

## **Washington Supreme Court Grants Overtime Protections to Dairy Workers Under the State Constitution**

In a 5-4 decision, a divided Washington Supreme Court ruled that dairy workers are entitled to overtime pay under Washington law if they work more than 40 hours a week, nullifying an exemption to the Washington Minimum Wage Act's overtime requirement as applied to dairy workers.

Before the decision, Washington's Minimum Wage Act (RCW 49.46.130(2)(g)), like federal law, exempted agricultural workers, including dairy workers, from overtime pay for any hours worked over 40 in a workweek. The court, however, invalidated this exemption, finding that the Washington constitution created a fundamental right of dairy workers to health and safety protection and that the legislature lacked reasonable grounds to grant employers of dairy workers a privilege or immunity from paying them overtime pay.

Although the court narrowly couched its ruling to apply to dairy workers, the same reasoning may extend to other agricultural workers who work in similarly hazardous conditions.

### **The Dairy Workers' Claims**

The case<sup>[1]</sup> began as a class action brought by several plaintiffs on behalf of 300 dairy workers who worked as milkers for DeRuyter Brothers Dairy. The dairy workers used mechanized equipment to milk almost 3,000 cows per shift, 24 hours a day, seven days a week, and typically worked over 40 hours per week without receiving overtime pay.

The dairy workers alleged that the dairy failed to pay them minimum wage, did not provide adequate rest and meal breaks, failed to compensate pre- and post-shift duties, and failed to pay them overtime. The parties ultimately reached a class settlement resolving all but the overtime pay claims. At issue before the court was whether the overtime exemption, as applied to dairy workers, violated the privileges or immunities clause or equal protection clause of the Washington State Constitution.

Specifically, the dairy workers claimed that the overtime exemption violated the privileges and immunities clause of the state constitution, which provides that "No law shall be passed granting to any citizen, class of citizens, or corporation ... privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." According to the workers, the agricultural exemption for overtime pay violated the privileges and immunities clause because it gave a privilege or immunity to the agricultural industry under a law implicating a fundamental right—the right of all workers in dangerous industries to receive workplace health and safety protections.

### **The Court Agreed With Dairy Workers That the Overtime Exemption Was Unconstitutional**

The court ultimately sided with the dairy workers, applying a two-step analysis in invalidating the overtime exemption as applied to them.

At the first step, the court found that dairy workers have a fundamental right to the health and safety protections of the Washington Minimum Wage Act because they are the type of worker meant to be protected by the state constitutional provision protecting "persons working in mines, factories and other employments *dangerous to life or deleterious to health*." As a justification for finding such a fundamental right, the court noted that the dairy workers worked long hours in conditions dangerous to life and deleterious to their health. Specifically, dairy workers generally worked over 40 hours per week, had high injury rates relative to other industries, and were exposed to physical strains, respiratory hazards, toxic chemicals, and an increased risk of contracting diseases and injuries from animals, which could lead to cancer, respiratory disease, and neurological conditions.

The court also found the exemption of dairy workers from the Minimum Wage Act's overtime requirement granted agricultural employers a "privilege or immunity" from providing those protections to dairy workers.

At the second step of the analysis, the court asked whether the legislature had "reasonable grounds" to grant that privilege or immunity to agricultural employers. According to the court, the legislature did not—namely, there was no convincing reason in the legislative history of the Minimum Wage Act to justify this privilege. Rather, the purpose of the act, the court reasoned, is "to protect the health and safety of Washington workers," which was undercut by failing to provide overtime to dairy workers.

## **Key Takeaways for Employers**

Although the court's opinion focused on the constitutionality of the overtime exemption solely as applied to year-round dairy workers, the decision potentially puts all Washington agricultural employers on the hook for overtime pay for their workers. This is reinforced by dissenting opinion, which characterizes the majority's decision as meaning that "*farm workers* will now be entitled to future overtime pay."

Indeed, the overtime exemption at issue—RCW 49.46.130(2)(g)—applies to "agricultural workers" more broadly, and not just dairy workers. Workers fitting into this category include traditional farmworkers, in addition to workers who package, store, deliver, can, freeze, or process any agricultural or horticultural commodities for market distribution. And, because the court declined to apply its decision only prospectively, similarly situated employees may now be entitled to overtime compensation going back three years.

In light of this decision, agricultural employers in Washington should carefully examine their workforce and pay practices and expect that agricultural workers may challenge any exemption to overtime pay under Washington's constitution on the grounds that their work exposes them to health and safety risks.

## **Endnotes**

[1] *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, No. 96267-7, 2020 WL 6495500 (Wash. Nov. 5, 2020).

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