

Summary of SB 172 – Introduced by Senator Edgar Flores

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SB 172 seeks to enact the **“Agricultural Workers’ Bill of Rights.”** It removes the current exemption for agricultural employees from over-time requirements and as a result will require agricultural employers to pay 1 ½ time overtime for any working time beyond 8 hours per day or beyond 40 hours per week.

Agricultural employees are defined as employees who perform a service or activity described by 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.

Sections 6-21 Establishes the **“Agricultural Workers’ Bill of Rights.”** While much of the purpose seems to target employers who participate with the H 2A (temporary/seasonal foreign visas) the requirements would apply to all agricultural employees.

Because of the nature of their businesses, farmers and ranchers carry out agricultural activities on an unpredictable schedule and does not fit within 8-hour work-days or 40-hour work weeks. The economic realities of agricultural enterprises do not provide for long-term sustainability with payments of excessive labor costs, driven by substantial over-time payments.

Based on federal H 2A requirements, hourly wage rates for Nevada workers is \$17.84. The employer is also responsible for providing housing and transportation costs. Section 19 of the bill provides for agricultural workers to unionize and participate in collective bargaining.

The bill establishes that an agricultural employer shall not employ an employee for a continuous period of 5 hours without permitting the employee to have a meal period of 30 minutes of at least one-half hour. All other employers are required to provide this half hour meal break for 8 hours of continuous employment.

Section 10 of the bill deals with “key service” providers and which links these key services as being available to an agricultural worker – Section 12 of the bill spells out when the key service provider access can happen and also directs the Labor Commissioner to adopt regulations to require periods of time when an agricultural worker is entitled to access to key service providers. (Do any other classification of employees have these types of established access to such key service providers?)

Section 10 identifies these key service providers as being:

- A provider of health care, as defined in NRS 629.081
- A community health worker, as defined in NRS 449.0027
- A teacher
- An attorney licensed to practice in this State
- A public official
- A member of the clergy

(NRS 629.081 Conditions under which person who observes rendering of care by practitioner of healing art is immune from civil action. A person who is present solely to improve his or her own personal skill or knowledge by observing the rendering of care by a practitioner of a healing art is immune from any civil action for damages arising from the alleged negligent rendering of that care if the person does not participate in any way in the rendering of that care and is not compensated for that care.)

(NRS 449.0027 “Community health worker” defined. “Community health worker” means a natural person who:

1. Lives in or otherwise has a connection to the community in which he or she provides services.
2. Is trained by a provider of health care to provide certain services which do not require the community health worker to be licensed.
3. Provides services at the direction of a facility for the dependent, medical facility or provider of health care which may include, without limitation, outreach and the coordination of health care.)

Section 15 covers the limitation or prohibition of “short-handed hoes.” **Do Nevada agricultural operations involve the use of “short-handed hoes” for weeding or thinning?**

Regardless of whether the agricultural worker is an H 2A authorized, seasonal/temporary worker – any agricultural employer and employee who has weeding by hand will need to comply with whatever prohibition that the Labor Commissioner comes up with for regulations on this topic. Further any agricultural employer who has work which involves weeding by hand will need to seek an exception from the Labor Commissioner to the prohibitions of the legislation and regulations.

An agricultural employer is required to increase a period of rest (as described in NRS 608.019) by 5 minutes if an agricultural worker engages in weeding or thinning by hand.

(NRS 608.019 Periods for meals and rest.

1. An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work for the purposes of this subsection.
2. Every employer shall authorize and permit all his or her employees to take rest periods, which, insofar as practicable, shall be in the middle of each work period. The duration of the rest periods shall be based on the total hours worked daily at the rate of 10 minutes for each 4 hours or major fraction thereof. Rest periods need not be authorized however for employees whose total daily work time is less than 3 and one-half hours. Authorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages.
3. This section does not apply to:
 - (a) Situations where only one person is employed at a particular place of employment.
 - (b) Employees included within the provisions of a collective bargaining agreement.
4. An employer may apply to the Labor Commissioner for an exemption from providing to all or to one or more defined categories of his or her employees one or more of the benefits conferred by this section. The Labor Commissioner may grant the exemption if the Labor Commissioner believes the employer has shown sufficient evidence that business necessity precludes providing such benefits. Any exemption so granted shall apply to members of either sex.
5. The Labor Commissioner may by regulation exempt a defined category of employers from providing to all or to one or more defined categories of their employees one or more of the benefits conferred by this section, upon the Labor Commissioner’s own motion or upon the application of an association of employers. Each such application shall be considered at a hearing and may be granted if the Labor Commissioner finds that business necessity precludes providing that particular benefit or benefits to the employees affected. Any exemption so granted shall apply to members of either sex.)

Section 18 of the bill requires the Labor Commissioner to adopt regulations to apply the minimum hourly wage published pursuant to Section 16 of Article 15 of the Nevada Constitution to agricultural workers and ensure that the requirements prescribed in NRS – Chapter 608 apply to agricultural workers in the same manner as those agricultural employees, as defined in NRS 608.019.

Section 19 provides the right to self-organization and to bargain for themselves and to form and join or assist labor organizations to bargain for the purpose of collective bargain.

Section 20 authorizes an agricultural worker to bring court cases against an employer who they believe has violated any provision of the “*Agricultural Workers’ Bill of Rights.*” Provisions are also included to cover a whistleblower or a key service provider who is unable to have access to an agricultural worker to bring a case against the employer.

Section 21 establishes an Advisory Committee on Agricultural Work, within the Office of the Labor Commissioner. This advisory committee would have nine members.

- Two members who are agricultural workers, appointed by the Labor Commissioner
- Two members who are advocates of agricultural workers, appointed by the Labor Commissioner
- Three members who are representatives of agricultural employers, appointed by the Director of the State Department of Agriculture
- Two members from the Farmworker Law Program of Nevada Legal Services (or its successor organization)

The Advisory Committee on Agricultural Work shall be involved in analyzing data and information regarding working conditions for agricultural workers and presenting reports to the Nevada Legislature.