

Why Some Farms Pay Wages as Salary

What is salary?

If you've worked in a salary position before, you'll know the basics: salaried employees don't get paid by the hour. They get paid a flat amount regardless of hours worked. In other words, salaried employees do not get paid overtime for hours worked over 40 in the week. On the bookkeeping side of things, salary can also simplify payroll. Sounds pretty great, right?

Before going too far, a few words of caution on what salary is NOT. Salary is not a strategy to avoid paying minimum wage. If minimum wage is required, the employer must pay it. Salary is also not a strategy to manage cash flow by doing payroll less often or in a lump sum. For example, some farms and ranches might want to pay wages every other month or after a crop is harvested. State and federal laws require that wages be paid out at certain intervals, usually at least monthly, and salary doesn't change anything there.

When to consider paying salary

For many farmers and ranchers, paying by salary doesn't offer much benefit. This is because a key reason for paying salary is that the employee doesn't get paid overtime for hours worked over 40 in a week. But, **many farms and ranches are exempt from overtime requirements**. So basically, the benefit is avoiding something many agricultural employers don't have to do in the first place. However, **some farm businesses are required to pay overtime** and for them, paying by salary can be a real game changer.

Generally, **farm businesses that assign non-agricultural labor DO owe overtime to employees doing that work for hours worked over 40 in the week**. When non-agricultural labor is performed, the farm loses the exemption from overtime that an employee who performs exclusively agricultural labor is afforded.

If you are paying (or are obligated to pay overtime) and salary seems like a potential solution, don't go running off to your payroll provider to set it just yet.

Eligibility matters

According to the law, salary can be used to avoid overtime pay for employees who fit certain categories. These categorical exemptions to overtime go by three broad names:

1. Executive exemption
2. Administrative exemption
3. Professional exemption

You can pretty well guess that the employees who qualify for salary treatment are executives, administrators, and professionals. However, **the Executive Exemption is the most relevant exemption category for farmers and ranchers**. The name is a bit deceiving. "Executive" doesn't mean the person has to be a CEO or other formal executive officer. It means the

employee must be **(1) managing and regularly directing the work of at least 2 other full-time employees or their equivalent**. This worker should also have **(2) the authority to hire and fire** other employees, in addition to giving suggestions for which staff deserve promotions. Lastly, the Executive Exemption requires that the employee must **(3) be making at least \$684 in gross wages per week for every week in which they do ANY work**. Most people don't think about salary in terms of the week, so let's say that's the same as an annual salary of about \$35,568 for the year. Keep in mind that this income threshold may change in the future. These are 2022 numbers we're working with here.

Tips for moving forward

Now that you've got a good basic understanding of when and why to pay salary on the farm, you're in a better position to move forward by following these 3 tips:

1. Identify whether or not you're required to pay overtime to your employee(s). Reference *Selected Essentials for Farm Employment Law* for your state available in the Library at www.farmcommons.org.
2. If overtime is required, decide whether to pay it where required or explore alternative solutions, including paying salary.
3. Take Farm Commons' *Advanced Farm Employment Law Course* to build holistic, sustainable legal solutions for your farm's employment program, including managing overtime, workers' compensation, in-kind wage rules, and more! Register at www.farmcommons.org.