigration law and therefore an undocumented worker could not receive backpay for work that they were not legally authorized to perform. The Committee heard additional testimony from the Office of Legislative Counsel, which explained that while this holding prevented workers without legal authorization to work in the United States from receiving backpay awards under the NLRA, other courts have awarded backpay to undocumented workers for violations of other employment laws such as the federal Fair Labor Standards Act. Accordingly, it was suggested that the General Assembly should consider expressly addressing whether only agricultural workers legally authorized to work in the United States would be entitled to the protections provided under any potential agricultural worker collective bargaining law.

(vi) The procedures for selecting and certifying an exclusive representative for a bargaining unit?

[74] 535 U.S. 137 (2002) (5-4 decision with Chief Justice Rehnquist writing for the majority).

Recommendation: The Committee was unable to reach consensus on this issue. Senator Brock and Senator Collamore favored selection solely by means of a secret ballot election. Senator Wrenner, Representative Bartley, Representative Chesnut-Tangerman, and Representative Surprenant favored allowing voluntary recognition of a union by the employer, secret ballot election, and majority signup. Senator Ram Hinsdale and Representative Durfee were in favor of allowing these three options but also expressed interest in receiving further information, including testimony on whether there are reasons to treat agricultural workers differently than employees covered by Vermont's existing collective bargaining statutes.

In addition, Representative Durfee noted that, given the testimony received by the Committee on an apparent gap in New York law with respect to decertifying an exclusive representative, any proposed legislation should include decertification procedures.

(vii) Mandatory subjects for bargaining?

Recommendation: The Committee recognized that wages hours, and working conditions are generally mandatory subjects for bargaining, although some of Vermont's collective bargaining laws also make certain additions to those subjects or specifically exclude certain subjects. The Committee recommends that the mandatory subjects for bargaining for agricultural workers should include wages, hours, and working conditions, at a minimum.

(viii) Procedures for resolving bargaining impasses, including whether to permit strikes or contract implementation?

Recommendation: The Committee recognized that whether to permit strikes was a focus of much of the testimony that the committees of jurisdiction received from the farming community during the 2024 legislative session, including testimony regarding the injurious impact of strikes on harvesting crops, food security, and the health and safety of livestock. There was general agreement favoring a multistep process to resolve bargaining impasses without a strike, involving some combination of mediation and a final decision by either the Vermont Labor Relations Board or an arbitrator. In addition, the Committee voted 5–2 to recommend that agricultural workers not be permitted to strike and that employers not be permitted to impose a contract. Representatives Chesnut-Tangerman and Surprenant were in favor of allowing agricultural workers to strike following a lengthy notice period, such as the 60-day period in Maine's proposed labor relations act for agricultural workers. Senator Ram Hinsdale abstained from voting on this issue and expressed concern that debate regarding this issue could distract legislative attention from the working conditions of agricultural employees.

(ix) Unfair labor practices?

Recommendation: The Committee does not have specific recommendations regarding what should constitute an unfair labor practice under a potential agricultural collective bargaining law. The Committee recommends that, in the event the General Assembly

considers such a law, the committees of jurisdiction should review the unfair labor practices set forth in Vermont's existing labor relations acts and assess their suitability for inclusion in a labor relations act for agricultural workers.

(x) The role, if any, of the Vermont Labor Relations Board in administering the proposed law?

Recommendation: The Committee agreed that the Vermont Labor Relations Board should be the oversight entity administering any potential future act, rather than setting up a separate agricultural labor board as has occurred in some other states. Senator Collamore recommended that, if the Vermont Labor Relations Board is the oversight entity, the General Assembly consider establishing an additional position for an individual familiar with agriculture to assist the Board. In addition, the Committee recognized that the Vermont Labor Relations Board needs additional resources to manage its existing workload and that adding such resource would likely be less costly than creating a new board to administer an agricultural labor relations act.

(xi) Whether to provide State resources to assist parties during the process of determining a bargaining unit, certifying an exclusive representative for a bargaining unit, negotiating a contract, and resolving a bargaining impasse?

Recommendation: The Committee recognizes that moving forward with collective bargaining for agricultural workers will result in costs that will be financially challenging for many Vermont farms, but the Committee did not have sufficient time to explore what types of resources or financial support could be provided or from where the funding for such resources would come. While the Committee heard limited testimony regarding the possibility of repurposing portions of certain State funds directed to agriculture for such a purpose,[75] if the General Assembly moves forward with legislation providing agricultural workers with the right to collectively bargain, the committees of jurisdiction are encouraged to seek additional testimony and information regarding potential options to minimize adverse impacts on Vermont farms and potential sources of funding.

B. Proposed Legislative Action on Vermont's Employment Laws Applicable to Agricultural Workers

(i) Minimum Wage

The Committee voted 6–2 to recommend that the General Assembly consider repealing the exclusion of "any individual employed in agriculture" from the protections of Vermont's minimum wage law.[76]

[75] To help farmers offset the potential increased costs associated with removing the exemptions to minimum wage and overtime, the Committee discussed potential funding sources, including money currently allocated to the Clean Water Fund once phosphorus levels in Lake Champlain are adequately reduced.
[76] *See* 21 V.S.A. §§ 381–397, Minimum Wages.

Senator Collamore opposed the recommendation, observing that it could have unintended consequences and may not solve the problem. Senator Brock also opposed the recommendation, expressing his reservations over the lack of reliable data regarding the number of agricultural employees that are being paid less than Vermont's minimum wage, the total number of undocumented workers employed in agriculture in Vermont, and the likely impact of such a change.

The Committee recognized that, unlike many other industries, workers employed in agriculture often receive housing, meals, and other employer-provided services. The Committee considered the permissible deductions from pay permitted by Vermont law, which apply to all Vermont workers covered by the minimum wage law.[77] Under Vermont law, an employer can deduct the cost of board, lodging, and other items or services supplied by the employer to the employee, "provided, however, that in no case shall the total remuneration received by an employee, including wages, gratuities, board, lodging, or other items or services supplied by the employer be less than the minimum wage[.]"[78] The Committee recommends that, should the General Assembly consider legislation to include agricultural workers under Vermont's minimum wage law, the committees of jurisdiction examine what impact this provision may have on agricultural worker wages.

(ii) Overtime/Maximum Hours

The Committee voted 5–3 to support providing overtime for agricultural workers for hours worked in excess of 60 hours/week if there were a mechanism for phasing in such a change and resources could be identified to help offset the resulting higher operating costs for agricultural employers. There was general recognition that additional work would be needed by the committees of jurisdiction to explore the feasibility of such an approach. Senator Ram Hinsdale also identified the high number of hours worked by some agricultural workers as a safety concern and suggested that Vermont consider the agricultural worker overtime model that is being phased in by New York.

Representative Bartley opposed the proposal to provide overtime to agricultural workers on the grounds that it would result in the closure of farms and would adversely impact both employers because of increased costs and employees whose hours could be reduced by employers struggling with the additional costs of overtime. Senator Collamore opposed the proposal because dairy farms lack the ability to offset increased payroll costs due to overtime because milk prices are set at the federal level. Finally, Senator Brock indicated that he was inclined to oppose the proposal because the Committee did not receive sufficient information to understand the magnitude of the issue and lacks accurate data on the likely impact of such a change. In addition, Senator Brock also expressed his fear that requiring overtime pay for agricultural workers would accelerate the loss of farms.

[77] *See* Committee document, Vermont Department of Labor's Update of Room and Board Deduction Rates for 2025.

[78] 21 V.S.A. § 385(4). In addition, no deduction may be made for the care, cleaning, or maintenance of required apparel. A deduction for required apparel can only be made with the employee's express written authorization and cannot reduce the employee's total remuneration below the minimum wage.

Report of the Agricultural Worker Labor and Employment Law Study Committee
December 2024

Representative David Durfee, Chair

Senator Irene Wrenner, Vice Chair

Representative Ashley Bartley

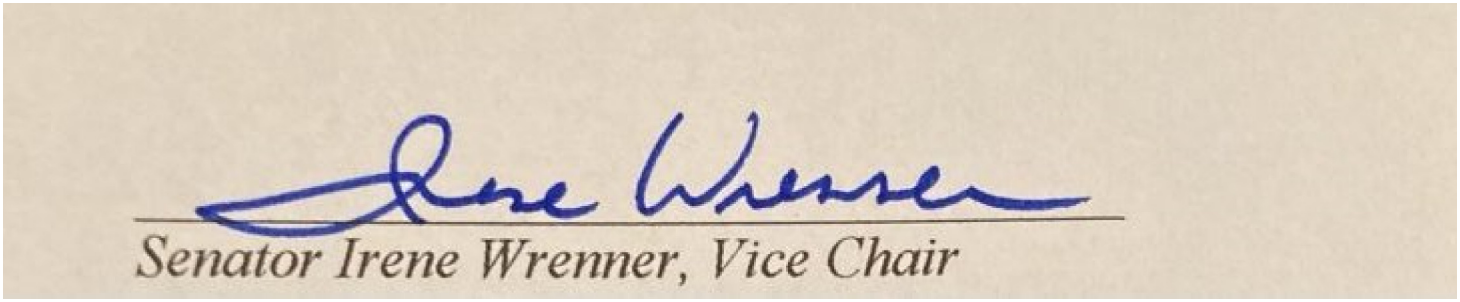
Senator Randy Brock

Representative Robin Chesnut-Tangerman

Senator Brian Collamore

Representative Heather Surprenant

Senator Kesha Ram Hinsdale


Senator Irene Wrenner, Vice Chair

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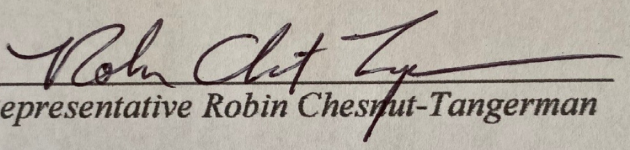
Representative Robin Chesnut-Tangerman	*Senator Brian Collamore*
Representative Heather Surprenant	*Senator Kesha Ram Hinsdale*

Representative David Durfee, Chair

Representative Ashley Bartley



Representative Robin Chesnut-Tangerman

Representative Heather Surprenant

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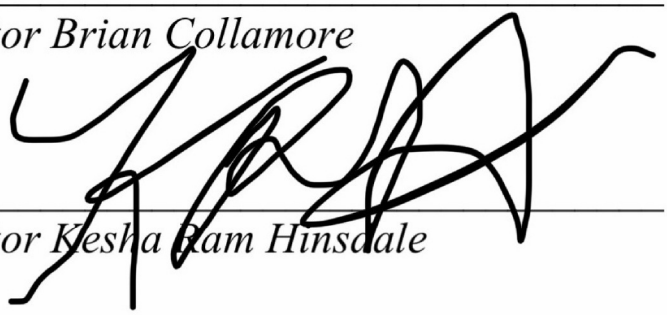

Senator Kesha Ram Hinsdale

Appendix 1: 2024 Acts and Resolves No. 117, Sec. 3

Sec. 3. AGRICULTURAL WORKER LABOR AND EMPLOYMENT LAWS; STUDY COMMITTEE; REPORT

(a) Creation. There is created the Agricultural Worker Labor and Employment Laws Study Committee to examine the application of Vermont's labor relations and employment laws to agricultural workers in Vermont and to identify potential legislative action to provide additional coverage to agricultural workers under those laws.

(b) Membership. The Committee shall be composed of the following members:

(1) four current members of the House, not all from the same political party, appointed by the Speaker of the House, of whom two shall be members of the Committee on Agriculture, Food Resiliency, and Forestry and two shall be members of the Committee on General and Housing; and

(2) four current members of the Senate, not all from the same political party, appointed by the Committee on Committees, of whom two shall be members of the Committee on Agriculture and two shall be members of the Committee on Economic Development, Housing and General Affairs.

(c) Powers and duties. The Committee shall study how Vermont's employment and labor relations laws apply to Vermont agricultural workers and identify potential legislative action to provide additional coverage to agricultural workers under those laws. In particular, the Committee shall:

(1) identify existing employment rights for agricultural workers under Vermont and federal law;

(2) identify Vermont and federal employment and collective bargaining laws that do not apply to some or all Vermont agricultural workers;

(3) identify laws in other states that provide employment or collective bargaining rights to agricultural workers that Vermont agricultural workers do not have;

(4) paying particular attention to states with agricultural economies similar to Vermont's, examine the structure of collective bargaining rights for agricultural workers in other states that provide such rights, including coverage, certification of exclusive bargaining representatives, subjects for bargaining, procedures for resolving bargaining impasse, unfair labor practices, and costs related to organizing and contract negotiation for both employers and labor organizations;

(5) examine the structure of Vermont's existing labor relations laws, including coverage, certification of exclusive bargaining representatives, subjects for bargaining, procedures for

resolving bargaining impasse, unfair labor practices, and costs related to organizing and contract negotiation for both employers and labor organizations;

(6) examine the capacity of the Vermont Labor Relations Board to administer collective bargaining in Vermont's agricultural sector;

(7) develop a framework for agricultural collective bargaining in Vermont; and

(8) identify other potential changes to Vermont's employment laws to provide additional rights and protections to agricultural workers.

(d) Assistance. The Committee shall have the administrative assistance of the Office of Legislative Operations, the fiscal assistance of the Joint Fiscal Office, and the legal assistance of the Office of Legislative Counsel.

(e) Report.

(1) On or before December 15, 2024, the Committee shall submit a written report to the General Assembly with its findings and recommendations for legislative action.

(2) The report shall include a proposal for permitting agricultural workers to collectively bargain. The proposal shall specifically address:

(A) whether to provide for collective bargaining by agricultural workers under the State Labor Relations Act or in a separate agricultural workers' labor relations act;

(B) the minimum size of agricultural employer to be covered;

(C) whether, and if so how, to differentiate between covered employers based on their size;

(D) the minimum number of employees who may form a bargaining unit;

(E) how to address seasonal, migratory, and temporary workers;

(F) procedures for selecting and certifying an exclusive representative for a bargaining unit;

(G) mandatory subjects for bargaining;

(H) procedures for resolving bargaining impasses, including whether to permit strikes or contract imposition;

(I) unfair labor practices;

(J) the role, if any, of the Vermont Labor Relations Board in administering the proposed law;

(K) whether to provide State resources to assist parties during the process of determining a bargaining unit, certifying an exclusive representative for a bargaining unit, negotiating a contract, and resolving a bargaining impasse; and

(L) any other issues the Committee deems to be appropriate.

(3) The report shall also include a recommendation for any other legislative action to amend Vermont's employment laws in relation to agricultural workers that the Committee deems to be appropriate.

(f) Meetings.

(1) The Chair of the House Committee on Agriculture, Food Resiliency, and Forestry shall call the first meeting of the Committee to occur on or before September 6, 2024.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Committee shall cease to exist on December 31, 2024.

(g) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

Appendix 2: Witness List

- Glenn Card, President and Farmer, Vermont Farm Bureau
- Brian Carpenter, Chair, Vermont Dairy Producers Alliance
- Jane Clifford, Dairy Producer, Clifford Farm LLC, Starksboro, VT
- Steve Collier, General Counsel, Agency of Agriculture, Food and Markets
- Jose Ignacio De La Cruz, Member, Migrant Justice/Justicia Migrante
- Judith Dillon, Executive Director, Vermont Labor Relations Board
- Alyson Eastman, Deputy Secretary, Agency of Agriculture, Food and Markets
- Jackie Folsom, President, Vermont Farm Bureau
- Deanna Fox, Chief Executive Officer, New York Farm Bureau
- Yesenia Hernandez, Member, Migrant Justice/Justicia Migrante
- Eli Hersh, Farmer, Honey Field Farm, Norwich, VT
- Rev. Mark Hughes, Executive Director of the VT Racial Justice Alliance & Co-Chair of the Health Equity Advisory Committee
- Maddie Kempner, Policy and Organizing Director, NOFA VT
- Will Lambek, Organizer, Migrant Justice/Justicia Migrante
- Abel Luna, Member, Migrant Justice/Justicia Migrante
- Damien Leonard, Legislative Counsel, Office of Legislative Counsel
- Richard Nelson, Co-owner, Nelson Farms, Derby, VT
- Salatiel Perez, Member, Migrant Justice/Justicia Migrante
- Phillip Roberts, Director, Massachusetts Department of Labor Relations
- Kim Skellie, Board Executive, New York Farm Bureau
- Maureen Torrey, Director, Board of National Council of Agricultural Employees
- Sophie Zdatny, Legislative Counsel, Office of Legislative Counsel

Staff for the Study Committee

- Megan Cannella, Committee Assistant
- Michael Ferrant, Director of Legislative Operations
- Damien Leonard, Legislative Counsel, Office of Legislative Counsel
- Sophie Zdatny, Legislative Counsel, Office of Legislative Counsel

Appendix 3: Overview of Agricultural Collective Bargaining Statutes in Other States

Overview of Agricultural Collective Bargaining Statutes in Other States

State	Employer Size	Types of Employees Covered	Types of Employees Not Covered	Subjects for Bargaining	Unit Determination	Union Certification	Dispute Resolution	Oversight Body
Arizona	6 or more employed for 30 days during last 6 months	Employed in growing or harvesting crops, or packaging crops in the field	Immediate Family Independent Contractors Supervisory Confidential Clerical Guard Executive, professional, or technical Quit or discharged Tenant or sharecropper Hauling and stitching	Wages Hours Conditions of employment	Temp workers Perm workers All workers	Secret ballot	Strike[1]	Agricultural Employment Relations Board
California		Employed in agriculture		Terms and conditions of employment	Possibility of geographically separate units	Secret ballot Majority support[2]	Mediation[3] Strike	Agricultural Labor Relations Board
Colorado	8 or more employees	Employed in agriculture	Independent contractor Immediate family	Terms and conditions of employment		Secret ballot	Mediation Arbitration Strike[4]	Division of Labor Standards and Statistics
Hawaii	2 or more employees	Employed in agriculture	Independent contractor Parent or Spouse Supervisor	Terms and conditions of employment		Secret ballot Majority support	Mediation Arbitration Strike[5]	Hawaii Labor Relations Board
Kansas	6 or more employees for 20 or more days in any calendar month in past 6 months	Employed in agriculture	Under 16 Independent contractor Supervisory, professional, or technical Tenant or sharecropper	Terms and conditions of employment		Secret ballot	Mediation Board hearing Strike[6]	Agricultural Labor Relations Board
Kentucky				Terms and conditions of employment			Strike	Education and Labor Cabinet
Louisiana		Employed in agriculture		Terms and conditions of employment				

[1] Employer may obtain court order stopping a strike for 10 days; if employer agrees to binding arbitration. May also obtain an injunction stopping an illegal strike or a strike that "will result in the prevention of production or the loss, spoilage, deterioration or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption" with a market value of at least $5,000.00. A.R.S. § 23-1393(b).

[2] Petition for election or majority support can only be filed if current employment by farmer is at least 50% of peak agricultural employment. Cal. Labor Code § 1156.4.

[3] Mediator may establish terms of collective bargaining agreement, subject to review by Agricultural Labor Relations Board, if the mediation fails. Cal. Labor Code §§ 1164 & 1164.3.

[4] Employees must give the Division 30 days' notice of a strike if the strike "would tend to cause the destruction or serious deterioration of" an agricultural product. Upon receiving notice, the Division Director must notify the employer and must attempt to mediate the dispute or convince the parties to submit the dispute to arbitration. C.R.S.A. § 8-3-113(3).

[5] Employees must give Board 10 days' notice of a strike if the strike "would tend to cause the destruction or serious deterioration of" an agricultural product. Upon receiving notice, the Board must notify the employer. HRS § 377-12.

[6] Strikes are prohibited during "periods of marketing of livestock or during a critical period of production or harvesting of crops." K.S.A. § 44-828(c)(6).

Overview of Agricultural Collective Bargaining Statutes in Other States

State	Employer Size	Types of Employees Covered	Types of Employees Not Covered	Subjects for Bargaining	Unit Determination	Union Certification	Dispute Resolution	Oversight Body
Massachusetts	4 or more permanent employees	Employed in agriculture		Pay, wages, hours, and conditions of employment		Secret ballot Majority authorization	Mediation Fact finding Arbitration[7] Strike	Labor Relations Commission
Nebraska				Wages, hours, and conditions of employment		Secret ballot	Mediation Fact finding Determination by Commission Strike	Commission of Industrial Relations
New Jersey		Employed in agriculture						State Board of Mediation[8]
New York		Employed in agriculture	Immediate family	Pay, wages, hours of employment, or other conditions of employment		Majority dues deduction authorization Secret ballot	Mediation Arbitration[9]	Public Employment Relations Board
Oregon		Employed in agriculture by the employer for at least six calendar days		Terms and conditions of employment			Strike[10]	
Washington		Employed in agriculture		Terms and conditions of employment			Strike	
Wisconsin		Employed in agriculture		Terms and conditions of employment		Secret ballot	Strike[11]	Employment relations commission
Maine*	5 or more agricultural employees	Employed in agriculture	Confidential employees	Wages Hours Conditions of employment		Secret ballot Majority signup	Mediation Arbitration	Maine Labor Relations Board

[7] In the event that a labor dispute threatens public health or safety, the Governor may order parties to appear before a moderator who can mediate the dispute or endeavor to convince the parties to submit the dispute to arbitration. Alternatively, the Governor may request that the parties submit their dispute to a fact-finding board. M.G.L.A. 150B § 3.

[8] Pursuant to court order.

[9] Agricultural workers are specifically prohibited from engaging in a "strike or other concerted stoppage of work or slowdown." N.Y Labor Law § 703, 704-b. New York also prohibits agricultural employers from locking out their workers. N.Y Labor Law § 704-b.

[10] It is unlawful to picket a farm, ranch, or orchard when perishable agricultural crops are being harvested unless the individual picketing was an employee of the farm immediately prior to picketing. O.R.S. § 662.815.

[11] Employees must give the Commission 10 days' notice of a strike if the strike "would tend to cause the destruction or serious deterioration of" an agricultural product. Upon receiving notice, the Commission must notify the employer and must attempt to mediate the dispute or convince the parties to submit the dispute to arbitration. W.S.A. § 111.15(3).

Agricultural Worker Labor and Employment Laws Study Committee

Highlights of States' Agricultural Worker Collective Bargaining Laws

September 20, 2024

Damien Leonard, Office of Legislative Counsel

Overview

- 14 States currently permit agricultural workers to collectively bargain
  - 13 have done so in statute
  - New Jersey has done so in its constitution
- The Maine Legislature passed a bill to permit agricultural workers to collectively bargain, but it was vetoed by the Governor in January 2022.

Employer Definition

- "Agricultural Employer" is only defined in some of the states' laws
  - Definitions frequently cross reference a federal law, including the NLRA, FLSA, and unemployment insurance law
- Several states' laws only apply to larger farms:
  - Arizona: 6 or more employees employed for 30 days during the past 6 months
  - Colorado: 8 or more employees
  - Hawaii: 2 or more employees
  - Kansas: 6 or more employees for 20 or more days in any month in past 6 months
  - Massachusetts: 4 or more permanent employees
  - Maine: 5 or more agricultural employees

Definition of Employee

- The definition of employee is generally broad with specific exceptions for certain types of employees, such as:
  - Immediate family of the farmer
  - Independent contractors
  - Supervisors
  - Confidential Employees
  - Guards
  - Tenants or sharecroppers

Factors for Determining Bargaining Units

- Most states look to common factors such as whether common interests and working conditions exist among the employees in the bargaining unit
- Arizona directs its Agricultural Employment Relations Board to consider whether a bargaining unit should consist of:
  - (1) only temporary workers;
  - (2) only permanent workers; or
  - (3) both.
- California directs its Agricultural Labor Relations Board to consider whether geographically separate worksites should have separate bargaining units

Union Certification

- 8 of 14 states permit secret ballot elections for union certification
- 4 of those 8 states also permit majority signup for union certification
- New York requires that the majority signup be in the form of a dues deduction authorization
- Maine would have permitted both secret ballot elections and majority signup
- The remaining 6 states' statutes are silent regarding union certification

Dispute Resolution

- 7 of 14 states provide for mediation to resolve bargaining disputes
- 2 of 14 states provide for fact finding to resolve bargaining disputes
- 6 of 14 states provide for arbitration or a determination by an oversight body to resolve bargaining disuputes
- 11 of 14 states appear to permit some form of strike
  - The right to strike is often limited

Limitations on Right to Strike

- Arizona: Permits court to stop a strike for 10 days if employer agrees to arbitration. Court may enjoin strike if it would result in loss of products valued at $5,000.00 or more.
- Colorado requires 30 days' notice to oversight body of any strike that may harm agricultural products, which will notify employer and attempt to mediate/convince parties to arbitrate.
- Hawaii requires 10 days notice to oversight body, which will notify employer
- Kansas prohibits strikes "periods of marketing of livestock or during a critical period of production or harvesting of crops."

Limitations on Right to Strike

- New York prohibits strikes, work stoppages, and work slowdowns.
- Oregon: Prohibits picketing at a farm, ranch, or orchard during harvest, except by employees of the farm, ranch, or orchard.
- Wisconsin requires 10 days' notice to oversight body of any strike that may harm agricultural products, which will notify employer and attempt to mediate/convince parties to arbitrate.

Oversight Body

- 3 of 14 states created an entity for the purpose of overseeing agricultural collective bargaining
- 7 of 14 states delegated oversight of agricultural collective bargaining to an existing labor relations oversight entity or another state agency
- 3 of 14 states have no apparent oversight body
- New Jersey's courts have charged the New Jersey State Board of Mediation with certain oversight responsibilities
- Maine would have delegated oversight to its existing Labor Relations Board

Appendix 4: Matrix of State-by-State Comparison of Employment Laws Applicable to Agricultural Workers

Matrix of state-by-state comparison of employment laws applicable to agricultural workers[1]

State	Unions Permitted	State Min Wage	State Overtime	Workers Comp.	Field Sanitation	Pesticide Safety	Recreational Cannabis
Alabama	NO	NO	NO	Voluntary by employer	NO	YES	NO
Alaska	NO	Excluded	Excluded	Limited coverage	NO	YES	YES – 2014
Arizona	YES[2]	YES w/ exclusion for minors	NO	YES – same as other workers	YES	YES	YES – 2020
Arkansas	NO	Excluded	Excluded	Voluntary by employer	NO	YES	NO
California	YES[3]	YES	YES – phased approach[4]	YES – same as other workers	YES	YES	YES - 2016
Colorado	YES[5]	YES	YES – phased approach[6]	YES – same as other workers	YES	YES	YES - 2012
Connecticut	NO	YES w/ some exclusions	Excluded	YES – same as other workers	YES	YES	YES - 2021
Delaware	NO	Excluded	NO	Voluntary by employer	YES	YES	YES – 2023
Florida	NO	Excluded	NO	YES w/exceptions for small employers	YES	YES	NO
Georgia	NO	Governed by FLSA	NO	Voluntary by employer	NO	YES	NO

[1] Data for this matrix is drawn from the Farmworker Justice website at https://www.farmworkerjustice.org/general-map/, which resource was provided to the Committee by Will Lambek of Migrant Justice. Much of the information available from the website has been supplemented and updated. Information about states that allow for retail sales/non-medical adult use of cannabis provided by NCLS at https://www.ncsl.org/health/state-medical-cannabis-laws.

[2] **Arizona – Agricultural Employment Relations Act**, 23 A.R.S. §§ 1381–1395.

[3] **California – Agricultural Labor Relations Act** (CALRA), Cal. Lab. Code §§ 1140–1167.

[4] California – Phase-in Overtime for Agricultural Workers Act of 2016, Cal. Lab. Code §§ 857–864 (based on employer size & hours worked).

[5] Colorado – Agricultural workers covered by general labor relations statute and Colorado's Labor Peace Act. *See* Colo. Rev. Stat. § 8-2-206; §§ 8-3-101–8-3-123. See Colo. Rev. Stat. § 8-70-109 for definition of agricultural labor and farm.

[6] Colorado – Director of Department of Labor and Employment shall promulgate rules providing meaningful overtime and maximum hours protections to agricultural employees. *See* Colo. Rev. Stat. § 8-6-120.

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State	Unions Permitted	State Min Wage	State Overtime	Workers Comp.	Field Sanitation	Pesticide Safety	Recreational Cannabis
Hawaii	YES[7]	Yes w/some exclusions[8]	YES, at 48+ hours/week[9]	YES – same as other workers	NO	YES	NO
Idaho	NO	Yes w/some exceptions	NO	YES – same as other workers	YES	YES	NO
Illinois	NO	Yes w/some exceptions	Excluded	YES w/some exceptions	Yes	YES	YES – 2020
Indiana	NO	Excluded	Excluded	Voluntary by employer	NO	YES	NO
Iowa	NO	Governed by FLSA	NO	YES w/some exceptions	NO	YES	NO
Kansas	YES[10]	Excluded	Excluded	Voluntary by employer	NO	YES	NO
Kentucky	YES[11]	Excluded	Excluded	Voluntary by employer	NO	YES	NO
Louisiana	YES[12]	NO	NO	YES w/exceptions for small employers	NO	YES	NO
Maine	NO	Excluded[13]	Excluded	YES w/ some exceptions	YES	YES	YES – 2016
Maryland	NO	YES w/some exceptions[14]	YES (at 60+ hours/week)[15]	YES w/exceptions for small employers	YES	YES	YES - 2022

[7] Hawaii – Agricultural workers are covered by Hawaii's Employment Relations Act, Haw. Rev. Stat. §§ 377-1–377-18.
[8] Hawaii - Agricultural workers who work in coffee harvesting or for an employer with 20 employees or less are exempt, along with employees guaranteed a monthly compensation of $2,000 or more. Haw. Rev. Stat. § 387-1.
[9] Hawaii - An agricultural employer may pick 20 weeks out of the year when overtime pay is exempt up to 48 hours. After 48 hours/week, overtime is required. During the other weeks of the year, overtime compensation must be paid for hours worked over 40 hours/week. Haw. Rev. Stat. § 387-3(e).
[10] **Kansas – Agricultural Labor Relations**, Kan. Stat. Ann. §§ 44-818 to 44-830. Focus is on meeting and conferring and statute bars lockouts, pickets, and strikes during certain periods.
[11] Kentucky – Ky. Rev. Stat. Ann. §§ 336.130 (right of workers to organize includes "any person employed by or suffered or permitted to work for a public or private employer").
[12] **Louisiana – Agricultural Laborers' Right to Work Law,** La. R.S. §§ 23:881–23:889 (1956).
[13] Maine – agricultural workers are generally excluded from state definition of employee unless performing services on farm with over 300,000 laying birds.
[14] Maryland – Md. Labor & Employment Code Ann. § 3-401 (listing numerous exceptions for workers in agricultural activities).
[15] Maryland – Md. Labor & Employment Code Ann. § 3-420(c) (overtime pay kicks in at 60 hours/week for employees who are engaged in agriculture and are exempt from the FLSA's overtime provisions).

State	Unions Permitted	State Min Wage	State Overtime	Workers Comp.	Field Sanitation	Pesticide Safety	Recreational Cannabis
Massachusetts	YES[16]	YES – special rate[17]	Excluded	YES – same as other workers	YES	YES	YES - 2016
Michigan	NO	YES w/some exceptions	Excluded	YES w/exceptions for small employers	YES	YES	YES – 2018
Minnesota	NO	YES w/some exceptions	YES w/some exceptions	YES w/some exceptions[18]	need a safety committee for 25+ e'ees	YES	YES - 2023
Mississippi	NO	NO	NO	Voluntary by employer	NO	YES	NO
Missouri	NO	YES w/some exceptions	Excluded	Voluntary by employer	NO	YES	YES – 2022
Montana	NO	YES w/some exceptions	Excluded	YES	NO	YES	YES - 2020
Nebraska	YES[19]	Excluded	NO	YES w/some exceptions	NO	NO	NO
Nevada	NO	YES w/some exceptions	Excluded	Voluntary by employer	YES	YES	YES - 2016
New Hampshire	NO	Excluded	Excluded	YES	NO	YES	NO
New Jersey	YES[20]	YES – special rate[21]	Excluded	YES – same as other workers	YES	YES	YES – 2021

[16] Massachusetts – Agricultural workers are covered by Massachusetts's Labor Relations statute, Mass. Gen. Stat. Ann. ch. 150A §5A (statute applies to agricultural workers where there is a permanent hired work force of more than four non-familial workers; covers horticulture, floriculture and any other commercial enterprise involving the production of food or fiber).

[17] Massachusetts – Mass. Gen. Stat. Ann. ch. 151 §2A ("A wage of less than $8.00 per hour in agriculture and farming shall be conclusively presumed to be oppressive and unreasonable," unless paid to a child of 17 years or younger, or an immediate family member).

[18] Minnesota – Minn. Stat. Ann. § 177.25. Overtime compensation required for hours worked over 48 in a workweek.

[19] Nebraska – Neb. Rev. St. §§ 48-901 to 48-912 (1959). Statute creates right of workers to unionize but notes that "[i]t is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration." Neb. Rev. St. § 48-901(2).

[20] New Jersey – There is judicial interpretation of a provision in the state constitution that grants farmworkers the right to join and organize labor unions free from retaliation, and to engage in collective bargaining with their employers. "Persons in private employment shall have the right to organize and bargain collectively." N.J. Const., Art. I, Para. 19. In 1986 and 1989, the NJ Appellate Court held this constitutional provision does apply to agricultural workers.

[21] New Jersey – NJ Stat 34:11-56a4(d) ($13.40/hour as of 1/1/25 with future increases of $0.80/year). Commissioner of Labor and Secretary of Agriculture to consider impact on farm employers and the viability of the State's agricultural industry of the increases of the minimum wage, including comparisons with the wage rates in the agricultural industries in other states.

State	Unions Permitted	State Min Wage	State Overtime	Workers Comp.	Field Sanitation	Pesticide Safety	Recreational Cannabis
New Mexico	NO[22]	YES, but many exceptions	Excluded	YES – same as other employees	YES	YES	YES – 2021
New York	YES[23]	YES[24]	YES[25]	YES	YES	YES	YES – 2021
North Carolina	NO[26]	Excluded	Excluded	YES w/some exceptions	YES	YES	NO
North Dakota	NO	YES – FLSA rate	Excluded	Voluntary by employer	NO	YES	NO
Ohio	NO[27]	YES, unless exempt by FLSA	Excluded	YES	NO	YES	YES - 2023
Oklahoma	NO	Excluded	NO	YES w/some exceptions	NO	NO	NO
Oregon	YES[28]	YES w/some exceptions	YES – being phased in[29]	YES – same as other employees	YES	YES	YES – 2014
Pennsylvania	NO[30]	Yes, for seasonal farm workers[31]	Excluded[32]	YES w/some exceptions	YES, for seasonal farm workers	YES	NO
Rhode Island	NO	Excluded	Excluded	YES w/some exceptions	NO	NO	YES – 2022

[22] New Mexico – state law prohibits retaliation against any person for assisting another person to assert a wage right or informing another person about their rights. N.M. Stat. Ann. § 50-4-26.1. State law also prohibits interfering in the rights of employees to bargain collectively. *Id.* at § 50-4-28.

[23] **New York** – Judicial interpretation that there is a constitutional right for farmworkers to organize, plus N.Y. Lab Law § 701(2)(b) grants farmworkers the right to join and organize labor unions free from retaliation. Section 702-b provides impasse resolution procedures specific to agricultural workers. NY passed the **Farm Laborers Fair Practices Act** in (2019), updating different sections of NY's existing laws, including providing farm laborers with 24 consecutive hours of rest every week, overtime pay at time and half for hours worked over 60 hours/week, and identifying strikes and lockouts as an unfair labor practice. NY Legis 105 (2019), 2019 Sess. Law News of N.Y. Ch. 105 (A. 8419).

[24] New York – N.Y. Lab. Law §§ 670-683, Minimum Wage Standards and Protective Labor Practices for Farmworkers.

[25] New York – N.Y. Lab. Law § 163-a, Hours of Labor, Farm Laborers.

[26] North Carolina – Farm Act of 2017 bars farmworkers from entering into agreements with employers for dues payments or from signing any agreement with a union relating to a lawsuit, such as a settlement in which an employer agrees to recognize a union, or a collective bargaining agreement that includes a promise not to sue. N.C. Gen. Stat. § 95-79(b). Constitutionality of Act has been upheld by federal appellate court. *See Farm Labor Organizing Committee v. Stein,* 56 F.4th 339 (4th Cir. 2022).

[27] Ohio – statute provides that contract provisions whereby a person agrees not to join, become, or remain a member of a labor organization is contrary to public policy. Ohio Rev. Code Ann. § 4115.02

[28] Oregon – Or. St. § 662.810 provides the right for agricultural workers to organize & bargain collectively. Or. St. § 662.820 limits picketing and strikes involving perishable agricultural crops.

[29] Oregon – Or. St. § 653.272 phases in when overtime is triggered from 55 hours/week in 2023 through to 40 hours in 2027.

[30] Pennsylvania – exception for mushroom workers (and likely indoor greenhouse operations) from exclusion from right to organize, per case law.

[31] Pennsylvania – persons (other than seasonal workers) who are engaged in "labor on a farm" are excluded from the state minimum wage.

[32] Pennsylvania - Seasonal Farm Labor Act, 43 Pa. St. §§ 1301.101–606, provides that, although seasonal farm workers are not entitled to be paid overtime, employers are prohibited from requiring them to work more than 6 days in a week, more than 48 hours/week or more than 10 hours/day. 43 Pa. St. § 1301.207.

State	Unions Permitted	State Min Wage	State Overtime	Workers Comp.	Field Sanitation	Pesticide Safety	Recreational Cannabis
South Carolina	NO	NO	NO	Voluntary by employer	NO	NO	NO
South Dakota	NO	YES	NO	Generally, NO but some exceptions	NO	YES	NO
Tennessee	NO	NO	NO	Voluntary by employer	YES	YES	NO
Texas	NO	YES w/some exceptions[33]	NO	Voluntary by employer	YES	YES	NO
Utah	NO	YES – FLSA rate	Excluded	YES w/some exceptions	YES	YES	NO
Vermont	NO[34]	Excluded	Excluded	YES w/some exceptions[35]	YES (OSHA standard)	YES	YES - 2018
Virginia	NO	Excluded	NO	YES w/some exceptions	YES	YES	YES - 2021
Washington	YES[36]	YES w/some exceptions[37]	YES – phased in approach[38]	YES – same as other workers	YES	YES	YES – 2012
West Virginia	NO	Excluded	Excluded	YES w/some exceptions	NO	YES	NO
Wisconsin	YES[39]	YES – FLSA rate	Excluded	YES w/some exceptions	YES	YES	NO
Wyoming	NO	Excluded	NO	Voluntary by employer	[Missing]	YES	NO

[33] Texas – Tex. Lab. Code § 62.160 (agricultural exemption from state's minimum wage statute for dairy and livestock workers).
[34] Vermont – Agricultural laborers specifically excluded from Vermont State Labor Relations Act, 21 V.S.A. § 1502(6)(A).
[35] Vermont – 21 V.S.A. § 616 (some exceptions to WC law); § 601(14)(C) (employers w/ aggregate payroll of less than $10,000 are exempt but can opt to be subject to WC law); § 706 (agricultural employers are exempt from certain WC reporting requirements).
[36] Washington – Wa. Stat. § 49.32.020, as interpreted by case law, grants agricultural workers the right to engage in concerted activity and organize labor unions free from retaliation. *See Bravo v Dolsen Co.*, 125 Wash.2d 745, 888P.2d 147 (1995).
[37] Washington – Wa. Stat. §49.46.010(3)(a) (excluding from coverage any individual employed as a hand harvest laborer and paid on a piece rate basis, who commutes daily from his or her permanent residence to the farm on which he or she is employed, and who has been employed in agriculture less than thirteen weeks during the preceding calendar year.
[38] Washington – Wa. Stat. § 49.46.130(6) provides that agricultural workers receive overtime pay if work more than 55 hours/week (2022), 48 hours/week (2023), and 40 hours/week (2024). However, House Bill 1523, introduced in 2023, sought to address the harvesting needs of perishable crops and proposed allowing an agricultural employer to select any 12 weeks in a calendar year as "special circumstance weeks" for labor demand. During such weeks, overtime would kick in at 50 hours/week. *See* https://app.leg.wa.gov/billsummary?BillNumber=1523&Year=2023&Initiative=false.
[39] Wisconsin – The Wisconsin Employment Peace Act grants some agricultural workers the right to organize and bargain with agricultural workers. Wis. Stat. Ann. §§ 111.02 to 111.19. Wisconsin is a right to work state so union membership and dues may not be compulsory. There are specific regulations governing the right of dairy and farm workers to strike. Wis. Stat. Ann. § 111.115(3).

Appendix 5: Examples of Statutory Definitions of "Agriculture" and "Farming"

VERMONT

State Land Use and Development Plans, 10 V.S.A. § 6001:

(22) "Farming" means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding, or management of livestock, poultry, fish, or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or

(F) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or

(G) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines; or

(H) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:

(i) the compost is principally used on the farm where it is produced; or

(ii) the compost is produced on a small farm that raises or manages poultry.

Cannabis Establishments, environmental and land use standards, 7 V.S.A. § 869:

(a) A cannabis establishment shall not be regulated as "farming" under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product, farm crop, or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. § 9741, or other relevant State law.

FEDERAL

Fair Labor Standards Act, Definitions, 29 U.S.C. § 203:

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

Federal Insurance Contributions Act (FICA), Definitions, 26 U.S.C. § 3121:

(g) Agricultural labor.

For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

ARIZONA

Agricultural Employment Relations, Definitions, Az. Rev. Stat. § 23-1382:

3. "Agriculture" means all services performed on a farm as defined in § 23-603, including but not limited to the recruiting, housing and feeding of persons employed or to be employed as agricultural employees by agricultural employers.

Employment Security, Agricultural Labor; Definitions, Az. Rev. Stat. § 23-603:

B. For the purposes of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms and plantations, ranches, nurseries, ranges, greenhouses or other similar structures that are used primarily for raising agricultural or horticultural commodities, including orchards.

CALIFORNIA

Agricultural Labor Relations, Definitions, Cal. Lab. Code § 1140.4:

(a) The term "agriculture" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

COLORADO

Labor Conditions for Agricultural Workers, Col. Rev. Stat. § 8-13.5-201:

(2) "Agricultural employment" means employment in any service or activity included in section 203 (f) of the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, or section 3121 (g) of the federal "Internal Revenue Code of 1986", as amended.

Employment Security, Agricultural Labor, Col. Rev. Stat. § 8-7-109:

(1) "Agricultural labor" means any remunerated service performed:

(a) On a farm in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by an act of nature, if the major part of the service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the "Agricultural Marketing Act", as amended (46 Stat. 1550, sec. 3; 12 U.S.C. section 1141J), or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for

transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (d) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in paragraph (d) of this subsection (1), but only if such operators produced more than one-half of the commodity with respect to which the service is performed; except that the provisions of this paragraph (e) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(f) On a farm operated for profit if the service is not in the course of the employer's trade.

(2) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

NEW YORK

New York State Labor Relations Act, NY Labor § 701(2)(b):

The term "agricultural employer" shall mean any employer engaged in cultivating the soil or in raising or harvesting any agricultural or horticultural commodity including custom harvesting operators, and employers engaged in the business of crops, livestock and livestock products as defined in section three hundred one of the agriculture and markets law, or other similar agricultural enterprises.

OREGON

Minimum Wage, Employment Conditions, Definitions, O.R.S. §653.271:

(2) "Agriculture" includes:

(a) Farming in all its branches, including the cultivation and tillage of the soil;

(b) Dairying;

(c) The production, cultivation, growing and harvesting of any agricultural or horticultural commodities;

(d) The raising of livestock, bees, fur-bearing animals or poultry; and

(e) Any other practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market, or delivery to carriers for transportation to market.

WASHINGTON

Unemployment Compensation, Employment—Agricultural Labor, Wash. Rev. Code § 50.04.150:

Agricultural labor is defined as services performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Appendix 6: Examples of Types of Agricultural Workers and the Minimum Number of Workers Required for Coverage by a Collective Bargaining Statute in Other States

ARIZONA

Agricultural Employment Relations, Definitions, Az. Rev. Stat. § 23-1382 (emphasis added):

1. "Agricultural employee, permanent" means any employee who is over sixteen years of age, who has been employed by a particular agricultural employer for at least six months during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. "Agricultural employee, temporary" means any employee who is over sixteen years of age, who is employed by a particular agricultural employer, who has been so employed during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the employee, the bookkeeping and the issuance of payroll checks are by a person other than the employer. In calculating a workday of an agricultural employee, one hour or more of employment in any one day shall be considered a workday. "Agricultural employee" also includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. "Agricultural employee" does not include any individual who:

(a) Is employed by his parent or spouse or by an immediate relative.

(b) Has the status of an independent contractor.

(c) Is employed as a supervisor or in a confidential capacity or as a clerical employee or a guard.

(d) Is employed as an executive, professional or technical employee.

(e) Has quit or has been discharged for cause.

(f) Is a tenant or sharecropper and reasonably directs or shares in the management of an enterprise engaged in agriculture.

(g) Is engaged in hauling or stitching functions.

2. "Agricultural employer" means any employer who is engaged in agriculture and who employed **six or more agricultural employees for a period of thirty days during the preceding six month period** and includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of employment in any one day shall be considered a day of work. Agricultural employer also includes any employer who is engaged in agriculture with less than six agricultural employees and who voluntarily elects to be subject to this article by filing a request in writing with the board.

CALIFORNIA

Agricultural Labor Relations Act (CALRA), Definitions, Cal. Lab. Code § 1140.4

(b) The term "agricultural employee" or "employee" shall mean one engaged in agriculture, as such term is defined in subdivision (a). However, nothing in this subdivision shall be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

Further, nothing in this part shall apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above.

As used in this subdivision, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

Agricultural Labor Relations Act (CALRA), Cal. Lab. Code § 1164 (emphasis added):

(a) . . . "Agricultural employer," for purposes of this chapter [Contract Dispute Resolution], means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged **25 or more agricultural employees during any calendar week in the year** preceding the filing of a declaration pursuant to this subdivision.

COLORADO

Labor Peace Act, Definitions, Colo. Rev. Stat. § 8-3-104 (emphasis added):

(11)(b) "Employee" does not include:

(I) An independent contractor;

(II) Domestic servants employed in and about private homes;

(III) An individual employed by the individual's parent or spouse;

(IV) An employee who is subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., as amended; or

(V) A parent, spouse, or child of an agricultural employer's immediate family.

(12)(a)(I) "Employer" means a person who regularly engages the services of **eight or more employees**, other than persons within the classes expressly exempted under the terms of subsection (11) of this section.

HAWAII

Hawaii Employment Relations Act, Definitions, Haw. Rev. Stat. § 377-1 (emphasis added):

"Employee" does not include any individual employed in the domestic service of a family or person at the family's or person's home or any individual employed by the individual's parent or spouse, or any person employed in an executive or supervisory capacity, **or any individual employed by any employer employing less than two individuals**, or any individual subject to the jurisdiction of the Federal Railway Labor Act or the National Labor Relations Act, as amended from time to time. "Employee" includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decisions and policies that it will not assume jurisdiction.

KANSAS

Agricultural Labor Relations, Definitions, Kan. Stat. Ann. § 44-819 (emphasis added):

(b) "Agricultural employee" means any individual employed to perform agricultural work, including any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any prohibited labor practice, who has not obtained any other substantially equivalent employment. A parent, spouse, or an immediate relative may be considered an "agricultural employee." However, "agricultural employee" does not include any individual:

(1) Who has not reached the age of 16 years;

(2) Who has the status of an independent contractor. An independent contract relationship does not exist if the person for whom services are performed reserves the right to control the manner and means by which a job is accomplished, even though this right is not exercised;

(3) Who is employed as a supervisor, or crew boss, or in a confidential capacity, or as a clerical employee, or as a guard, or as a domestic employee;

(4) Who is employed as an executive, professional or technical employee;

(5) Who has quit, been discharged, or who is on strike in violation of any of the provisions of this act; or

(6) Who is a tenant or sharecropper and directs or shares in the management of an enterprise engaged in agriculture.

(c) "Agricultural employer" shall mean any employer engaged in cultivating the soil or in raising or harvesting any agricultural or horticultural commodity including custom harvesting operators operating wholly within the state of Kansas, and employers engaged in operating stock, dairy, poultry, fruit, furbearing animal, wildlife and truck farms, plantations, ranches, feedlots, ranges, orchards, or other similar agricultural enterprises and **who employed six or more employees for 20 or more days of any calendar month in the six months** preceding the filing for recognition by such employees as an employee organization as provided for in K.S.A. 44-823, and amendments thereto.

"Agricultural employers" employing less than six employees may elect to come within the provisions of this act by filing a written statement of election with the board and upon filing such a statement such employer shall become an agricultural employer as defined herein.

LOUISIANA

Agricultural Laborers' Right to Work Law, Definitions, La. R.S. § 23:881

As used in this Part, the term "agricultural laborers" means only those persons employed in the ginning processing cotton seed and compressing of cotton, the irrigation, harvesting, drying and milling of rice, the sowing, tending, reaping or harvesting of crops, livestock, or other agricultural products on farms and plantations or those persons employed in the processing of raw sugar cane into brown sugar where such persons or their employees are not directly connected or concerned with any operation to further process such cane; except that those persons working for the raisers of such cane may process sugar beyond the brown sugar stage for such raisers and still remain within the definition of agricultural laborers but except as provided above, such term does not include persons employed in mills, plants, factories, wholesale or retail sales outlets, or otherwise in the transportation, storage, preparation, processing or sale of such crops, livestock or produce, except for transportation by the grower of rice from the field to the mill, or initial storage warehouse, for transportation of cotton by the grower from the field to the gin, or for transportation of sugar cane by the grower from the field to the mill at which the cane is to be initially processed, and for the transportation of cotton seed from the gin to the mill.

MASSACHUSETTS

Labor Relations, Agricultural Workers, representatives, Mass. Gen. Stat. 150A § 5A (emphasis added):

In the case of a person engaged in agriculture, as hereinafter defined, and **having a permanent hired work force of more than four agricultural workers who are not members of his family**, the provisions of section five shall apply; provided that only the employer unit shall be deemed appropriate for collective bargaining purposes; and provided further that nothing in this section nor in said section five shall be construed as constituting authority for any action or proceeding to nullify, amend or otherwise modify any contract or agreement, or any provision thereof, which is reached by any such person for the seasonal employment of agricultural workers with the official sanction either of the government of any territorial possession of the United States or of the United States department of labor. As used in this section, the term "agriculture" includes horticulture, floriculture and any other commercial enterprise involving the production of food or fiber.

OREGON

Picketing of Agricultural Production Sites, Definitions, Or. St. § 662.805 (emphasis added):

(3) "Regular employee" means a person who has been employed by the employer **for at least six calendar work days**.