

# Complying with Farm Labor Regulations: Correctly Counting Compensable Hours<sup>1</sup>

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United States law requires farm employers to keep accurate records of the number of daily compensable hours worked by their seasonal and migrant farm workers. Department of Labor (DOL) wage-and-hour investigators are charged to scrutinize agricultural employers and ensure that they comply with these regulations. The most prevalent and serious violations occur when agricultural employers do not correctly record the daily start and stop times for seasonal and migrant farm workers and, as a consequence, underreport the number of “compensable” hours for each worker. At the very least, this mistake results in a record-keeping violation of the Migrant and Seasonal Worker Protection Act (MSPA). More importantly, underreporting the number of compensable hours can lead to a minimum wage violation, which draws a larger civil monetary penalty in addition to requiring the employer to pay all applicable back-wages to the affected workers.

The purpose of this article is to discuss the concept of “compensable” hours in more detail and eliminate any confusion that might lead agricultural employers to make costly mistakes. With a better understanding of compensable time, agricultural employers can more effectively examine their payroll and time recording procedures to weed out errors, ensure that their employees are correctly compensated, and avoid DOL fines. To enable discussion of these issues, we present a daily time log for a hypothetical citrus



harvesting crew. The issues presented in this case are *not* specific to citrus but can occur in any agricultural operation where workers are paid by the piece. “Mike” is a member of this fictitious crew and serves to illustrate several important points in how to correctly count compensable hours.

Two federal laws govern most of the farm labor regulations that affect worker earnings: the Fair Labor Standards Act (FLSA) of 1938; and the Migrant and Seasonal Farmworker Protection Act (MSPA) of 1983. FLSA requires

1. This document is FE940, a publication of the Food and Resource Economics Department, UF/IFAS Extension. Published February 2014. This research was supported by the Florida Agricultural Experiment Station, and approved for publication as Journal Series No. T-00666. Please visit the EDIS Website at <http://edis.ifas.ufl.edu>.
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most employers to pay their workers at least the federal minimum wage for every hour of compensable time. MSPA further specifies that the workers must receive the highest wage rate applicable, which includes the promised rate in the “terms and working conditions” statement, the federal minimum wage, or the state minimum wage. In Florida, the most likely applicable rate will be the state minimum wage. As of January 1, 2014, Florida’s minimum wage increased to \$7.93 per hour, 68 cents higher than the federal minimum wage of \$7.25 per hour.

For piece-rate workers, whose hourly earnings are likely to fluctuate with their productivity, employers are allowed to calculate a worker’s average hourly earnings across the entire work week and compare that number against the highest applicable minimum wage. At the end of a company’s pay period, *total gross pay is divided by total number of compensable hours* (Figure 1). If compensable time is underreported, average hourly earnings might appear to be above the required wage but they will in fact be below the correct minimum wage threshold.

Table 1 is a time log for a single day of a citrus harvesting crew. Stop for a moment and please read through Table 1. Then try and answer the questions below before looking at Table 2.

1. When does the clock start and stop for Mike and the rest of the crew?
2. What are the total compensable hours for Mike and the rest of the crew?
3. What are the average hourly earnings for Mike and the rest of the crew?
4. Is there a minimum wage violation?

Do you agree with the answers provided in Table 2? The rest of this article provides the rationale behind those answers.

Some employers mistakenly think that the number of compensable hours equals the time spent doing the primary job. In the case of the bus driver, his job responsibilities are transporting workers from a central pickup location to the farm/harvesting site and supervising the workers during the day. The bus driver’s day starts at 6:30 AM and continues through to 6:30 PM, when he parks his bus at the end of his work day. Note that the “pre” and “post” trip vehicle inspections are the first and last work tasks performed by the driver, and as such define the length of his work day. Since the bus driver is considered a supervisor, he is expected to

be “on-duty” throughout the day, so his total compensable hours are 12.

For Mike and the other crew members, their primary job is harvesting citrus. Given the scenario presented in Table 1, Mike and the rest of the crew start harvesting at 8:30 AM and quit at 5:00 PM. Assuming that Mike’s lunch and other break times cumulate to one hour, total time spent harvesting is 7.5 hours. Mike’s total compensable time, however, is reported as 10.5 hours while the rest of the crew is reported as 9.5 hours.

From where did the additional hours of compensable time come, and why is there a difference in compensable time between Mike and the rest of the crew?

First, the difference in reported time between Mike and the rest of the crew stems from the fact that Mike’s day actually began at 7 AM when the bus driver (a supervisor) asked him to fill an ice chest for the crew’s use. While a minor task, supervisor’s request is considered a “work task” so per wage-and-hour regulations, Mike has effectively “punched-in.” Alternatively, if Mike had filled an ice chest for his personal use, then this would not be counted as a work task and not considered as part of his compensable time.

The day for the rest of the crew began at 8:00 AM when they arrived at the grove. Many farm employers offer their workers transportation from home or a central pickup point to the farm or work site. Ordinary home to work travel time is *NOT* compensable. Any travel time during the work day, such as when workers move from one farm to another, however, *is* compensable. Because Mike’s day began at 7 AM, the 30-minute morning drive to the farm site *is* compensable for Mike.

Once at the work site, Mike and the rest of the crew are “engaged to wait” while the bus driver/supervisor prepares the equipment and organizes the crew for the day. Likewise, at the end of the day, Mike and the other workers wait 30 minutes while the bus driver finishes his end-of-day activities before driving the bus back to the pickup location. We have accounted for two of the three additional compensable hours that should be credited for Mike—one hour for the earlier start time and one hour of waiting time, 30 minutes at the beginning and end of the day. The third additional hour of compensable time relates to lunch and rest breaks.

Whether to deduct a lunch break from total compensable time is another matter of confusion for many employers. First point to consider: except for workers 17 years old or younger, who are protected by child labor laws, there is

no state or federal regulation requiring that an employer provide time for lunch or rest breaks. If an employer does provide a lunch break of **at least 30 consecutive minutes**, the lunch break *can be* deducted from total compensable time (the specific regulation governing lunch breaks is 29 CFR 785.19). However, and this is an extremely important condition, the workers must be “completely relieved of duty” during the entire meal break. If a DOL Wage & Hour investigator determines that lunch times are being deducted but that workers continue to work through these breaks, the employer will be issued a record-keeping violation and the lunch/break time will be added back into the compensable time totals. As noted in the Table 1 scenario, Mike and the other workers took only a 10-minute lunch break before going back to work. Even though Mike and the other workers take additional 10-minute breaks throughout the day, a Wage & Hour investigator would still cite the one-hour automatic deduction as a “record keeping violation” and add an additional hour to Mike and the other workers’ time cards.

One final issue regarding compensable time concerns workers who arrive early or work late, sometimes hours before or after the posted start/stop times. Even if these workers “volunteer” to do work activities, those hours count as compensable time. Wage and hour rules are rigid in this regard. The word “volunteer” does not exist in the vocabulary of a wage-and-hour investigator when it comes to assessing time of an employee for a “for-profit” company. If a worker shows up early by choice, his early arrival time is not compensable as long as the employer or manager prevents him from performing any work-related task. Given that many people like work for its own sake, are eager to start the day, and feel a sense of team camaraderie that makes them want to pitch in to help their peers and bosses, managers sometimes have a difficult time keeping workers from showing up or leaving long after the whistle blows. Exactly how a manager can prevent “early” work from being performed is beyond the scope of this fact sheet, but we do urge, and strongly, that the manager documents all attempts to prevent “volunteering” and instructs employees on abiding by the posted start and stop times. Above all, managers must keep scrupulously accurate records of time worked.

For workers who are paid an hourly rate, their gross pay for the week or day is simply the promised hourly rate multiplied by the total number of compensable hours. In this case, every hour of waiting time is being paid by the employer. Piece-rate workers, by contrast, may not have to be paid for waiting time. So long as a piece-rate worker’s

average hourly gross earnings (*number of pieces multiplied by the piece rate, then divided by the total number of compensable hours*) is above the required wage, no additional payments must be made for waiting time. On the day described in Table 1, Mike earned \$72 (*8 tubs multiplied by \$9 per tub*). Mike’s average hourly earnings were \$6.86 (*\$72 divided by 10.5 compensable hours*). If this was the only day Mike worked, then the employer would have to pay Mike an additional \$11.27 in order to bring Mike’s hourly earnings up to the Florida minimum wage of \$7.93 per hour, (*\$7.93 x 10.5 hours = \$83.27 - \$72.00 = \$11.27*). On the other hand, if Mike worked another 20 hours of compensable time and at the end of the employment period (i.e., week) his gross earnings were \$300, then Mike’s average hourly earnings for the week would be \$9.84 (*\$300 divided by 30.5 hours*), more than the \$7.93 minimum wage rate.

As our example shows, tracking the correct number of compensable hours for seasonal and migrant farm workers is sometimes complex, so much so that, in some farm situations owners or managers may benefit from the advice of a farm labor law attorney. Paying for the professional services of an attorney expert in this area of the law will be cost effective if problems are identified and corrected before the Department of Labor investigates and/or workers seek their own private counsel.

The issues presented in this article are part of the Farm Labor Supervisor (FLS) Core training program. If you have any questions about the points raised in this article or about the FLS training program, please call Fritz Roka or Carlene Thissen at (239) 658-3400, or email at [fmroka@ufl.edu](mailto:fmroka@ufl.edu).

$$\frac{\text{Total gross earning (\$)}}{\text{Total compensable time (hrs)}} \geq \text{Min Wage (\$/hr)}$$

Figure 1. Minum wage calculation

**Table 1. A one day time line of the crew’s activities for a hypothetical Florida citrus harvesting company; a case study to determine daily start/stop times, total compensable hours, and verification of minimum wage threshold for agricultural workers doing piece-rate work**

<b>Time</b>	<b>Description of activity</b>			
6:30 AM	Bus driver inspects bus and drives to the New Market Street Stop-N-Shop, a designated pickup site for workers.			
7:00 AM	Mike Alvarez, one of the workers, is asked by the bus driver to fill coolers with ice that will be used for the crew’s drinking water.			
7:30 AM	Mike and 29 other citrus harvesters board the bus and leave the pickup site for workers.			
8:00 AM	Bus arrives at the Big Orange Grove and the driver, who is also the goat driver and crew leader, organizes the equipment while workers remain on the bus.			
8:30 AM	Harvesting begins.			
12:00 PM [Noon]	Crew leader sounds an air horn signaling a lunch break. Per instructions from the company owner, everyone is given a one-hour lunch break. One hour is automatically deducted from individual timesheets. Many workers, including Mike, take only 10 minutes for the lunch break, but take several 10-minute breaks throughout the day.			
5:00 PM	Crew leader announces that harvesting is done for the day. The crew leader collects and records the tub tokens. Mike picked 8 tubs at a piece rate of \$9/tub. All the other crew members picked 9 tubs at a piece rate of \$9/tub.			
5:30 PM	Mike and the other workers board the bus to return to the pickup site.			
6:00 PM	Bus arrives back at the New Market Street Stop-N-Shop pickup site. Everybody gets off the bus to go home.			
6:30 PM	Driver returns home and completes a post-trip bus inspection.			
	<b>Questions:</b>	<b>Bus driver</b>	<b>Mike</b>	<b>Rest of crew</b>
	When does the day begin and the clock start?			
	When does the day end and the clock stop?			
	Total number of compensable hours?			
	Mike’s average hourly earnings for the day?			
	Average hourly earnings for the rest of the crew?			

**Table 2. Answers to the questions in Table 1**

<b>Questions:</b>	<b>Bus driver</b>	<b>Mike</b>	<b>Rest of crew</b>
When does the day begin and the clock start?	6:30 AM	7:00 AM	8:00 AM
When does the day end and the clock stop?	6:30 PM	5:30 PM	5:30 PM
Total number of compensable hours?	12	10.5	9.5
Mike’s average hourly earnings for the day?	\$6.86/hr (\$9/tub x 8 tubs) / 10.5 hours		
Average hourly earnings for the rest of the crew?	\$8.52/hr (\$9/tub x 9 tubs) / 9.5 hours		