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**INDUSTRIAL WELFARE COMMISSION
ORDER NO. 14-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE
AGRICULTURAL OCCUPATIONS**

(Effective July 1, 2001 as amended)

1. Applicability of Order This order shall apply to all persons employed in an agricultural occupation whether paid on a time, piece rate, commission, or other basis, except that:

(A) No provision of this order shall apply to any employee who is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than two (2) times the monthly state minimum wage for full-time employment.

(B) No provision of this order shall apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(C) Section 5 of this order shall not apply to any employer who employs fewer than five (5) persons covered by this order. If at any one time during a calendar year an employer has five (5) or more employees covered by this order, every provision of this order, including Section 5, Reporting Time Pay, shall apply to that employer throughout that calendar year.

(D) No provision of this order shall apply to any employee covered by Order No. 8 or Order No. 13, relating to industries handling products after harvest.

(E) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code Section 1171.)

(F) Sections 3, 4(A)-(D), 5, 6, 9, 11, 12, and 13 of this order shall not apply to an employee engaged to work as a "shepherd," as that occupation is defined in Section 2 (N). Otherwise, this order, including Section 4 (A), shall apply to any workweek during which a shepherd employee is engaged in any non-sheep herding agricultural or other work.

(G) Section 3 of this order shall not apply to an employee licensed pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and

Game Code who serves as a crew member on a commercial fishing vessel.

2. Definitions.

(A) "Commission" means the Industrial Welfare Commission of the State of California.

(B) "Division" means the Division of Labor Standards Enforcement of the State of California.

(C) "Employ" means to engage, suffer, or permit to work.

(D) "Employed in an agricultural occupation" means any of the following described occupations:

(1) The preparation, care, and treatment of farm land, pipeline, or ditches, including leveling for agricultural purposes, plowing, discing, and fertilizing the soil;

(2) The sowing and planting of any agricultural or horticultural commodity;

(3) The care of any agricultural or horticultural commodity; as used in this subdivision, "care" includes but is not limited to cultivation, irrigation, weed control, thinning, heating, pruning, or tying, fumigating, spraying, and dusting;

(4) The harvesting of any agricultural or horticultural commodity, including but not limited to picking, cutting, threshing, mowing, knocking off, field chopping, bunching, baling, balling, field packing, and placing in field containers or in the vehicle in which the commodity will be hauled, and transportation on the farm or to a place of first processing or distribution;

(5) The assembly and storage of any agricultural or horticultural commodity, including but not limited to, loading, road siding, banking, stacking, binding, and piling;

(6) The raising, feeding and management of livestock, fur bearing animals, poultry, fish, mollusks, and insects, including but not limited to herding, housing, hatching, milking, shearing, handling eggs, and extracting honey;

(7) The harvesting of fish, as defined by Section 45 of the Fish and Game Code, for commercial sale;

(8) The conservation, improvement or maintenance of such farm and its tools and equipment.

(F) "Employee" means any person employed by an employer.

(G) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(G) "Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(H) "Minor" means, for the purpose of this order, any person under the age of 18 years.

(I) "Non-sheep herding work" means any work except the work defined in Section 2(N) below.

(J) "Open range sheep herding" means, generally, sheep herding on land that is not cultivated, but produces native forage ("browse" or herbaceous food that is available to livestock or game animals) for animal consumption, and includes land that is re-vegetated naturally or artificially to provide forage cover that is managed like range vegetation. The range may be on private, federal, or state land. Typically, the land is not only non-cultivated, but not suitable for cultivation because it is rocky, thin, semiarid, or otherwise poor. Also, many acres of range land are required to graze one animal unit (five sheep) for one month. By its very nature, open range sheep herding is conducted over wide expanses of land, such as thousands of acres.

(K) "Outside salesperson" means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(L) "Piece rate basis" is a method of payment based on units of production or a fraction thereof.

(M) "Primarily" as used in Section 1, Applicability, means more than one-half the employee's work time.

(N) "Shepherd" means any individual who is employed to do any of the following: tend flocks of sheep grazing on range or pasture; move sheep to and about an area assigned for grazing; prevent sheep from wandering or becoming lost, or using trained dogs to round up strays and protect sheep against predators and the eating of poisonous plants; assist in the lambing, docking, and shearing of sheep; provide water or feed supplementary rations to sheep; or perform the work of a shepherd pursuant to an approved job order filed under the provisions of Section 101(a)(15)(H)(ii)(a) of the federal Immigration and Nationality Act (commonly referred to as the "H-2A" program (see 8 U.S.C. Section 1101 et seq.), or any successor provisions.

(O) "Shift" means designated hours of work by an employee, with a designated beginning time and quitting time.

(P) "Split shift" means a work schedule which, is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(Q) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(R) "Workday" means any consecutive 24 hours beginning at the same time each calendar day.

(S) "Workweek" means any seven (7) consecutive days, starting with the same calendar day each week. "Workweek" is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

3. Hours and Days of Work.

(A) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school: such employees shall not be employed more than ten (10) hours in any one workday or more than six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over ten (10) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

(See California Labor Code, Sections 1391 and 1394)

(VIOLATIONS OF CHILD LABOR LAWS are subject to civil penalties of from \$500 to \$10,000 as well as to criminal penalties provided herein. Refer to California Labor Code Sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors. Employers should ask school districts about required work permits.)

(B) An employee may be employed on seven (7) workdays in one workweek with no overtime pay required when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(C) The provisions of subsection (A) above shall not apply to an employee covered by this order during any week in which more than half of such employee's working time is devoted to performing the duties of an irrigator.

(D) The provisions of this section are not applicable to employees whose hours of service are regulated by:

- (1) The United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers;

or

(2) Title 13 of the California Code of Regulations, subchapter 6.5, Section 1200 and following sections, regulating hours of drivers.

(E) This section shall not apply to any employee covered by a collective bargaining agreement if said agreement provides premium wage rates for overtime work and a cash wage rate for such employee of not less than one dollar (\$1.00) per hour more than the minimum wage.

4. Minimum Wages.

(A) Every employer shall pay to each employee wages not less than six dollars and twenty-five cents (\$6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents (\$6.75) per hour for all hours worked, effective January 1, 2002, except:

LEARNERS: Employees during their first 160 hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 per cent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

(E) Effective July 1, 2001, the minimum wage for all shepherders shall be \$1,050.00 per month; effective July 1, 2002 the minimum wage for all shepherders shall be \$1,200.00 per month. Wages paid to shepherders shall not be offset by meals or lodging provided by the employer

5. Reporting Time Pay.

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday

and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. Licenses for Disabled Workers.

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.

(C) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(D) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division.

(See California Labor Code, Sections 1191 and 1191.5)

7. Records.

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which, operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Employers of shepherders shall keep accurate information with respect to shepherd employee, including an itemized statement showing applicable rates of pay for sheep herding and any applicable non-sheep herding agricultural or other work, all deductions, dates of period for which paid, name and social security number (if any) of employee, and name of employer.

(C) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(D) Every employer of a shepherd shall annually notify the shepherd of his or hers rights and obligations under state and federal law.

(E) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

8. Cash Shortage and Breakage.

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. Uniforms and Equipment.

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee's last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. Meals and Lodging.

(A) "Meal" means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) "Lodging" means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

Effective Dates:	January 1, 2001	January 1, 2002
Lodging:		
Room occupied alone:	\$29.40 per week	\$31.75 per week
Room shared:	\$24.25 per week	\$26.20 per week

Apartment-two-thirds (2/3) of the ordinary rental value, and in no event more than:	\$352.95 per month	\$381.20 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary rental value, and in no event more than:	\$522.10 per month	\$563.90 per month
Meals:		
Breakfast:	\$2.25	\$2.45
Lunch:	\$3.10	\$3.35
Dinner:	\$4.15	\$4.50

(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

(F) Paragraphs (C), (D), and (E) above shall not apply to shearers. Every employer shall provide to each shepherd not less than the minimum monthly meal and lodging benefits required to be provided by employers of shepherds employed under the provisions of the H-2A program of the Immigration and Nationality Act [8 U.S.C Section 1101 et seq], or any successor provisions. Fixed Site Housing: A shepherd not engaged in open range sheep herding, shall be provided with fixed site housing that complies with all the following standards and requirements

(1) Toilets (which may include portable toilets) and bathing facilities (which may include a portable facility).

(2) Heating (which may include a camp stove or other sources of heat).

(3) Indoor Lighting.

(4) Potable hot and cold water.

(5) Cooking facilities and utensils.

(6) Refrigeration for perishable foodstuffs (which may include ice chests, provided that ice is delivered to the shepherd, as needed, to maintain a continuous temperature required to retard spoilage and assure food safety).

(7) Fixed Site Housing Inspections: housing that is erected for shepherds at fixed locations shall be annually inspected by the State of

California Employment Development Department for compliance with Paragraph (F) of this section, unless the employer receives a statement in writing from the Employment Development Department that there are no such inspectors available.

(G) Mobile Housing: When a shepherd is engaged in open range sheep herding, the employer shall provide mobile housing that complies with all standards and inspection requirements prescribed for mobile shepherd housing by the United States Department of Labor then in effect. Such housing shall be inspected and approved annually by an inspector from the Employment Development Department unless the employer receives a statement in writing from the Employment Development Department that there are no such inspectors available

11. Meal Periods.

Every employer shall authorize and permit all employees after a work period of not more than five (5) hours to take a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.

12. Rest Periods.

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

13. Seats.

When the nature of the work reasonably permits the use of seats, suitable seats shall be provided for employees working on or at a machine.

14. Other Working Conditions Applicable To Shepherders

Shepherders shall be provided with all of the following at each work site:

(A) Regular mail service, which, in the case of open range locations, shall mean mail delivery not less frequently than once every seven days.

(B) An appropriate form of communication, including but not limited to a radio and/or telephone, which will allow shepherders to communicate with employers, health care providers, and government regulators. Employers may charge shepherders for all others uses.

(C) Visitor access to fixed site housing and, when practicable to mobile housing.

15. Exemptions

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provisions in Section 7, Records; Section 11, Meal Periods; Section 12, Rest Periods; or Section 13, Seats, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective any may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application is filed with the Division.

16. Filing Reports (See California Labor Code, Section 1174(a))

17. Inspection (See California Labor Code, Section 1174)

18. Penalties (See California Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation - - \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations - - \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(B) Any employer or any other person acting on behalf of the employer who employs shepherders and who requires them to engage in non-sheep herding duties shall be subject to the following penalties:

(1) Initial violations--a civil penalty of one week's pay computed on a basis of a 60 hour workweek and a wage of n less than the current minimum wage in effect.

(2) Second vilolation--a civil penalty of one month's pay computed on a basis of a 252 hour month and a wage of no less than the current minimum

wage in effect.

(3) Third and subsequent violation--a civil penalty equal to the cost of the contract of the approved "H2A" job order.

(C) The affected employee shall receive payment of all wages recovered.

(D) The Labor Commissioner may also issue citations pursuant to Labor Code Section 1197.1 for payment of wages for overtime work in violation of this order.

19. Separability

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

20. Posting of Order

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order and make it available to every employee upon request.