Hiring employees comes with certain responsibilities and regulations that employers should be familiar with. The Fair Labor Standards Act contains the guiding regulations for employers. There are also applicable state regulations. Following is a list of regulations that farmers should be aware of.

*§ 780.300 Statutory exemptions in section 13(a)(6). Section 13(a)(6) of the Act exempts from the minimum wage requirements of section 6 and from the overtime pay requirements of section 7: Any employee employed in agriculture: (A) If such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor.*

Based on the above, small agricultural employers are exempt from minimum wage and overtime provisions. 500 man-days of labor is the equivalent of seven full time employees. Additionally, if an employee is working with a product that is related to interstate commerce, they are not exempt and are subject to minimum wage and overtime provisions. The effective minimum wage is $4.00 per hour if you are exempt from the federal minimum wage.

The following two regulations define agriculture:

*§ 780.103 ‘‘Agriculture’’ as defined by the Act. Section 3(f) of the Act defines ‘‘agriculture’’ as follows: ‘‘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 15(g) of the Agricultural Marketing Act, as amended).*

*§ 780.158 Examples of other practices within section 3(f) if requirements are met. (a) As has been noted above, the term ‘‘agriculture’’ includes other practices performed by a farmer or on a farm as an incident to or in conjunction with the farming operations conducted by such farmer or on such farm in addition to the practices listed in section 3(f). The selling (including selling at roadside stands or by mail order and house to house selling) by a farmer and his employees of his agricultural commodities, dairy products, etc., is such a practice provided it does not amount to a separate business. Other such practices are office work and maintenance and protective work.*

Applicable State of Montana regulations are:

 ***39-3-405. Overtime compensation.***

 *(2) An overtime provision does not apply for farm workers.*

***39-3-409. Adoption of minimum wage rates – exception***

*(3) The minimum wage rate for a business whose annual gross sales are $110,000 or less is $4 an hour.*

***39-3-404. Minimum wage.*** *(1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), an employer shall pay to each employee a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with* [*39-3-409*](http://leg.mt.gov/bills/mca/39/3/39-3-409.htm)*.
     (2) In the case of a farm worker employed for a part of a calendar year that includes periods requiring working hours in excess of 8 hours a day and other seasonal periods requiring working hours substantially less than 8 hours a day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:
     (a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by the employer, but the total wages paid by the employer to the employee for that part of the year during which the employee was employed by the employer may not be less than the applicable minimum wage rate multiplied by the total number of hours worked; or
     (b) in lieu of the minimum wage set forth in this part, pay the farm worker a wage as defined in this section on a monthly basis. This monthly compensation must constitute a minimum wage and may not be less than $635 a month beginning January 1, 1990.*

The last part is particularly important. The minimum wage, including any overtime, when paid on a monthly basis is $635. Note: that amount can include up to 40% deducted for board, lodging, and other facilities, including heating fuel, electricity, water, and gas furnished for the employee’s personal use.

The federal Fair Labor Standards Act states that for trainees to be considered interns and not employees, a program must meet six criteria:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in an educational environment or vocational school.

2. The training is for the benefit of the trainee.

3. The trainees do not displace regular employees, but work under their close supervision.

4. The business that provides the training derives no immediate advantage from the activities of the trainees, and may in fact be impeded.

5. The trainees are not necessarily entitled to a job at the conclusion of the training period.

6. The trainees understand they are not entitled to wages for the time spent in the training.

Additional items of importance:

* Employer must have a W4 and I9 form for each employee
* A daily time record must be kept for each employee, no matter how they are being paid
* Employees must receive a statement of withholding with each pay check
* Workers compensation is required for all employees

*Information gathered by Tom McCamant, Forbidden Fruit Orchard*