

FARMWORKER OVERTIME IN COLORADO: Estimate of Benefits and Costs

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Colorado Center on Law and Policy Issue Brief

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Introduction

The Colorado General Assembly passed SB21-087 during the 2021 legislative session, expanding the rights and protections afforded to farmworkers under state law. Referred to as the “farmworkers’ bill of rights,” one of the bill’s measures directed the Colorado Department of Labor and Employment (CDLE) to extend overtime protections to farmworkers. However, the legislation did not specify at which point farmworkers should receive overtime pay, leaving it for CDLE to establish through a rule-making process that is currently underway. Under consideration is the threshold at which Colorado’s farmworkers would be eligible for overtime pay. In general, workers who are eligible for overtime in our state receive wages worth 1.5 their wage rate for hours of work more than 40 hours per week or 12 hours per day. CDLE released a [proposed rule](#) on September 30, 2021 as part of their proposed Colorado Overtime and Minimum Pay Standards (COMPS) Order. The rule would establish different overtime thresholds for farmworkers depending on the size of their employer and the seasonality of their work. Overtime thresholds will phase-in, starting at 60 hours for all workers beginning on November 1, 2022. On January 1, 2024, farmworkers working for small employers¹ would be eligible for overtime pay for work over 56 hours per week. Farmworkers employed by highly seasonal employers² are eligible for overtime pay after 56 hours during the peak work season and after 48 hours during the rest of the year. All other farmworkers would receive overtime pay after 54 hours worked in a given week, which would drop to 48 hours beginning in 2025. Furthermore, farmworkers who are the parents, spouses, or children of an agricultural employer are exempt from all overtime pay requirements under the proposed rule.

¹ Defined by CDLE as an employer who employed fewer than four workers on average over the previous three calendar years and who had an average adjusted gross income of less than \$1 million over the three prior taxable years.

² Defined by CDLE as an employer who had at least twice as many employees during any 22-week period (or combination of periods) as compared to the rest of the year. The proposed rule notes that employers must provide workers with a written notice at least 30 days in advance when weekly overtime pay will be 56 rather than 48 hours.

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Table 1
Summary of Proposed Overtime Thresholds for Farmworkers

Time Period	Small Employers	Highly Seasonal Employers	Other Employers
Until Nov. 1, 2022	No overtime pay required		
Nov. 1, 2022 to Dec. 31, 2023	60 hours		
Jan. 1, 2024	56 hours	56 hours for 22 peak weeks	54 hours
Jan. 1, 2025 and later		48 hours otherwise	48 hours

Source: Colorado Overtime and Minimum Pay Standards Order (COMPS Order) #38, Colorado Department of Labor and Employment

One of the main policy questions surrounding overtime and farmworkers is the potential cost to farmers and the impact on the agricultural industry in Colorado as a whole. In this issue brief, we explore how many workers we estimate would benefit from CDLE’s proposed overtime thresholds and how that might impact farmers in Colorado. We compare this to the potential effects an overtime policy that begins after 40 hours of work, the threshold for nearly all other workers in the state. Following the methodology developed by Dr. Jeannette Wicks-Lim to in her study of potential labor costs associated with providing overtime pay to farmworkers in Massachusetts,³ CCLP was able to develop a similar estimate for Colorado farmers. Our findings suggest that:

- Colorado’s farmworkers are nearly twice as likely as the average worker in the state to be a person of color, a foreign-born worker, or a worker experiencing poverty.
- Farmworkers are also more likely to not have health insurance and are more likely to participate in government benefit programs than are other workers, likely because of the low wages paid to such workers in 2019.
- While work patterns of farmworkers are different from that of the average worker in the state, they are not that dissimilar from those of workers in sectors like manufacturing or construction whose workers are largely covered by overtime protections.
- Just one in five farmworkers had hired labor in 2017, meaning that any overtime threshold would not affect the majority of operations in the state. More than half of farmworkers in the state were unpaid.
- Only farms with incomes above \$250,000 hired more than half of their workforce (the remainder were unpaid).

³ Wicks-Lim, Jeannette. “Estimates of the Potential Costs and Benefits of Extending Overtime Pay Eligibility to All Farmworkers in Massachusetts.” Political Economic Research Institute, University of Massachusetts Amherst (2020). Accessed from https://peri.umass.edu/publication/item/download/869_0a54574aab944610945a1c3f7f2832f5.

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- Among farms with paid workers, nearly all hired an average of 2 to 4 farmworkers compared to 17 among farms with incomes of more than \$1 million.
- Under CDLE's proposed rule, we estimate that 62.2 percent of workers would be employed by a small employer and 37.8 percent would be employed by an other employer. We were unable to estimate the share that might be employed by highly seasonal employers.
- The average farmworker employed by a small employer and eligible for overtime could see their weekly wages increase by 9.9 percent and by 11.1 percent if they were employed by an other employer. Overall, 22.1 percent of farmworkers employed in 2019 would have been eligible for overtime if the thresholds proposed by CDLE for 2025 were in place that year.
- As a result of the overtime protections proposed by CDLE, we estimate that farmers would see their aggregate labor costs increase by 4.4 percent. This labor costs increase is equivalent to a 0.33 percent increase in total operating expenses and a 0.25 percent increase in total revenues.
- If farmworkers were eligible for overtime after 40 hours, eligible farmworkers would see their weekly wages increase by 15.0 percent. We estimate that this threshold would raise labor costs for farmers by 9.6 percent, or 0.72 percent and 0.87 percent of operating expenses and revenue, respectively.
- Despite carrying higher costs for farmers, we do not feel that a 40-hour overtime threshold for farmworkers would lead to the destruction of the agricultural industry in our state. Our estimates suggest that, even just among the 1/5 of farms with hired workers, the aggregate cost increases to the industry would be less than 1 percent. And that's assuming no change in employment or hours worked among farmworkers. The real increase is likely to be even less.

Data Sources

The data used in this analysis come from four different publicly available government sources with information on farmworkers: the U.S. Census of Agriculture, the National Agricultural Statistics Service, the Current Population Survey (CPS) and the American Community Survey (ACS). The first two sources provide information on farming operations in Colorado, including farm income, operating expenses, labor costs, as well as the number and type of workers employed. The CPS and the ACS provide information about farmworkers themselves, including their wages, number of hours worked per week, and number of weeks worked per year. The ACS also allows us to explore a range of socioeconomic and demographic statistics for farm workers, including their median age and rate of poverty. The CPS data is available monthly which allows us to look at farmworkers' labor patterns throughout the year to understand how employment and hours worked, for instance, varied seasonally. However, the sample size of farmworkers in the monthly CPS data for Colorado was small. As such, this analysis combines monthly survey data for 2010 through 2019 to improve the accuracy of the estimates. This

analysis uses data from the 5-year ACS and so includes responses for 2015 through 2019, again to improve the accuracy of the estimates given small sample sizes. Both the ACS and CPS data were weighted to be representative of Colorado’s population using survey weights provided by the U.S. Census Bureau.

Within government statistics, what we would consider “farmworkers” varies depending on the data source. For the purposes of this analysis, we defined farmworkers in the ACS as employed Coloradans working as “agricultural product graders and sorters”, and “other agricultural workers” and excluded workers who were not employed in the “crop production” industry, the “animal production and aquaculture” industry, or the “support activities for agriculture and forestry” industry. In the CPS, we defined farmworkers as Coloradans employed as “agricultural product graders and sorters” or “miscellaneous agricultural workers” and excluded workers who were not employed in the “crop production”, “animal production”, or “support activities for agriculture and forestry” industries.⁴ Data from the CPS and ACS only include those farmworkers who listed one of the above occupations as their primary job. This analysis likely undercounts the total number of workers in Colorado who work as farmworkers. The long hours and migratory nature of farm work likely makes farmworkers a difficult population to capture in government statistics. Immigration status likely also discourages some farmworkers from sharing personal information with the federal government.

Census Bureau data does not tell us much about agricultural employers in Colorado. For this information, we looked at data from the U.S. Department of Agriculture’s Census of Agriculture program. Although the Census of Agriculture is only released every five years, it provides a wealth of data about farms and agriculture in Colorado, even at the county level. The USDA’s National Agricultural Statistics Service (NASS) also releases an annual report on agricultural statistics for Colorado. The 2020 report includes statistics from 2019 and earlier. We used 2019 statistics in place of 2017 statistics from the Census of Agriculture where possible to use the most recent data available.

Colorado’s Farmworkers

Before looking at the effects of providing overtime protections to farmworkers, it is informative to understand how farmworkers are similar and different from other workers in Colorado. According to the ACS, approximately 13,265 Coloradans were employed as farmworkers in 2019.⁵ This represents 0.5 percent of all Coloradans employed in the state during that period.

⁴ These definitions for farmworkers are based on those used by Dr. Wicks-Lim in her analysis of farmworkers in Massachusetts.

⁵ Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org.

Demographic and Economic Characteristics of Colorado’s Farmworkers

Table 2
Demographic Characteristics of Farmworkers in Colorado, 2019

	Farmworkers	All Workers
Average Age	38.3	41.1
Percentage Non-White (including Hispanic/Latinx)	45.9%	28.8%
Percent Hispanic/Latinx	42.4%	19.1%
Percent Male	82.5%	54.0%
Percent Foreign-Born	26.7%	11.7%

Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

As detailed in Table 2, farmworkers were more likely to be younger, more likely to be a person of color, more likely to be male, and more likely to be foreign-born than the typical worker in Colorado in 2019. In other words, the population of farmworkers is very different in demographic composition than Colorado’s workforce. The share of Hispanic/Latinx farmworkers is more than twice the share of Hispanic/Latinx workers in the state. The same is true for foreign-born workers.

Table 3
Economic Characteristics of Farmworkers in Colorado, 2019

	Farmworkers	All Workers
Median Wage and Salary Income	\$25,030	\$56,110
Median Family Income	\$42,940	\$83,485
Percent Experiencing Poverty	14.5%	6.3%
Percent Near Poverty (below 200% FPL)	42.2%	18.2%

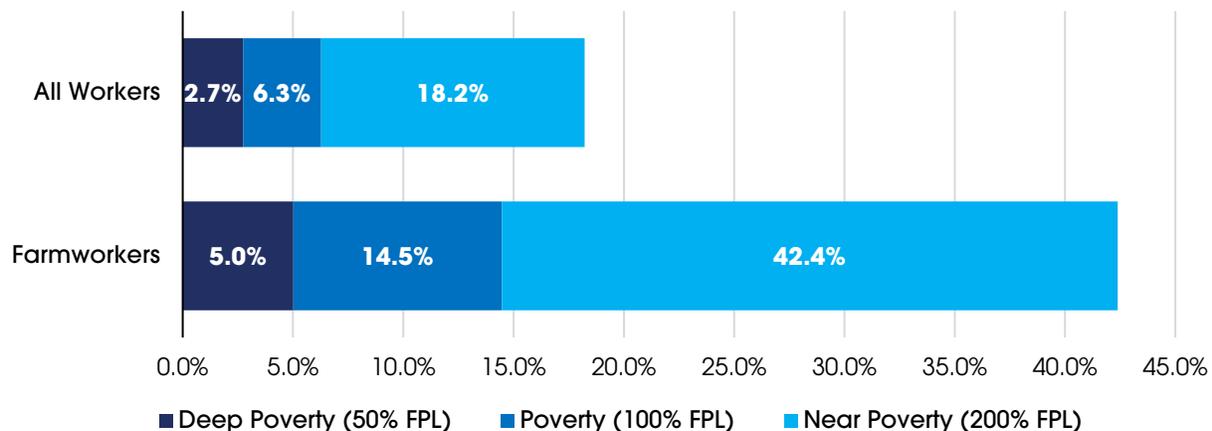
Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Farmworkers also stand out from Colorado’s workforce when compared across a range of economic statistics. The median wage and salary income (i.e., income from work) for farmworkers was more than half that of the median wage and salary income for all Colorado workers. This is also true when comparing the median family incomes of both groups. It should come as no surprise that the share of farmworkers experiencing poverty is also greater than the share among all workers in the state. Similarly, 42.2 percent of farmworkers lived in households with incomes below twice the poverty threshold. These near-poverty households are likely to face economic insecurity and are at greater risk of falling into poverty if faced with an unexpected expense, such as a medical bill.⁶

⁶ Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org.

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Figure 1
Rates of Poverty Among Workers in Colorado, 2019



Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Table 4
Annual Self-Sufficiency Wages in CO Counties with Greatest Number of Farmworkers, 2018

Counties with Greatest Number of Farmworkers	1-Adult Household	2-Adult, 1-School-age Household*
Weld	\$22,308	\$47,074
Larimer	\$25,124	\$49,793
Mesa	\$20,470	\$44,604
Adams	\$27,684	\$53,826
Yuma	\$18,274	\$38,471
Delta	\$21,902	\$47,525
Boulder	\$30,639	\$64,152
Morgan	\$19,145	\$40,147
Rio Grande	\$20,182	\$40,594
Alamosa	\$20,288	\$44,565

*Annual Self-Sufficiency wage for this household type assumes both adults work full-time.

Note: Shaded cells represent Self-Sufficiency Wages that are above the median wage and salary income of a farmworker or a farmworker family.

Source: University of Washington, Center for Women's Welfare; Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Although we might think of farmworkers as working primarily in Colorado's rural counties, many urban counties are among those that have the greatest number of farmworkers in the state. While there are rural areas within these urban counties, the average cost of living⁷ in the

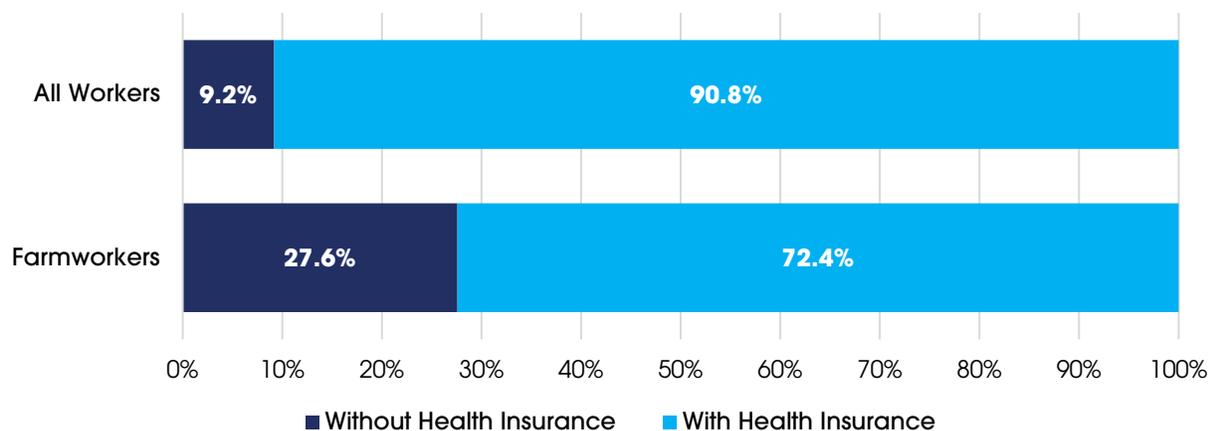
⁷ Cost of living data comes from the *Self-Sufficiency Standard for Colorado*, authored by the University of Washington's Center for Women's Welfare and published by the Colorado Center on Law and Policy:

<https://cclponline.org/resource/self-sufficiency-standard-for-colorado-2018/>.

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urban counties located along the Front Range⁸ is quite high, particularly when compared to other parts of the state. While a single farmworker had a median income high enough to afford the cost of living in all but Larimer, Adams, and Boulder counties in 2018, the cost of living in most of the counties listed in Table 3 is higher than the median farmworker family would have been able to afford. These cost-of-living estimates for single farmworkers include costs for essential items such as food and housing, which may be covered by some employers.

Figure 2
Share of Colorado Workers without Health Insurance Coverage, 2019



Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

However, Figure 1 and Table 4 suggest that the wages paid to farmworkers are not sufficient for many farmworkers to support themselves and their families. The share of farmworkers in Colorado without health insurance in 2019 was 27.6 percent compared to 9.2 percent among all workers in the state, further evidence that many farmworkers are not able to meet their basic needs on the wages they earn from work. 22.9 percent of farmworkers with health insurance were enrolled in Health First Colorado⁹, more than double the 10.7 percent among all workers. Similarly, 14.0 percent of farmworkers lived in a household that received Supplemental Nutrition Assistance Program (SNAP) benefits compared to 5.7 percent of all workers in Colorado. Higher rates of enrollment in public programs like Medicaid and SNAP indicate that a higher share of farmworkers are unable to meet their own or their family's basic needs without support from government programs. As detailed later in this issue brief, the wage increases that could occur due to providing overtime protections to farmworkers would help eligible farmworkers to become more economically secure, particularly if the overtime threshold were set at 40 hours per week. It would also be a positive step towards ensuring Colorado taxpayers are not subsidizing the low wages paid to farmworkers by farmers. Without

⁸ Weld County, Larimer County, Adams County, and Boulder County

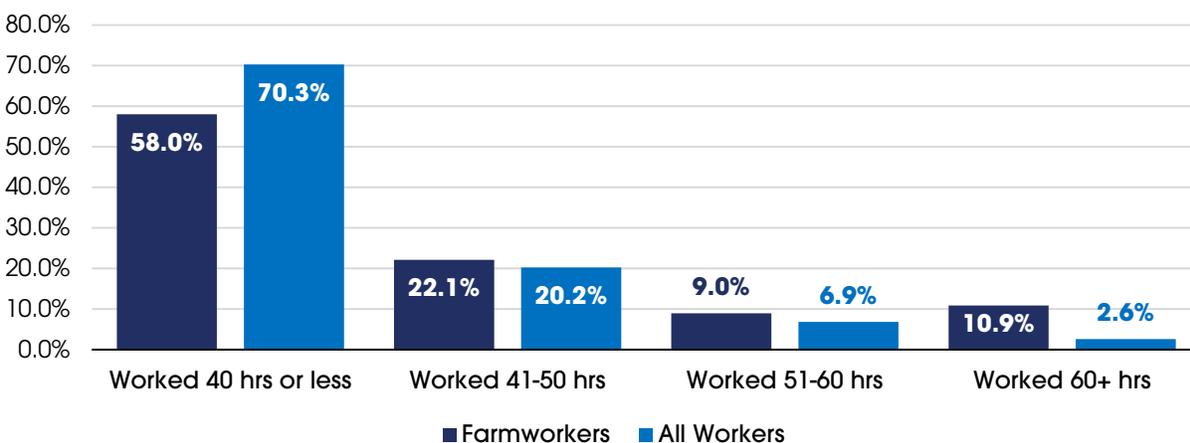
⁹ Colorado's Medicaid program

programs like SNAP and Medicaid, farmers would likely have an even more difficult time finding needed workers at current wage levels.¹⁰

Work Patterns of Colorado's Farmworkers

Despite being twice as likely to experience poverty, the long hours and seasonal work patterns of farmworkers are two common arguments for why farmworkers should not be afforded the same overtime protections as other workers in the state. Despite some notable differences between the working patterns of farmworkers and all workers in Colorado, the uniqueness of farmworkers in terms of hours worked per week and weeks worked per year are often overstated. When compared to workers in construction or manufacturing, farmworkers do not look all that different from workers who likely receive overtime protections under our current state labor regulations.

Figure 3
Distribution of Colorado Workers by Usual Weekly Hours Worked, 2019



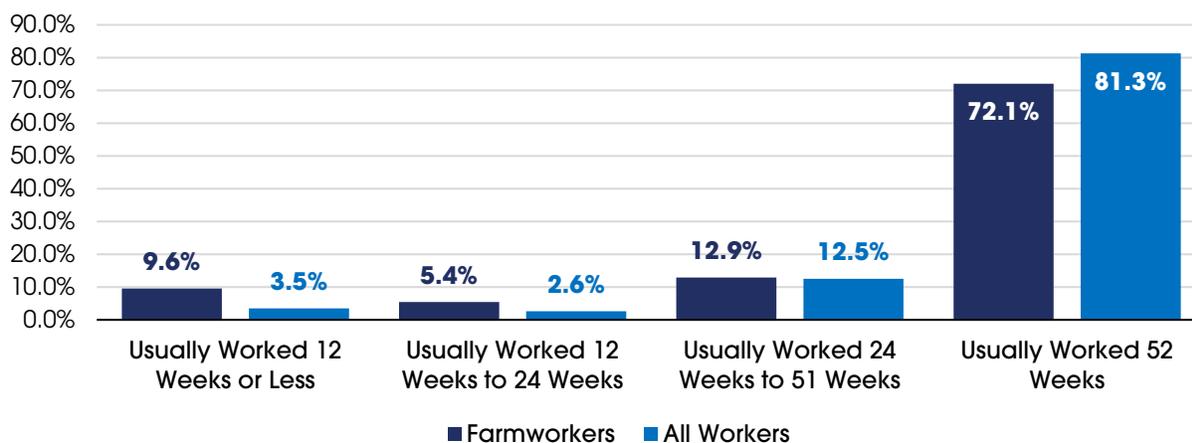
Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

On average, farmworkers worked more hours per week than the average worker in Colorado. In 2019, Colorado farmworkers worked an average of 44.2 hours each week, compared to 39.5 hours for all workers in the state. As shown in Figure 3, 58.0 percent of farmworkers worked for 40 hours or less in 2019, compared to 70.3 percent of all workers in the state. On the other hand, slightly more than one in ten farmworkers reported working more than 60 hours each week, a much greater share than the 2.6 percent of all workers who reported working more than 60 hours each week in 2019. While farmworkers do stand out from other workers in terms of hours worked each week, it is not clear from the data whether this trend is due to the fact that most other sectors of the economy have been subject to overtime laws since the late 1930s. According to an estimate by Huberman & Minns, the average full-time production worker in a

¹⁰ According to the preliminary findings of Colorado State University's "2020 Colorado Agricultural Labor Survey for Employers," 22 percent of respondents reported being unable to obtain all the workers they needed between 2015 and 2020. Access from <https://foodsystems.colostate.edu/wp-content/uploads/2020/06/Preliminary-Findings.Colo-Ag-Labor-Survey-for-Employers.March-2021-1.pdf>.

non-agricultural industry in the United States worked 48.0 hours per week in 1929, prior to the passage of the Fair Labor Standards Act (FLSA), which created overtime standards for most workers in the United States (but excluded farmworkers). Since 1960, the average weekly hours worked per week for the same type of workers has remained at or below 40 hours.¹¹ In other words, farmworkers’ work patterns might have been more like the rest of the workforce in Colorado if farmers were required to operate with overtime regulations in the same way that other employers have had to do for more than 80 years. Employers in all other industries had to make a similar transition to what farmers in Colorado are now facing.

Figure 4
Distribution of Colorado Workers by Weeks Worked, 2019



Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

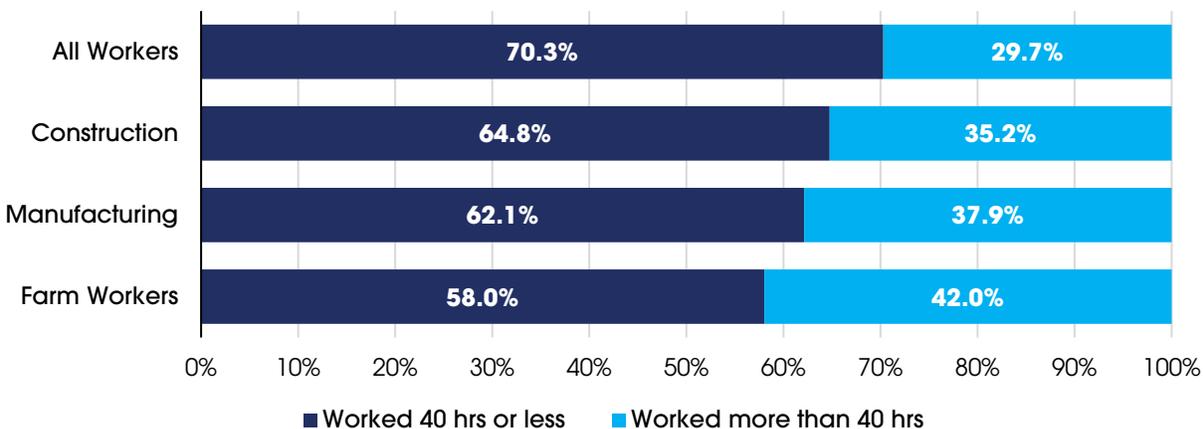
On average, farmworkers in Colorado worked 44.7 weeks per year, compared to 48.1 weeks per year for all workers. Despite working fewer weeks on average, 72.1 percent of farmworkers worked 52 weeks during 2019. This was 9.2 percentage points fewer than all workers in Colorado. On the other hand, 9.6 percent of farmworkers worked 12 weeks or less in 2019, a much larger share than the 3.5 percent of all workers. So, while it is true that farmworkers tend to work less throughout the year than other workers, just 27.9 percent worked less than 52 weeks compared to 18.7 percent of all Colorado workers. According to the Department of Labor’s National Agricultural Workers Survey (NAWS), 23 percent of farmworkers in the United States said they worked for more than one employer in the past 12 months during fiscal year 2017-18. On average, a farmworker had 1.44 employers that same year.¹² This suggests that while farm operators may employ a farmworker for long hours only over a short period of time, it is not uncommon for a farmworker to work long hours for more than one employer at different times of the year. Thus, while operators’ needs for labor may be for a short period of

¹¹ Huberman, Michael and Chris Minns. “The times they are not changin’: Days and hours of work in Old and New Worlds, 1870-20000.” *Explorations in Economic History* vol. 44(4). 2007.

¹² National Agricultural Workers Survey, Employment and Training Administration, U.S. Department of Labor.

time, it does not mean that farmworkers do not work long-hour seasons for multiple employers.

Figure 5
Share of Colorado Workers Working More than 40 Hours per Week, 2019



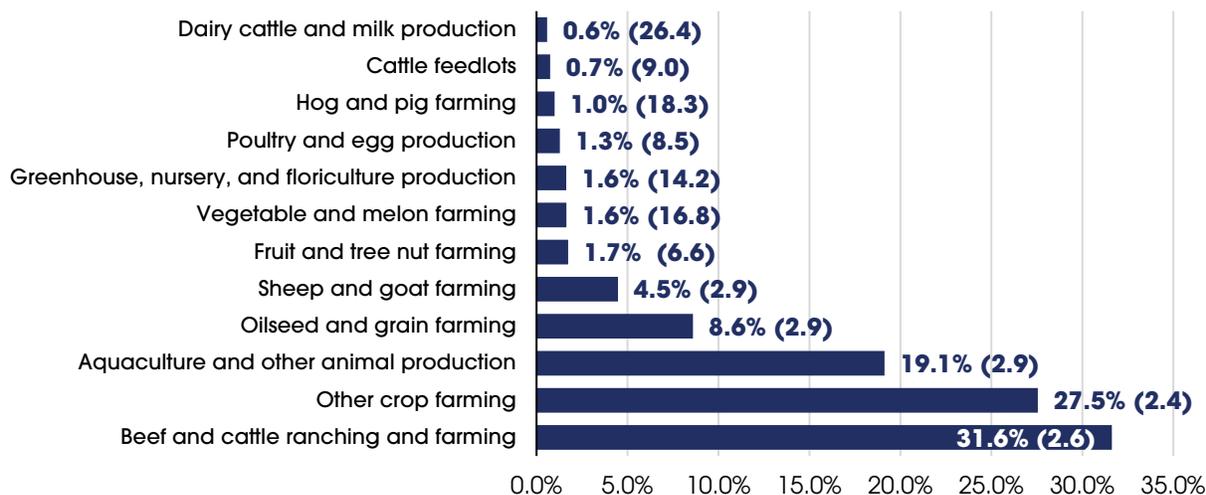
Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

The differences that do exist between farmworkers and Colorado’s workforce become less pronounced when comparing farmworkers to workers from specific sectors of the economy, such as construction and manufacturing. When we look specifically at hours worked, 35.2 percent and 37.9 percent of workers in Colorado’s construction and manufacturing sectors, respectively, worked more than 40 hours in a week. While still not as high a share as the 42.0 percent of farmworkers who worked more than 40 hours per week, the shares for construction and manufacturing workers are more like farmworkers than they are for workers as a whole. Workers in the manufacturing and construction sectors worked an average of 42.3 hours and 42.4 hours per week, compared to 44.2 hours among farmworkers (and 39.5 hours among all workers). Although these two sectors are different in many ways from agriculture, employers within construction and manufacturing have been able to manage overtime costs despite having a workforce who work average weekly hours that are higher than the average for all workers in the state. Both sectors also have workers who work more than 40 hours per week on average. All are sectors in which workers face increased safety risks from working with heavy machinery or working outdoors (in the case of construction and agriculture), yet only farmworkers are not protected from the risks associated with overwork.

Colorado’s Farm Operations

We cannot understand the effects a policy like overtime would have on the agricultural industry without first looking at employment patterns among farm operators in the state. The Census of Agriculture is one source of information on farms, their labor composition, and costs. These are all important to understand as the labor costs associated with expanding overtime protections to farmworkers will depend on the type of agricultural products being produced, the size of the farm, and the number of hired laborers.

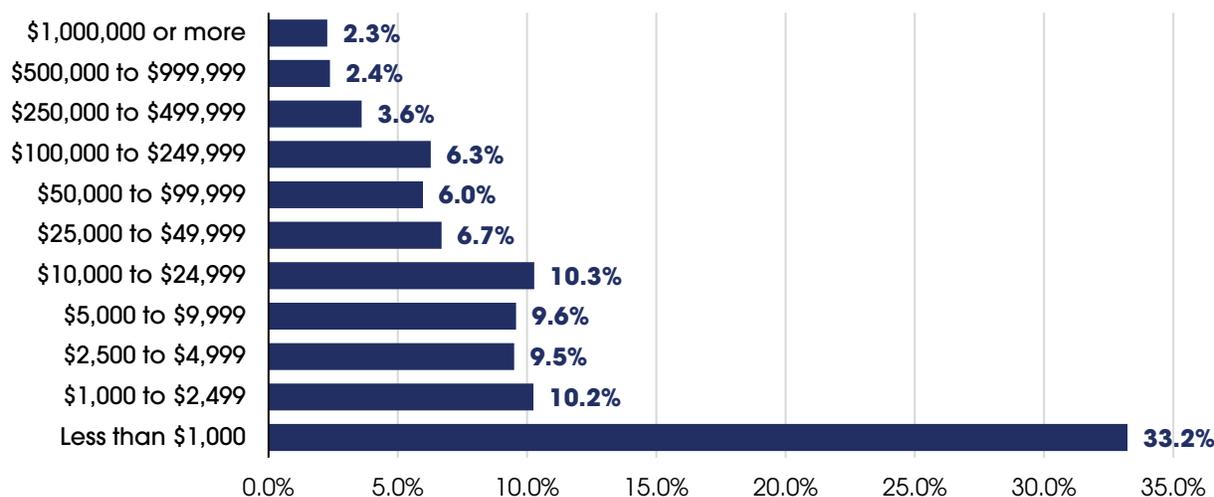
Figure 6
Colorado Farms by NAICS Classification, 2017



Note: Numbers in parenthesis represent the average number of hired farm labor per operation with hired farm labor.

Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture.

Figure 7
Colorado Farms by Economic Class, 2017

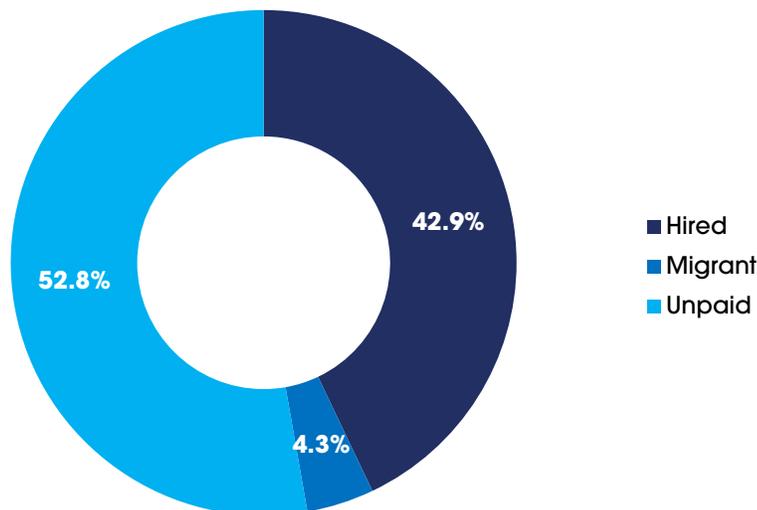


Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture.

As Figures 6 and 7 show, there is tremendous variation in the types of farms across the state, as well as in the size of producers as measured by economic class, or the market value of agricultural products sold plus federal farm program payments. Beef and cattle ranching and farming followed by other crop farming were the two most common types of farms in Colorado in 2017. These farms, representing almost 60.0 percent of farms in the state that year, had the lowest needs for hired labor, on average, of any farms. Our three most labor-intensive types of

agriculture in 2017¹³ included just 3.2 percent of all farm operations in the state. In all, 91.4 percent of farms in Colorado produced an agricultural product that required, on average, less than the statewide average of 4.2 hired workers per operation. In terms of distribution by income, one third of farms had incomes less than \$1,000 in 2017. Just 2.3 percent of farms in the state had incomes of \$1,000,000 or more that same year.

Figure 8
Composition of Colorado Farm Workers by Type, 2017



Source: 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Overall, the 2017 Census of Agriculture estimated that there were 85,580 agricultural workers in Colorado that year. This included 36,733 hired workers. However, the majority of agricultural workers in our state were unpaid workers.¹⁴ Not all farms employed farmworkers in 2017. Among all farms, just 22.6 percent reported having hired workers compared to 51.3 percent who reported having unpaid workers. Just 1.1 percent, or 421 farms in the state, had migrant workers that year.¹⁵ This data from USDA suggests that overtime protections for farmworkers will affect the labor costs of just over one in five farms in the state. The remaining farms either do not use hired labor or do not have any labor at all and will not see their labor costs change because of providing overtime protections to farmworkers, regardless of which overtime thresholds are ultimately included in the final rule. It is hard to see how a regulation that only affects 1 in 5 farms in the state could result in the decimation of the agricultural industry in Colorado.

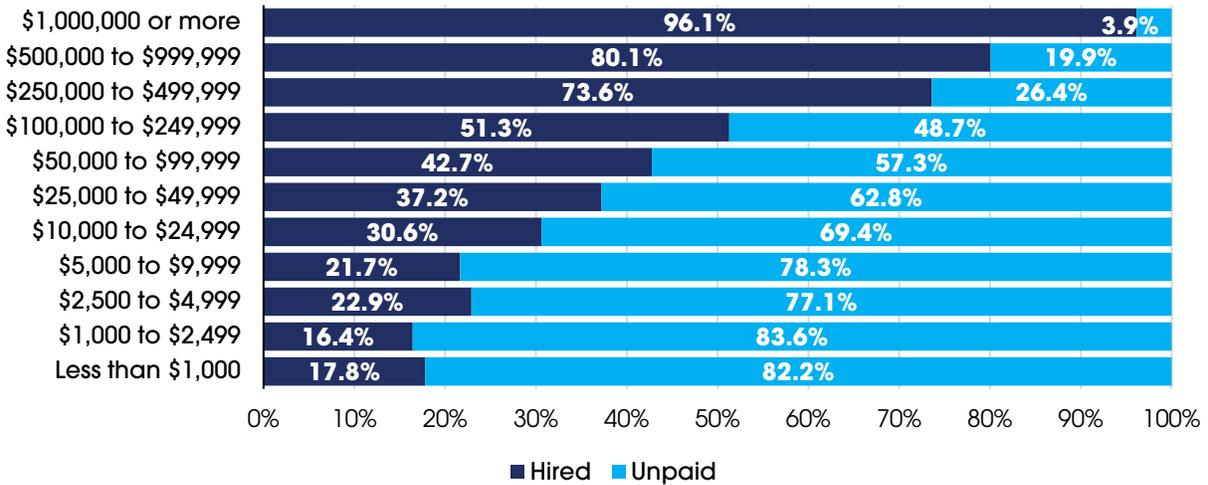
13 These include dairy cattle and milk production (26.4 workers per operation), hog and pig farming (18.3 workers), and vegetable and melon farming (16.8 workers).

14 Unpaid workers are defined in the Census of Agriculture as: “Data include agricultural workers not on the payroll who performed activities or work on a farm or ranch.”

15 Migrant workers are defined in the Census of Agriculture as: “migrant farm workers whose employment requires travel that prevents the worker from returning to his or her permanent place of residence the same day.”

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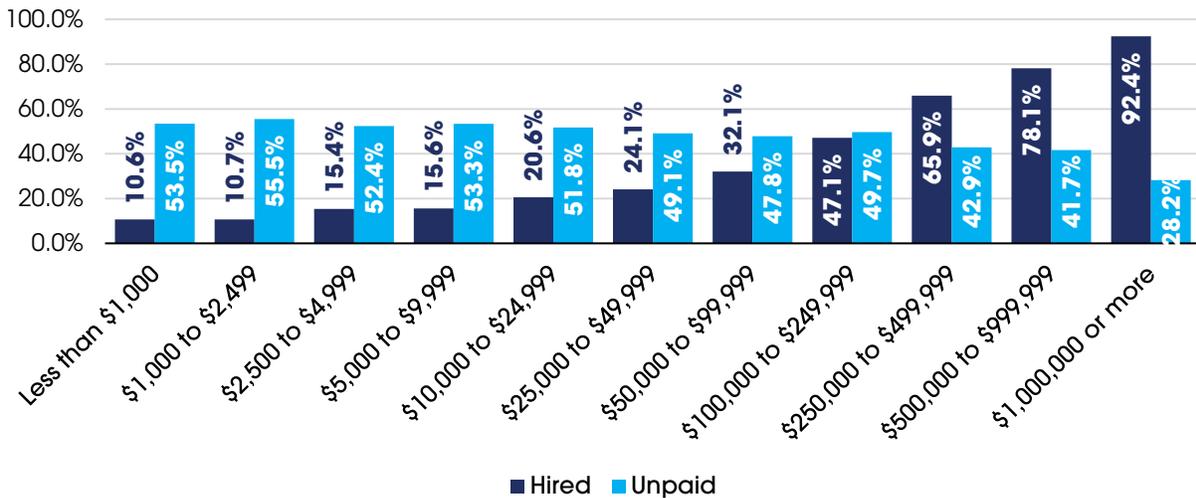
Figure 9
Colorado Non-Migrant Farm Workers by Type and Farm Economic Class, 2017



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

The share of workers who were hired compared to unpaid varied by the economic class of farms. In 2017, 96.1 percent of the farmworkers employed by farms with incomes of \$1,000,000 and over were hired workers compared to 17.8 percent of farmworkers employed by operations with incomes less than \$1,000. In general, the share of paid workers increased with farm income among farms in Colorado in 2017.

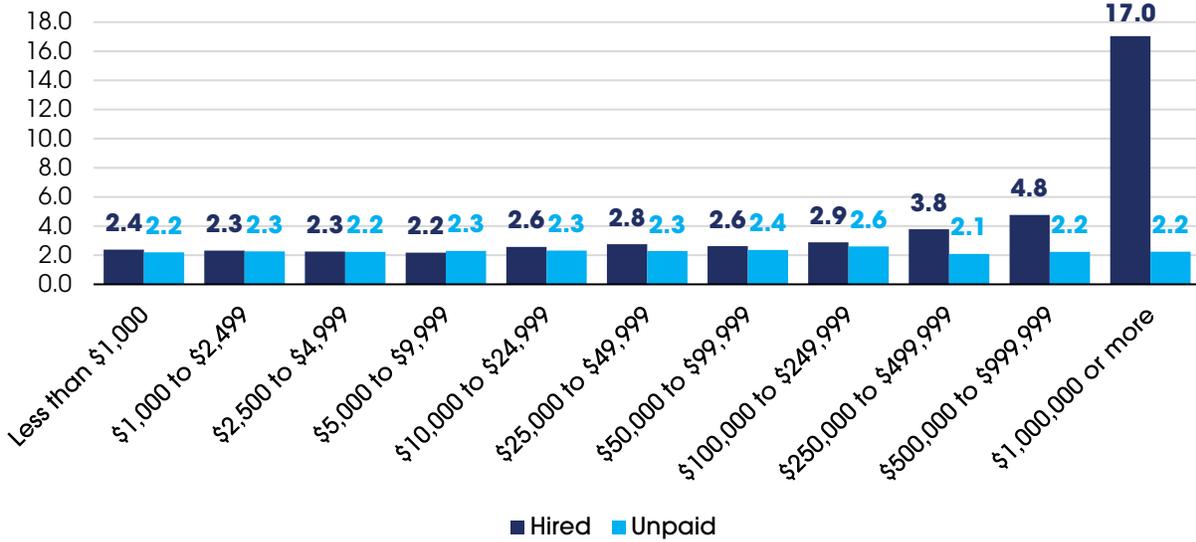
Figure 10
Share of Colorado Farms with Hired or Unpaid Workers by Economic Class, 2017



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Figure 10 shows that farms with higher incomes were more likely to hire farmworkers. Only a small share of lower income farms hired farmworkers compared to 92.4 percent of farms with incomes of \$1,000,000 or more.

Figure 11
Average Hired or Unpaid Workers per Operator by Economic Class, 2017



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Most farms in the state with hired labor, regardless of income, hired an average of 2 to 4 farmworkers in 2017. Farms with incomes of \$1,000,000 or more, on the other hand, hired an average of 17.0 farmworkers. As a result, 37.8 percent of farmworkers are employed by Colorado’s largest farms despite these farms accounting for only 2.3 percent of operations in the state.

This look at Colorado’s farm operations suggests that any overtime rule, regardless of the overtime threshold chosen, would only affect a small share of farms in the state. Even among farms who use hired labor, most farms in the state employed around 2 to 4 workers. Only farms with incomes over \$500,000 had an average number of workers above the statewide average of 4.2 hired worker per operation. Any regulation that would raise labor costs will have a disproportionate impact on the types of agriculture that require a large number of workers, such as dairy farming or hog and pig farming. However, data from the Census of Agriculture suggests that these labor-intensive types of agriculture made up a small share of the farming operations in our state in 2017 and were more likely to have incomes of \$1,000,000 or more and thus are better prepared to adapt to increased labor costs due to overtime. We do not believe that exemptions for these types of farms are warranted and encourage CDLE from adding new carve-outs in the final rule based on the type of agricultural products produced by an employer.

Estimated Impacts of CDLE’s Proposed Rule

While a lack of detailed data on agricultural operations and workers makes it difficult to fully estimate the impacts of CDLE’s proposed overtime rule for farmworkers, in particular the rule’s carve-out for seasonal work, it is still possible to estimate which farms and workers

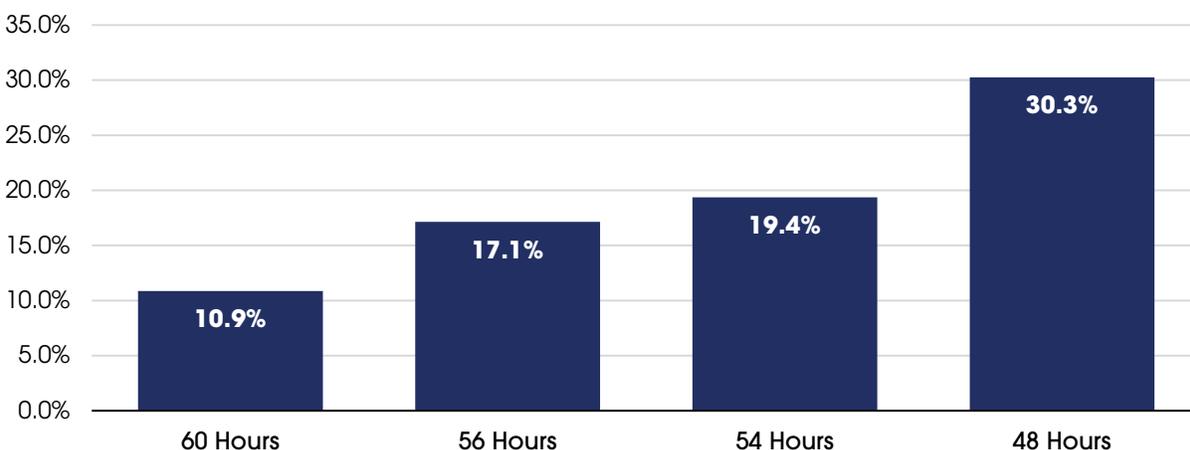
might be affected by the rule and how that might change over the next few years as the rule is phased-in.

To estimate the effects of the proposed overtime rule on farmworker wages, we first need to estimate the average wage paid to farmworkers in 2019. The American Community Survey does not include data on hourly wages, so we must look to the Current Population Survey (CPS). However, as mentioned at the start of this issue brief, we opted to combine monthly survey data from 2010 to 2019 since the Current Population Survey is monthly and has a very small monthly sample size for farmworkers. Wage data from the CPS is not adjusted for inflation. To address this, we used the CPI-U-RS series from the U.S. Bureau of Labor Statistics to adjust all wage data to the value of 2020 dollars. With this adjustment for inflation, the average wage for a farmworker between 2010 and 2019 was \$13.21 per hour. There is one additional data source we can look to in order to confirm this estimate is accurate. The U.S. Department of Labor sets adverse effective wage rates (AEWR), or the minimum wage that must be paid to foreign farmworkers who are hired as part of H2-A visa program, for all states in the country.¹⁶ In 2019, the AEWR for Colorado was \$13.13 per hour or \$13.29 per hour in 2020 dollars. After adjusting for inflation, the AEWR for Colorado in 2019 was nearly identical to our estimated wage rate of \$13.21 per hour. We averaged these two estimates to arrive at our final estimated hourly wage of \$13.25 per hour.

Benefits to Farmworkers

Figure 12

Share of Colorado Farmworkers Eligible for Overtime at Different Thresholds, 2019



Note: This chart does not account for the employer size and seasonality carve-outs proposed in CDLE's rule.

Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

As a starting point, it is helpful to examine how many farmworkers, regardless of their employer-type, might qualify for overtime pay at the different thresholds proposed by CDLE. Figure 12 shows that just over 10 percent of farmworkers in the state would have potentially been eligible for overtime pay if the rules proposed by CDLE were in place in 2019. On the

¹⁶ Unless the state, federal minimum wage, the prevailing wage or a previously agreed upon wage are higher.

other hand, close to one in three farmworkers worked more than 48 hours in a week. While not every worker in the state was eligible for overtime pay, 29.7 percent of all Colorado workers worked over 40 hours in a week in 2019. While an argument could be made that a 48-hour overtime threshold would cover the same share of farmworkers as a 40-hour overtime threshold does for workers in Colorado as a whole, we should remember that this 29.7 percent share likely reflects 80 years of employers altering their labor practices to adapt to overtime regulations, something that has not been necessary in the agricultural sector until the passage of SB21-087.

Table 5
Estimated Pay Increase for Colorado Farmworkers at Different Overtime Thresholds, 2019

Overtime Threshold	Avg Hours Worked for Overtime Workers	Avg Weekly Wage	Avg Weekly Wage with Overtime	Weekly Wage Increase for Overtime Workers	Weekly Wage Increase for All Workers
60 Hours	75.6	\$1,002	\$1,105	10.3%	1.1%
56 Hours	69.9	\$926	\$1,018	9.9%	1.7%
54 Hours	68.2	\$904	\$998	10.4%	2.0%
48 Hours	61.7	\$818	\$908	11.1%	3.4%

Note: \$13.25 wage is CCLP’s estimate for the average hourly wage paid to farmworkers in Colorado in 2019. This analysis assumes all farmworkers would receive overtime pay at these thresholds, regardless of their employer.

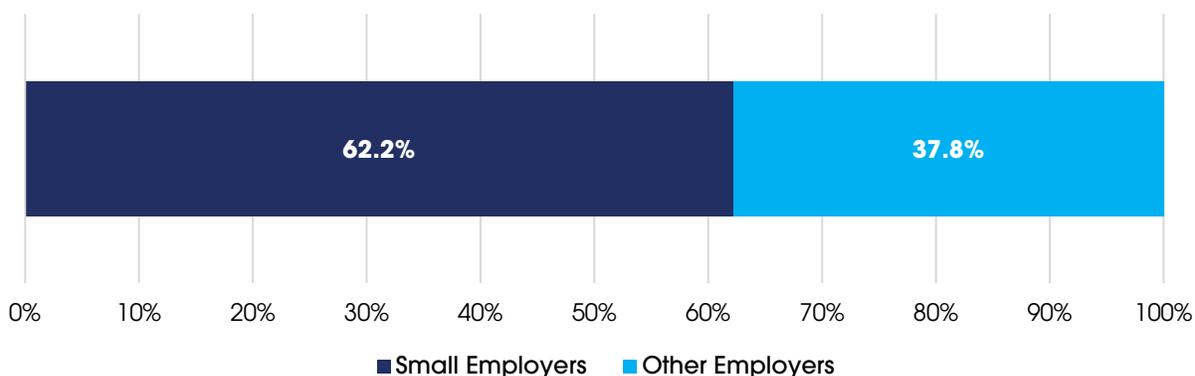
Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Using data from the U.S. Census Bureau, it is possible to estimate how the overtime thresholds proposed in CDLE’s rule might affect the wages of farmworkers if applied universally to all employers. For example, the 10.9 percent of farmworkers who worked more than 60 hours per week worked an average of 75.6 hours during 2019. Under current rules, a farmworker working this number of hours would earn \$1,002 per week if paid the average hourly wage of \$13.25 per hour. If this worker received overtime pay for the 15.6 hours of overtime worked above 60 hours, then his or her wage would increase by \$103 per week, an increase of 10.3 percent. Since only one in ten farmworkers worked more than 60 hours per week in 2019, a 60-hour threshold would effectively result in a rise in wage income of 1.1 percent for Colorado’s farmworkers in aggregate. This assumes that employers do not alter workers’ hours in response to the overtime rules. Looked at from the perspective of maximizing the increase in wages for farmworkers, Table 5 suggests that a 48-hour overtime threshold would result in the greatest increase in wages for farmworkers. This is not surprising given close to one in three farmworkers would receive overtime at this threshold.

Thus far, this analysis has not accounted for the different thresholds that were included in CDLE’s proposed rule for small and seasonal employers. When fully implemented, overtime thresholds for workers will vary based on their employer. While we can use data from the U.S. Department of Agriculture to estimate the number of employers and farmworkers who would

fall into the “small employer” category,¹⁷ it is more difficult to estimate the number of employers and workers who would fall under the “highly seasonal employer” category and “other employer” category. This is unfortunate, as CDLE proposed different overtime thresholds for these two groups of workers. It is difficult to estimate which farmworkers might fall into which employer category without detailed weekly information on farmworkers’ work patterns coupled with their employers’ income. That said, we can assume that farms who meet the definition of small employer would likely not seek to qualify as a highly seasonal employer because they would be required to provide overtime pay to farmworkers after 48 hours worked per week except for during 22 peak weeks, when overtime pay would be provided after 56 hours of work per week. Small employers are required to pay overtime to workers after 56 hours, so it seems likely that only other employers, who must pay overtime after 48 hours worked per week, would seek to qualify as a highly seasonal employer to take advantage of the higher overtime threshold during peak seasons. This higher overtime threshold for highly seasonal employers would not benefit small employers since they must follow the same overtime threshold of 56 hours per week throughout the year, not just during the 22 peak weeks.

Figure 13
Share of Colorado Farmworkers by Employer Type, 2017



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Based on the assumptions above, Figure 13 shows the share of farmworkers who we estimate were employed by an operation that would be considered a small employer under CDLE’s definition if it were in place in 2017. That year, 62.2 percent of farmworkers were employed by

17 For this analysis, we assumed that any farm with income below \$1,000,000 would fall into the “small employer” category for overtime. This likely overestimates the number of farms that would be small farms, as farms with incomes of \$500,000 to \$999,999 had an average of 4.8 hired workers in 2017. The number of workers per CDLE’s rule is based on hours worked, and it is not clear to what extent the average for these types of farms is being influenced by a small number of farms who happen to employ more than 4 workers or whether it is truly representative of most farms. For these reasons, and due to data limitations, we were not able to create a more accurate estimate of who which farms would be considered “small farms” under CDLE’s rule. This raises another issue: how can CDLE know its proposed overtime rule for farmworkers is a “meaningful protection” if we cannot know from available data which category of employer all the farms in Colorado would fall into?

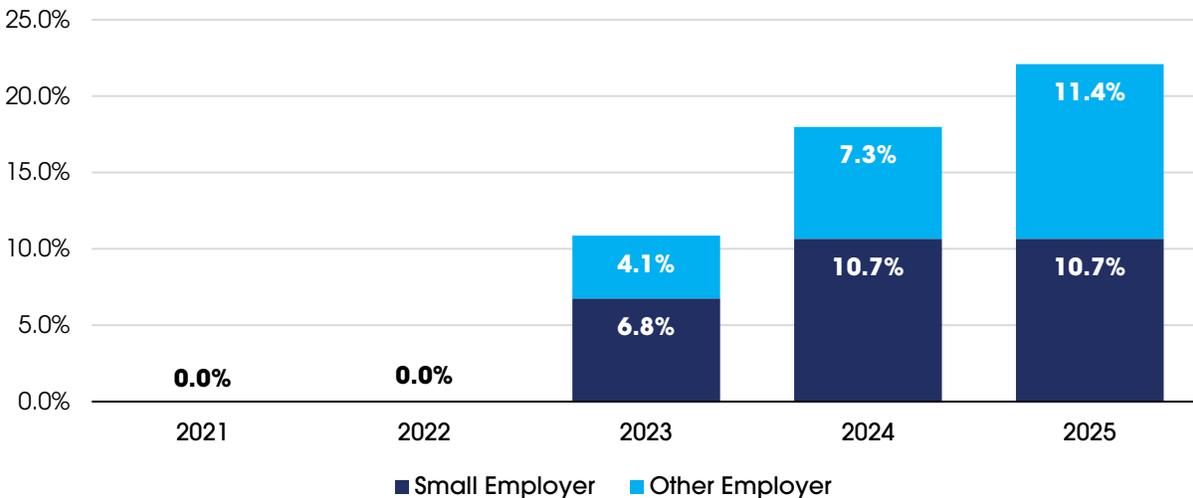
Farmworker Overtime in Colorado: Estimates of Benefits and Costs

a small employer compared to 37.8 percent of farmworkers who worked for an other employer. The estimate for other employers likely includes some share of employers who would qualify as highly seasonal employers. What this suggests is that most farmworkers in our state would be subject to a 56-hour overtime threshold starting in January 2024 under CDLE’s proposed rule, as the majority are employed by small employers.

Since U.S. Census Bureau data does not include detailed information about the employers of farmworkers, it is difficult to estimate how the weekly hours worked by farmworkers varies between small employers and other employers. For simplicity’s sake, we assume that the working hours of farmworkers remain the same regardless of the size of their employer’s farm. We also assume that the composition of farmworkers in Colorado, specifically in terms of hours worked, will be the same between 2021 and 2025 as it was in 2019. Finally, we assume that farm operators do not change their hiring and labor practices because of these new overtime protections as they are phased-in starting in 2023. With these assumptions, we can begin to estimate how many farmworkers could see their wages increase because of the proposed overtime rule.

Figure 14

Share of Farmworkers Who Would Receive Overtime Protections by Employer Type, 2019



Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

The effects of CDLE’s proposed rule are easy to estimate for 2021, 2022, and 2023; farmworkers would see no changes in overtime protections during the remainder of 2021 and most of 2022. Beginning in late 2022 and during all of 2023, all farmworkers would qualify for overtime pay after 60 hours of work in a given week regardless of their employer. We know from Figure 12 that 10.9 percent of farmworkers worked more than 60 hours per week in 2019. Among employers, we estimate that 6.8 percent of farmworkers employed by a small employer would qualify for overtime protections at this threshold, assuming no changes in employment or hours because of these new rules. On the other hand, we estimate that 4.1% of farmworkers employed by an other employer would qualify for overtime in 2023. The share of farmworkers

who qualify for overtime protections will increase for workers employed by both small employers and other employers starting in 2024 as lower thresholds phase-in.

We estimate that 17.1 percent of the 62.2 percent of farmworkers employed by small employers worked 56 hours per week or more, while 19.4 percent of the 37.8 percent of farmworkers employed by other employers worked 54 hours or more in 2024. When the proposed rule is fully phased-in, we estimate it would extend overtime protections to 22.1 percent of all farmworkers in the state. 10.7 percent of farmworkers would receive overtime protections after 56 hours of work, while 11.4 percent would receive overtime protections after 48 hours of work. Our estimates for the share of eligible workers employed by other employers likely overestimates the share of workers who would receive overtime protections in 2024 and 2025, depending on the share of farmworkers in this group who work for highly seasonal employers. In addition, adaptations by employers to these new rules will also likely result in a lower share of workers being paid overtime in the future.

Table 6
Estimated Weekly Wage Increase for Colorado Farmworkers Working 60 Hours per Week

	Employed by Small Employer	Employed by Other Employer	Non-Farmworker
Estimated Hourly Wage	\$13.25	\$13.25	\$13.25
Weekly Wage, no Overtime	\$795	\$795	\$795
Weekly Wage, with Overtime	\$821	\$874	\$928
Increase in Weekly Wage	3.3%	10.0%	16.7%

Note: Non-farmworkers in this analysis were eligible for overtime pay after 40 hours of work per week. For comparative purposes, we assumed the non-farmworkers earns a wage identical to farmworkers.

Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

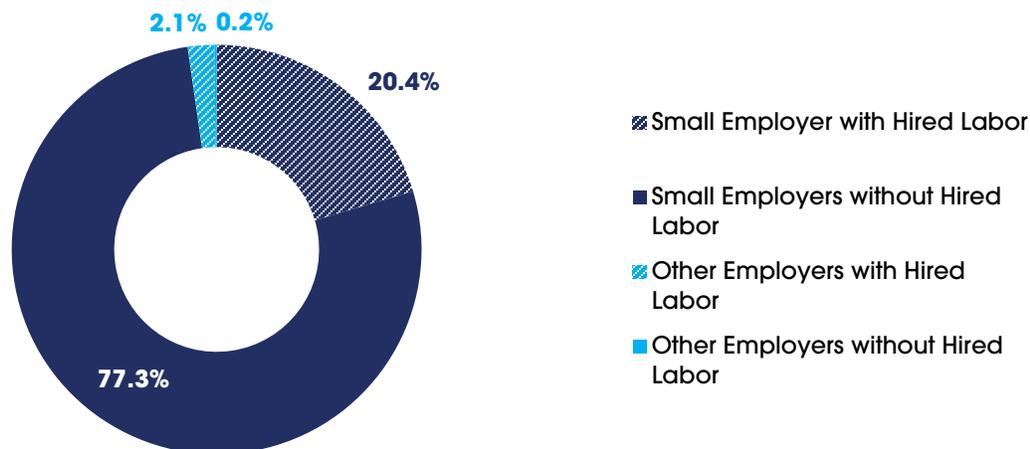
Table 6 compares how the average weekly wage of a farmworker who works 60 hours per week would change depending on if the worker was employed by a small employer or an other employer. Without overtime, this farmworker would earn \$795 per week if paid our estimated average wage of \$13.25 per hour. Once CDLE’s proposed rule is fully phased-in, this worker would receive overtime wages for 4 hours of work if employed by a small employer and 12 hours if employed by an other employer. The farmworker employed by a small employer would see their weekly wage increase 3.3 percent to \$821 per week. If employed by an other employer, the farmworker’s weekly wage would increase by 10.0 percent to \$874 per week. All things held equal, the income earned by a farmworker who is employed by an other employer and works 60 hours per week would receive 6.5% more income than the same worker employed by a small employer due to the different overtime thresholds proposed for these two types of employers. While our analysis estimates that one in five farmworkers could see their weekly wages increase because of CDLE’s proposed rule, the benefits for farmworkers would be even higher if they received the same overtime protections as other workers. For non-farmworkers who are eligible for overtime and working 60 hours a week, overtime protections

result in a weekly wage that is 16.7 percent higher than it would have been without overtime pay, assuming a wage of \$13.25.

Costs to Farmers

Figure 15

Share of Colorado Farms by Type and Use of Hired Labor, 2017



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Extending overtime protections to farmworkers, no matter the hour threshold, will result in increased labor costs to Colorado's farmers who employ hired farmworkers. As discussed in the previous section, the share of farms that would be impacted by this rule vary by farm size. First, we estimate that 97.7 percent of farms in Colorado in 2017 would have been considered small employers under CDLE's proposed rule if it were in place that year. 20.4 percent of farms in the state were small employers with hired labor, compared to 2.1 percent who were an other employer with hired labor. Looking at each group individually, 20.9 percent of small employers used hired labor in 2017, compared to 92.4 percent of other employers. In other words, 79.1 percent of small employers and 7.6 percent of other employers would not see any changes in their labor costs because they do not use hired labor.

We can estimate how much labor costs could rise for farm owners under CDLE's proposed rule. For ease of the analysis, we will only model the costs associated with providing overtime protections to farmworkers once the proposed rule is fully phased-in. By 2025, small employers would be required to provide overtime pay after 56 hours of work and other employers after 48 hours. As with the benefits the proposed rule would have for farmworkers, our analysis of labor costs does not try to account for employers who would qualify as highly seasonal employers under the proposed rule.

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Table 7

Estimated Average Farmworker Employment and Weekly Hours by Season, 2010-2019

Season	Avg. Employment	Share Working More than 56 Hours	Avg. Hours for Work Over 56 Hours	Avg. Hours for Work Under 56 Hours	Share Working More than 48 Hours	Avg. Hours for Work Over 48 Hours	Avg. Hours for Work Under 48 Hours
Winter	10,965	19.7%	65.8	36.9	33.6%	59.9	33.2
Spring	11,958	19.1%	70.3	38.2	41.6%	59.6	33.5
Summer	18,448	21.4%	69.9	38.3	36.6%	62.3	35.2
Fall	16,065	25.8%	72.4	37.0	36.0%	66.6	34.7

Note: Winter: December, January, February; Spring: March, April, May; Summer: June, July, August; Fall: September, October, November

Source: Colorado Center on Law and Policy analysis of 2010-2019 Current Population Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Any estimate of farm labor costs should account for the seasonal fluctuations in employment levels and in work hours of farmworkers. To do this, we can look to the monthly CPS data to estimate how the number of farmworkers and their hours change, on average, in Colorado throughout the year. Table 7 summarizes these changes. Based on the CPS data, we estimate that more farmworkers are employed in Colorado during the summer and fall seasons, which are also the seasons with the greatest estimated share of farmworkers working more than 56 hours per week. A similar trend is evident when looking at estimates of the share of farmworkers working more than 48 hours per week, although the spring season had the largest share of farmworkers working more than 48 hours. These estimates are for the population of farmworkers as a whole and do not reflect the unique patterns of employment and hours needed to produce specific types of crops or livestock in Colorado.

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

Table 8
Estimated Seasonal Wage Bill without Overtime Pay Rates

	Number of Workers	Avg. Weekly Hours	Avg. Hourly Pay	Wage Bill (millions)
WINTER:				
Workers with OT Hours, Small Employer	1,345	65.8	\$13.25	\$14.1
Workers with no OT Hours, Small Employer	5,475	36.9	\$13.25	\$32.1
Workers with OT Hours, Other Employer	1,392	59.9	\$13.25	\$13.3
Workers with no OT Hours, Other Employer	2,753	33.2	\$13.25	\$14.5
<i>Winter Wage Bill</i>				\$74.0
SPRING:				
Workers with OT Hours, Small Employer	1,418	70.3	\$13.25	\$15.8
Workers with no OT Hours, Small Employer	6,020	38.2	\$13.25	\$32.1
Workers with OT Hours, Other Employer	1,880	59.6	\$13.25	\$17.8
Workers with no OT Hours, Other Employer	2,640	33.5	\$13.25	\$14.1
<i>Spring Wage Bill</i>				\$84.3
SUMMER:				
Workers with OT Hours, Small Employer	2,455	69.9	\$13.25	\$27.3
Workers with no OT Hours, Small Employer	9,019	38.3	\$13.25	\$54.9
Workers with OT Hours, Other Employer	2,555	62.3	\$13.25	\$25.3
Workers with no OT Hours, Other Employer	4,419	35.2	\$13.25	\$24.7
<i>Summer Wage Bill</i>				\$132.3
FALL:				
Workers with OT Hours, Small Employer	2,574	72.4	\$13.25	\$29.6
Workers with no OT Hours, Small Employer	7,418	37.0	\$13.25	\$43.6
Workers with OT Hours, Other Employer	2,185	66.6	\$13.25	\$23.1
Workers with no OT Hours, Other Employer	3,888	34.7	\$13.25	\$21.5
<i>Fall Wage Bill</i>				\$117.9
ANNUAL WAGE BILL				\$408.4

Note: Winter: December, January, February; Spring: March, April, May; Summer: June, July, August; Fall: September, October, November. The average hourly pay rate is an estimate of the wages paid to farmworkers in 2019. This analysis assumes that 62.2% of farmworkers are employed by small employers and 37.8% of farmworkers are employed by other employers.

Source: Colorado Center on Law and Policy analysis of 2010-2019 Current Population Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Based on the estimates from Table 7 and our estimates that 62.2 percent of Colorado's farmworkers were employed by small employers compared to 37.8 percent employed by other employers, we can approximate the annual wage bill for Colorado farmers and how it would

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

change under CDLE’s proposed rule. Table 8 shows our assumptions for the number of farmworkers employed by small or other employers, the number of farmworkers working overtime-eligible hours, as well as how many hours each type of farmworker worked in an average week. Based on these, we estimate that farms paid an aggregate of \$408.4 million in wages to farmworkers. The wage bill was greatest during the summer season, not surprising given this is the month during which the greatest number of farmworkers are employed. With this baseline estimate, we can compare how the aggregate wage bill might change under CDLE’s proposed rule.

Table 9
Estimated Seasonal Wage Bill with Overtime Pay Rates Under Proposed Rule

	Number of Workers	Avg. Weekly Hours	Avg. Hourly Pay	Wage Bill (millions)
WINTER:				
Workers with OT Hours, Small Employer Regular Hours	1,345	56.0	\$13.25	\$12.0
Workers with OT Hours, Small Employer Overtime Hours		9.8	\$19.88	\$3.1
Workers with no OT Hours, Small Employer	5,475	36.9	\$13.25	\$32.1
Workers with OT Hours, Other Employer Regular Hours	1,392	48.0	\$13.25	\$10.6
Workers with OT Hours, Other Employer Overtime Hours		11.9	\$19.88	\$4.0
Workers with no OT Hours, Other Employer	2,753	33.2	\$13.25	\$14.5
<i>Winter Wage Bill</i>				<i>\$76.4</i>
SPRING:				
Workers with OT Hours, Small Employer Regular Hours	1,418	56.0	\$13.25	\$12.6
Workers with OT Hours, Small Employer Overtime Hours		14.3	\$19.88	\$4.8
Workers with no OT Hours, Small Employer	6,020	38.2	\$13.25	\$36.6
Workers with OT Hours, Other Employer Regular Hours	1,880	48.0	\$13.25	\$14.3
Workers with OT Hours, Other Employer Overtime Hours		11.6	\$19.88	\$5.2
Workers with no OT Hours, Other Employer	2,640	33.5	\$13.25	\$14.1
<i>Spring Wage Bill</i>				<i>\$87.6</i>
SUMMER:				
Workers with OT Hours, Small Employer Regular Hours	2,455	56.0	\$13.25	\$21.9

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

	Number of Workers	Avg. Weekly Hours	Avg. Hourly Pay	Wage Bill (millions)
Workers with OT Hours, Small Employer Overtime Hours		13.9	\$19.88	\$8.1
Workers with no OT Hours, Small Employer	9,019	38.3	\$13.25	\$54.9
Workers with OT Hours, Other Employer Regular Hours	2,555	48.0	\$13.25	\$19.5
Workers with OT Hours, Other Employer Overtime Hours		14.3	\$19.88	\$8.7
Workers with no OT Hours, Other Employer	4,419	35.2	\$13.25	\$24.7
Summer Wage Bill				\$137.9
FALL:				
Workers with OT Hours, Small Employer Regular Hours	2,574	56.0	\$13.25	\$22.9
Workers with OT Hours, Small Employer Overtime Hours		16.4	\$19.88	\$10.1
Workers with no OT Hours, Small Employer	7,418	37.0	\$13.25	\$43.6
Workers with OT Hours, Other Employer Regular Hours	2,185	48.0	\$13.25	\$16.7
Workers with OT Hours, Other Employer Overtime Hours		18.6	\$19.88	\$9.7
Workers with no OT Hours, Other Employer	3,888	34.7	\$13.25	\$21.5
Fall Wage Bill				\$124.4
ANNUAL WAGE BILL				\$426.3
WAGE BILL INCREASE (FROM TABLE 8)				+\$17.9

Note: Winter: December, January, February; Spring: March, April, May; Summer: June, July, August; Fall: September, October, November. The average hourly pay rate is an estimate of the wages paid to farmworkers in 2019. This analysis assumes that 62.2% of farmworkers are employed by small employers and 37.8% of farmworkers are employed by other employers.

Source: Colorado Center on Law and Policy analysis of 2010-2019 Current Population Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Based on Table 9, we estimate that the wage bill for farmers would increase \$17.9 million in aggregate from \$408.4 million to \$426.3 million. This represents an increase of 4.4 percent; however, this increase would not occur immediately, but over the next four years as the rule phases in. Looked at by employer type, we estimate that small employers would see their wage bill increase in aggregate by 3.4 percent compared to 6.0 percent for other employers. In addition, we estimate that farmers' wage bills will grow the most during the fall season, increasing by 5.6 percent. Small employers would see their wage bill increase 4.6 percent during the fall season, while other employers would see their wage bill increase by 7.2 percent. Across all seasons, other employers will see their wage bills increase more than the wage bills of small employers.

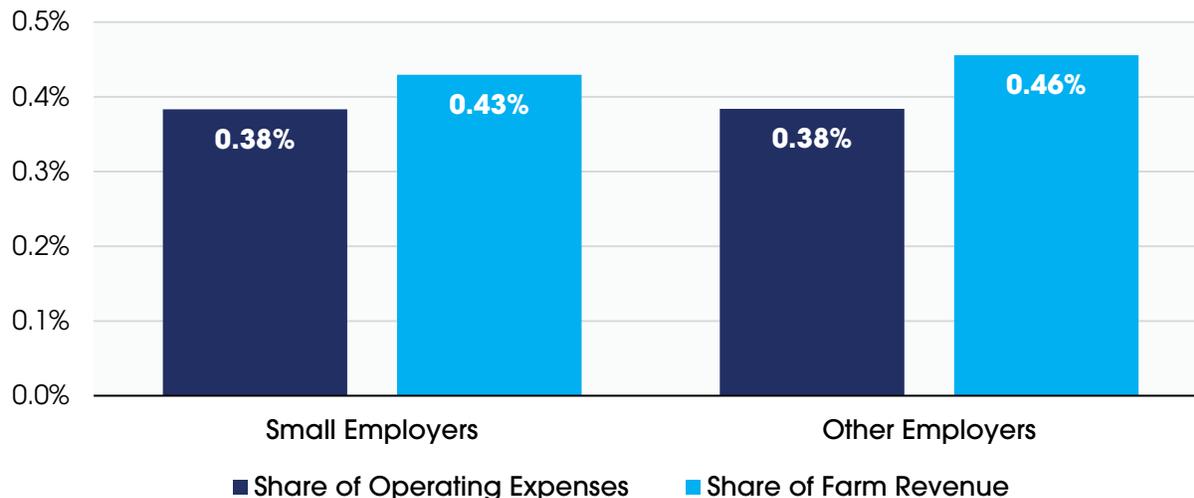
Table 10
Effect of Labor Cost Increases on Operating Expenses and Revenue, 2019

Number of Farms	69,032
OT Labor Cost Increase	4.4%
FARM EXPENDITURES	
Hired Labor Expenses	\$420.4 million
Contract Labor Expenses	\$75.6 million
Total Labor Expenses	\$496.0 million
Total Operating Expenses	\$6,604.5 million
Labor Expenses as a Share of Total Expenses	7.5%
Labor Cost Increase as a Share of Total Expenses	0.33%
FARM REVENUE	
Total Revenue	\$8,536.9 million
Labor Expenses as a Share of Total Revenue	5.8%
Labor Cost Increase as a Share of Total Revenue	0.25%

Source: Colorado Center on Law and Policy analysis of data from the Colorado Agricultural Statistics 2020, National Agricultural Statistics Service, U.S. Department of Agriculture.

Assuming farmers' total labor costs also grow by 4.4 percent, we can estimate what this increase represents as a share of farms' total expenditures or as a share of their income. For this estimate, we can use data provided by the 2020 NASS Statistical Bulletin for Colorado on the labor costs, expenditure, and income of farms in Colorado in 2019. That year, farms spent an aggregate of \$420.4 million on hired labor costs. Including the \$75.6 million spent on contract labor, farms spent a total of \$496.0 million on labor in 2019. That same year, Colorado farms spent a total of \$6.6 billion on operating expenses, of which labor costs represented 7.5 percent. Based on this, we can estimate that an increase of 4.4 percent in labor costs would result in an increase in costs equivalent to 0.33 percent of total operating expenses. That same year, total labor costs accounted for 5.8 percent of aggregate farm revenue in Colorado. A 4.4 percent increase in this 5.8 percent is equivalent to 0.25 percent of farm revenues. In other words, this analysis suggests that the increased labor costs associated with CDLE's proposed rule would only be a small percentage of what farms spend on operating costs or a small percentage of the revenue they earn each year. It also suggests that CDLE could lower the proposed overtime thresholds without having a seriously negative impact on the agricultural industry in the state. Total labor costs make up a small share of farms' total expenditures, so it would take a significant increase in labor costs to have an impact on operating expenses or revenues.

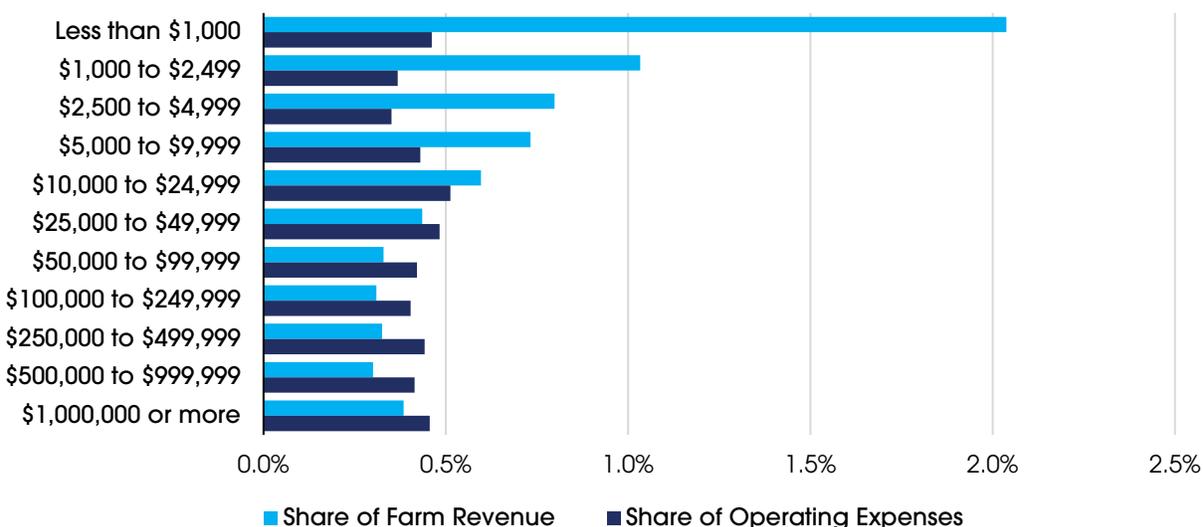
Figure 16
 Cost Increases Due to Proposed Overtime Rule as a Share of Expenses and Revenue, 2017



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

We can look to the 2017 Census of Agriculture to help us further refine our estimates and explore how the increased costs due to overtime for small and other employers compare to their total operating expenses and revenue. Based on Table 8 and 9, we can estimate that the wage bill for small employers would increase by 3.4 percent and the wage bill for other employers would increase by 6.0 percent. We also know from the Census of Agriculture that farms who would likely qualify as small farms under CDLE’s proposed rule had total labor expenses of \$241.2 million in 2017. They also had operating expenses of \$1.9 billion and revenue of \$2.2 billion that same year. Labor costs represented 12.5 percent of operating expenses and 11.2 percent of revenue for small employers. Other employers spent \$376.8 million on labor in 2017 and had operating expenses of \$4.9 billion and revenues of \$5.8 billion. Labor costs represented 7.7 percent and 6.4 percent of other employers’ expenditures and revenues, respectively. As Figure 16 shows, the increase in labor costs due to CDLE’s proposed rule are equivalent to 0.38 percent of the operating expenses of small and other employers. The additional costs are equivalent to 0.43 percent of small employers’ revenues and 0.46 percent of other employers’ revenues.

Figure 17
 Cost Increases Due to Proposed Overtime Rule as a Share of Total Expenses and Revenue by Economic Class, 2017



Note: Assumes the labor cost increase for farms with incomes below \$1,000,000 is equivalent to small employers and the labor costs for farms with \$1,000,000 or more is equivalent to other employers, as shown in Figure 16.

Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Similarly, we can estimate how these costs would affect farms with different incomes. Figure 17 shows that the cost increase due to overtime represents 0.51 percent or less of operating expenses for farms in all economic classes. The labor cost increase represents 2.0 percent of total revenues for farms with incomes of less than \$1,000 in 2017, significantly more than for farms of other economic classes. However, it is important to remember that only 10.6 percent of the farms with incomes less than \$1,000 had hired labor in 2017. Nine in ten operations would see no changes to their revenues because of this proposed rule. Even the majority of farms with higher incomes would see no changes to their labor costs after the proposed rule is fully phased in. For instance, 20.2 percent of farms with incomes under \$250,000 would face the increased labor costs estimated in Figure 17 compared to 76.7 percent of farms with incomes of \$250,000 or more in 2017 if the rule was in place that year.

Summary of Costs and Benefits of the Proposed Rule

Assuming the number of farmworkers in Colorado remains constant through 2025 and that the workforce remains similar in terms of work patterns, we estimate that 22.1 percent of farmworkers in Colorado would see their wages rise if the overtime protections proposed by CDLE were fully in place in 2019. The typical farmworker working 60 hours per week would see their weekly wage increase by 3.3 percent if employed by a small employer and 10.0 percent if employed by an other employer. A similar number of farms would face increased labor costs because of the proposed rule. Just 22.5 percent of Colorado farms had hired labor in 2017. We estimate that these farms would see their total labor costs increase by 4.4 percent because of providing overtime pay at the thresholds proposed by CDLE by 2025. Because total labor costs

represented a small share of Colorado farms' operating expenses and revenues in 2019, our estimated increase in labor costs would require a less than 1 percent increase in the total operating expenses or revenue among all farms in Colorado to cover the added expense. When we look at changes in total labor costs by economic class, we estimate that most farms would require less than a 0.51 percent increase in operating expenses to cover the increased labor costs due to overtime, while all but the lowest income farms would require an increase in sales of less than 1.0 percent. Despite this, we believe that increased labor costs are manageable and similar to the increases a farm might see in other expenses in their budgets year-to-year.

Based on our analysis we are concerned that the rule as proposed does not meet the mandate for CDLE as set out in SB21-087. According to that legislation, the proposed rule should provide "meaningful overtime and maximum hours protections to agricultural employees". However, the rule did not include any maximum daily hour protections to farmworkers, despite the 12-hour daily protections afforded to all other workers who are eligible for overtime protections. We believe that this should be addressed in the final rule, and strongly encourage CDLE to apply the same 12-hour threshold that is applied to other workers. Although the rule does set weekly hour protections for farmworkers, we do not believe that these are meaningful protections that will result in Colorado's farmworkers working fewer hours. Overtime protections are in place to prevent over-work and guarantee workers have time outside of work to attend to personal matters, such as spending time with family, or necessities, such as sleeping. Our labor laws require employers to pay their workers a higher wage rate for overtime hours to disincentivize employers from overworking their employees. As with any financial incentive, the increased cost of requiring a worker to work more than what we as a society deem acceptable or safe must be high enough so that it has a meaningful impact on employers' behavior. In the context of this rule-making process, if the overtime threshold or thresholds for farmworkers are set too low, they will not provide meaningful protections.

We can look to Table 6 to understand how the 56-hour overtime threshold proposed by CDLE for farmworkers employed by small employers does not provide a meaningful overtime protection. First, the wage bill for a small employer with one farmworker who worked 60 hours per week at a wage of \$13.25 per hour would increase by \$26 per week once the proposed rule is fully phased-in by 2025. Assuming this farmworker consistently worked 60 hours year-round, the annual cost of employment to their employer would increase by \$1,352 (\$26 x 52 weeks). On the other hand, if farmworkers received the same overtime protections as other eligible workers in Colorado, this farmworker would be \$133 more expensive to employ each month, or \$6,916 more expensive each year. While \$1,352 more per year may be too much for some small farms to afford, it is certainly more affordable than paying an additional \$7,000 per year for 60 hours of labor like nearly all other employers in Colorado would be required to do under state labor laws. Said another way, we discourage non-farm employers in Colorado from overworking their employees by making them pay \$7,000 per year for requiring a worker to work 60 hours per week, but this proposed rule would only require farm employers to pay \$1,325 per year for requiring a worker to work 60 hours per week, one-fifth of the amount other employers would pay.

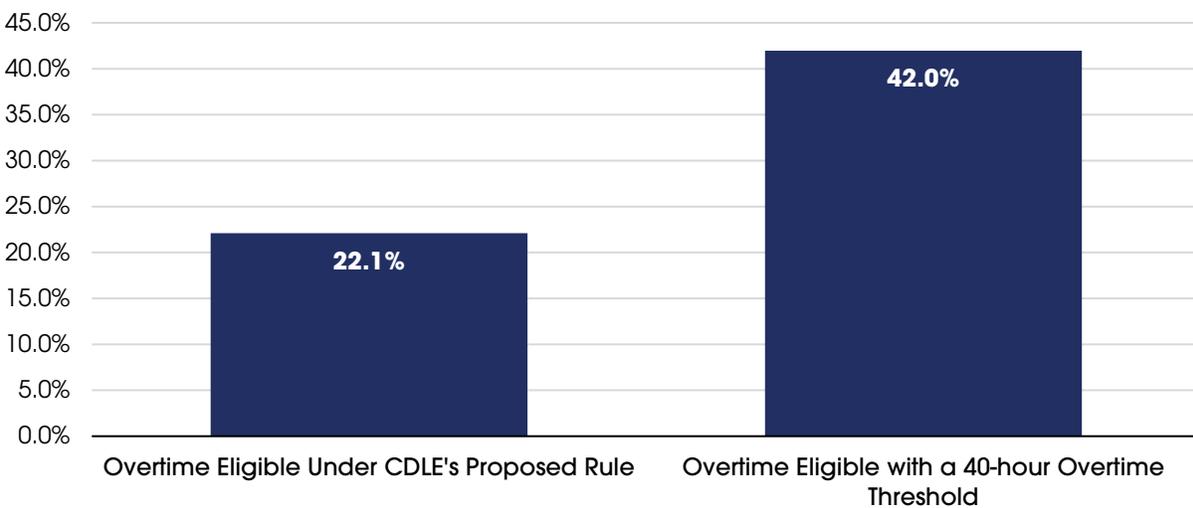
If preventing overwork is the goal of overtime protections, then we should look at what kinds of work weeks a 56-hour threshold would allow for farmworkers. Under the proposed rule, most farmworkers would still work an average of 11.2 hours per day if split across five days or an average of 9.3 hours per day if split across six days before receiving overtime pay. It is hard to see how a rule that would still allow workers to work 11.2 hours during a 5-day work week will reduce overwork among farmworkers. This is compared to an average of 8.0 hours over 5 days and 6.7 hours over 6 days for workers who are eligible for overtime after 40 hours. We encourage CDLE to reconsider the overtime thresholds for all types of farmworkers. Ideally, this would be 40 hours a week, but we acknowledge there are other considerations CDLE must weigh in its rulemaking. That said, we hope whatever the final threshold or thresholds are, they are set low enough to encourage meaningful change by agricultural employers and not just maintain the status quo. There will be costs to farmers, but our estimates encourage us that these costs will not destroy the agricultural industry in our state, especially if the rule gives farmers time in meeting the requirements of the next COMPS Order.

Estimated Impacts of a 40-Hour Overtime Threshold for Farmworkers

As a point of comparison to the effects of CDLE’s proposed rule, CCLP estimated the effects of providing a 40-hour overtime threshold to all farmworkers, instead of the thresholds chosen by CDLE for different employers. We include these findings because we feel that they support our ask of CDLE to set overtime thresholds for farmworkers at 40 hours per week, just as they are for most other workers in the state. We also feel that only a 40-hour overtime threshold will provide “meaningful” protections to farmworkers.

Benefits to Farmworkers

Figure 18
Share of Overtime-Eligible Farmworkers Under CDLE’s Rule vs 40-Hour Overtime Threshold, 2019



Note: The estimate for CDLE’s rule is based on overtime thresholds when the rule is fully phased-in. This analysis assumes the rule was in place during 2019.

Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

The first major difference between the overtime thresholds in CDLE’s proposed rule and a 40-hour threshold is in the share of farmworkers who might be eligible for overtime. Under CLDE’s rule, we estimate that 22.1 percent of farmworkers would receive overtime based on their hours worked in 2019. At a 40-hour threshold, we estimate that 42.0 percent of farmworkers would be eligible for overtime protections. Again, this share would not be too dissimilar from the share of workers in the construction and manufacturing sectors.

Table 11

Estimated Pay Increase for Colorado Farmworkers at 40-Hour Overtime Threshold

Overtime Threshold	Avg Hours Worked for Overtime Workers	Avg Weekly Wage	Avg Weekly Wage with Overtime	Weekly Wage Increase for Overtime Workers	Weekly Wage Increase for All Workers
56 Hours	69.9	\$926	\$1,018	9.9%	1.7%
48 Hours	61.7	\$818	\$908	11.1%	3.4%
40 Hours	57.2	\$758	\$872	15.0%	6.3%

Note: \$13.25 wage is CCLP’s estimate for the average hourly wage paid to farmworkers in Colorado in 2019. This analysis assumes all farmworkers would receive overtime pay at these thresholds, regardless of their employer.

Source: Colorado Center on Law and Policy analysis of 2019 5-Year American Community Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

As shown in Table 11, we estimate that the average farmworker’s pay would change by 15.0 percent if they were eligible for overtime pay after 40 hours worked. In terms of aggregate effects, this threshold would result in 6.3 percent of the state’s farmworkers experiencing an increase in weekly wages, assuming no changes in employment or hours because of these rules. As Table 6 shows, if a farmworker working 60 hours in a week were eligible for overtime pay after 40 hours, they would see their weekly wages increase 16.7 percent. Assuming no changes in hours worked, it is hard to deny that a 40-hour overtime threshold would be more beneficial to farmworkers. While it comes with increased costs, as we will detail in the next section, we believe that the potential benefits of such an overtime threshold would outweigh the costs. Furthermore, we believe this is the only overtime threshold that could be considered a meaningful protection, as it is the same as nearly every other worker in the state who is eligible for overtime.

Costs to Farmers

Table 12

Estimated Average Farmworker Employment and Weekly Hours by Season, 2010-2019

Season	Avg. Employment	Share Working More than 40 Hours	Avg. Hours for Work Over 40 Hours	Avg. Hours for Work Under 40 Hours
Winter	10,965	39.3%	57.7	32.8
Spring	11,958	49.3%	57.3	31.8
Summer	18,448	41.8%	60.1	34.4
Fall	16,065	42.1%	63.6	33.4

Note: Winter: December, January, February; Spring: March, April, May; Summer: June, July, August; Fall: September, October, November

Source: Colorado Center on Law and Policy analysis of 2010-2019 Current Population Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

To estimate costs to farmers associated with a 40-hour overtime threshold, we use a similar methodology as we did earlier to examine the costs associated with CDLE’s proposed rule. Table 12 show the assumptions used in the analysis for hours worked by overtime and non-overtime workers by season.

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

Table 13
Estimated Seasonal Wage Bill without Overtime Pay Rates at 40 Hour Threshold

	Number of Workers	Avg. Weekly Hours	Avg. Hourly Pay	Wage Bill (millions)
WINTER:				
Workers with OT Hours	4,313	57.7	\$13.25	\$39.6
Workers with no OT Hours	6,652	32.8	\$13.25	\$34.7
<i>Winter Wage Bill</i>				\$74.3
SPRING:				
Workers with OT Hours	5,899	57.3	\$13.25	\$53.7
Workers with no OT Hours	6,059	31.8	\$13.25	\$30.6
<i>Spring Wage Bill</i>				\$84.4
SUMMER:				
Workers with OT Hours	7,718	60.1	\$13.25	\$73.8
Workers with no OT Hours	10,730	34.4	\$13.25	\$58.7
<i>Summer Wage Bill</i>				\$132.4
FALL:				
Workers with OT Hours	6,765	60.1	\$13.25	\$68.4
Workers with no OT Hours	9,300	34.4	\$13.25	\$49.4
<i>Fall Wage Bill</i>				\$117.8
ANNUAL WAGE BILL				\$408.9

Note: Winter: December, January, February; Spring: March, April, May; Summer: June, July, August; Fall: September, October, November. The average hourly pay rate is an estimate of the wages paid to farmworkers in 2019. This analysis assumes that 62.2% of farmworkers are employed by small employers and 37.8% of farmworkers are employed by other employers.

Source: Colorado Center on Law and Policy analysis of 2010-2019 Current Population Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Table 13 includes our estimates for current farm wage bills using the assumptions in Table 12. Our estimate of \$408.9 million is slightly more than our previous estimates due to using different average hours worked. However, the difference is less than 0.1 percent, so the two figures are essentially equal.

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

Table 14
Estimated Seasonal Wage Bill with Overtime Pay Rates Under Proposed Rule

	Number of Workers	Avg. Weekly Hours	Avg. Hourly Pay	Wage Bill (millions)
WINTER:				
Workers with OT Hours, Regular Hours	4,313	40.0	\$13.25	\$27.4
Workers with OT Hours, Overtime Hours		17.7	\$19.88	\$18.2
Workers with no OT Hours	6,652	32.8	\$13.25	\$34.7
<i>Winter Wage Bill</i>				\$80.3
SPRING:				
Workers with OT Hours, Regular Hours	5,899	40.0	\$13.25	\$37.5
Workers with OT Hours, Overtime Hours		17.3	\$19.88	\$24.3
Workers with no OT Hours	6,059	31.8	\$13.25	\$30.6
<i>Spring Wage Bill</i>				\$92.5
SUMMER:				
Workers with OT Hours, Regular Hours	7,718	40.0	\$13.25	\$49.1
Workers with OT Hours, Overtime Hours		20.1	\$19.88	\$37.0
Workers with no OT Hours	10,730	34.4	\$13.25	\$58.7
<i>Summer Wage Bill</i>				\$144.8
FALL:				
Workers with OT Hours, Regular Hours	6,756	40.0	\$13.25	\$43.0
Workers with OT Hours, Overtime Hours		23.6	\$19.88	\$38.1
Workers with no OT Hours	9,300	33.4	\$13.25	\$49.4
<i>Fall Wage Bill</i>				\$130.5
ANNUAL WAGE BILL				\$448.1
WAGE BILL INCREASE (FROM TABLE 13)				+\$39.2

Note: Winter: December, January, February; Spring: March, April, May; Summer: June, July, August; Fall: September, October, November. The average hourly pay rate is an estimate of the wages paid to farmworkers in 2019. This analysis assumes that 62.2% of farmworkers are employed by small employers and 37.8% of farmworkers are employed by other employers.

Source: Colorado Center on Law and Policy analysis of 2010-2019 Current Population Survey microdata accessed from IPUMS USA, University of Minnesota, www.ipums.org

Table 14 shows our calculations to estimate how much farmers' wage bills would increase because of a 40-hour overtime threshold. This threshold would result in an increase in farmers' wage bills that is nearly double our estimate of the cost increase due to CDLE's proposed rule. However, when compared to farms' operating expenses and revenues, this increase is still small. Comparing Table 14 to Table 13, we see that labor costs would increase by \$39.2 million in aggregate for farms, an increase of 9.6 percent.

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

Table 15
Effect of Labor Cost Increases on Operating Expenses & Revenue with a 40-Hour Threshold, 2019

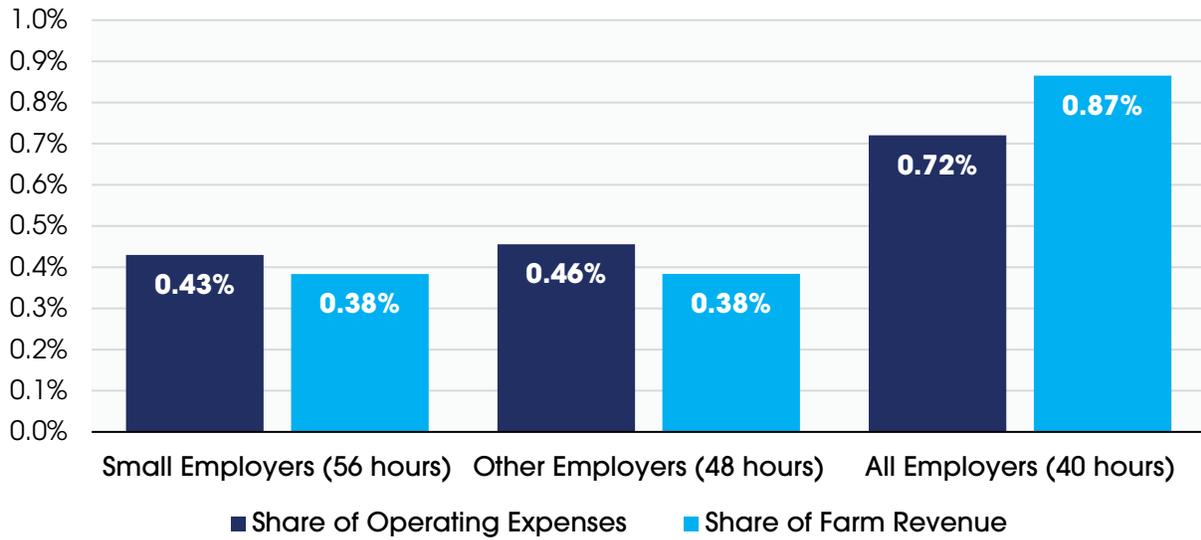
Number of Farms	69,032
OT Labor Cost Increase	9.6%
FARM EXPENDITURES	
Hired Labor Expenses	\$420.4 million
Contract Labor Expenses	\$75.6 million
Total Labor Expenses	\$496.0 million
Total Operating Expenses	\$6,604.5 million
Labor Expenses as a Share of Total Expenses	7.5%
Labor Cost Increase as a Share of Total Expenses	0.72%
FARM REVENUE	
Total Revenue	\$8,536.9 million
Labor Expenses as a Share of Total Revenue	5.8%
Labor Cost Increase as a Share of Total Revenue	0.87%

Source: Colorado Center on Law and Policy analysis of data from the Colorado Agricultural Statistics 2020, National Agricultural Statistics Service, U.S. Department of Agriculture.

Following the same approach as we did for the wage bill increase due to CDLE's proposed rule, we assume that the 9.6 percent increase in farmers' wage bills estimated in Table 14 would translate to a similar increase in farms' total labor costs. Again, we can turn to the Census of Agriculture to estimate that this 9.6 percent increase will translate to an increase in costs relative to 0.72 percent of the aggregate operating expenses of Colorado farms. This same labor cost increase would require farms to increase their revenues, in aggregate, by 0.87 percent.

Figure 19

Estimated Cost Increases to Farmers Due to CDLE's Rule vs 40-Hour Overtime Threshold, 2019

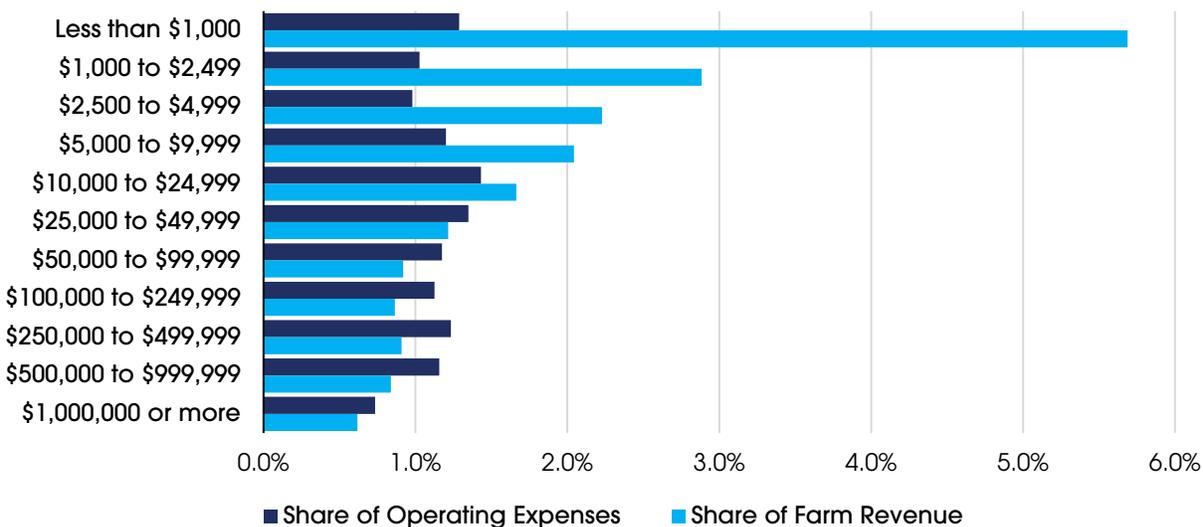


Note: The “Small Employers” and “Other Employers” refer to our estimated increased labor costs as a share of expenses and revenue under CDLE’s proposed rule. The “All Employers” bars refer to our estimated increased labor costs under a 40-hour overtime threshold.

Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

In aggregate, Colorado’s farms would see their labor costs increase more under a 40-hour overtime threshold, as shown in Figure 19. However, this increase would still be equivalent to less than 1 percent of total operating expenses and less than 1 percent of farm revenues. In addition, a phase-in period to get to a 40 hour threshold over a period of 5 years would drastically reduce the impact this small cost increase would entail by giving farmers more time to adapt to the new regulations.

Figure 20
 Estimated Cost Increases to Farmers Due to CDLE's Rule vs 40-Hour Overtime Threshold, 2019



Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Figure 20 shows how an increased labor costs of 9.6 percent for farms would affect farms of different economic classes. Looking at operating expenses, the increase for farms in most economic classes would be around 1.0 percent. As with Figure 17, the impacts of overtime as a share of revenues is greatest for small farms, particularly those with revenues of less than \$1,000. One fact that helps explain this, both for Figure 20 and Figure 17, is that aggregate operating expenses exceeded aggregate revenues for farms with incomes below \$25,000 in 2017. This is likely why just 13.3 percent of such farms had hired workers that year. So, while the effects of a 40-hour overtime threshold may be large for smaller farms, very few of these farms had hired labor to begin with.

Summary of Analysis and Comments

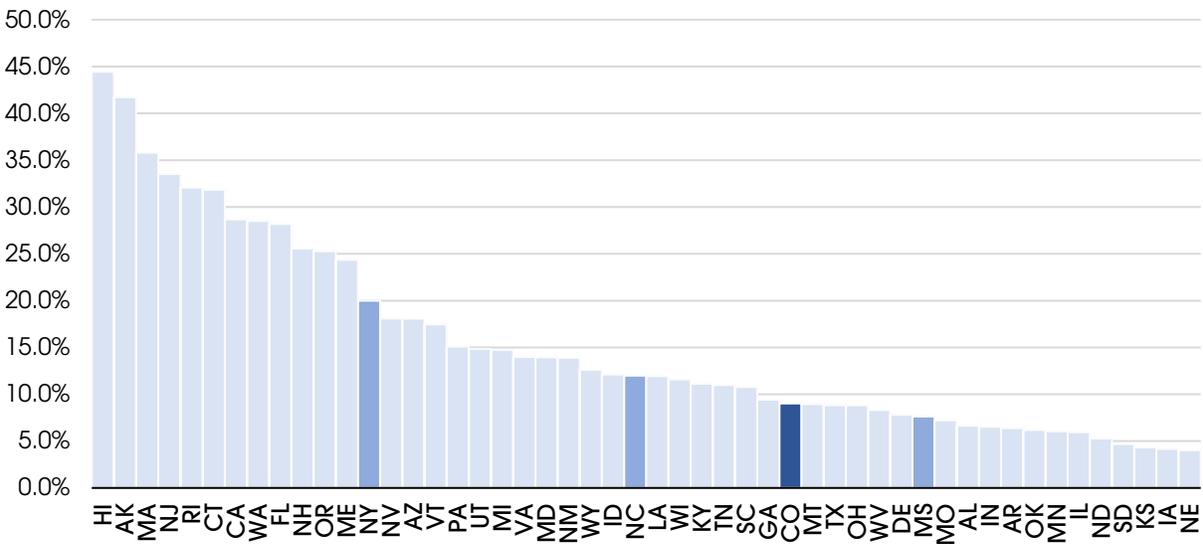
In sum, CCLP has severe doubts that the overtime rule proposed by CDLE for farmworkers meets the mandate set forth in SB21-087 to provide “meaningful overtime and maximum hour protections to agricultural employees”. First, we urge CDLE to include a 12-hour daily overtime threshold in the final rule. This is a protection given to all other workers who are eligible for overtime, yet we are not sure why it was omitted for farmworkers. Second, we are concerned that the way “small employers” and “highly seasonal employers” are classified under the rule makes it unclear exactly what impact this rule would have on farmworkers and the agricultural industry. While we’ve done our best to fill in missing data with our own assumptions, we sincerely hope that CDLE did not do the same. How can a rule provide “meaningful protections” if we are not even certain how many workers it would affect? We recommend that CDLE revise the way these categories are defined, and ideally, not include multiple overtime thresholds. All workers, regardless of their employer should be eligible for the same overtime protections.

Farmworker Overtime in Colorado: Estimates of Benefits and Costs

Third, we are concerned that the anecdotal evidence provided by farmers, supported by evidence or not, has been given more weight in this rule-making process than claims that can be supported with data. While there certainly are exemplary employers in the agricultural industry, this is not universally true. Farmworkers should not suffer because only a vocal few farm operators treat their workers fairly. Stories about the mistreatment and abuse suffered by farmworkers should not be discounted because they are a “worst case scenario.” Instead, we would hope that CDLE would assume such practices will continue unless explicitly prohibited in state regulations (and strictly enforced!). Fourth, the state and legislators have more tools at their disposal to provide relief to farmers that would not come at the expense of farmworkers’ health, safety, and free time. We know that these overtime regulations, regardless of the threshold, will be difficult for some farms to meet. It is likely that farms in our state would cease operations. However, we do not feel it is fair to preserve the sustainability of potentially unsustainable operations at the expense of fair treatment to farmworkers. We should not subsidize agriculture in Colorado on the backs of our farmworkers. Based on our analysis, we are confident that even a 40-hour threshold would not decimate the industry in our state, but would provide untold benefits to farmworkers.

Finally, we wanted to compare labor costs for Colorado’s agricultural industry to those in other states. We believe that this comparison will further demonstrate how, even with overtime protections in place, Colorado will still have a competitive agricultural sector.

Figure 21
Labor Costs as a Share of Operating Expenses by State, 2017



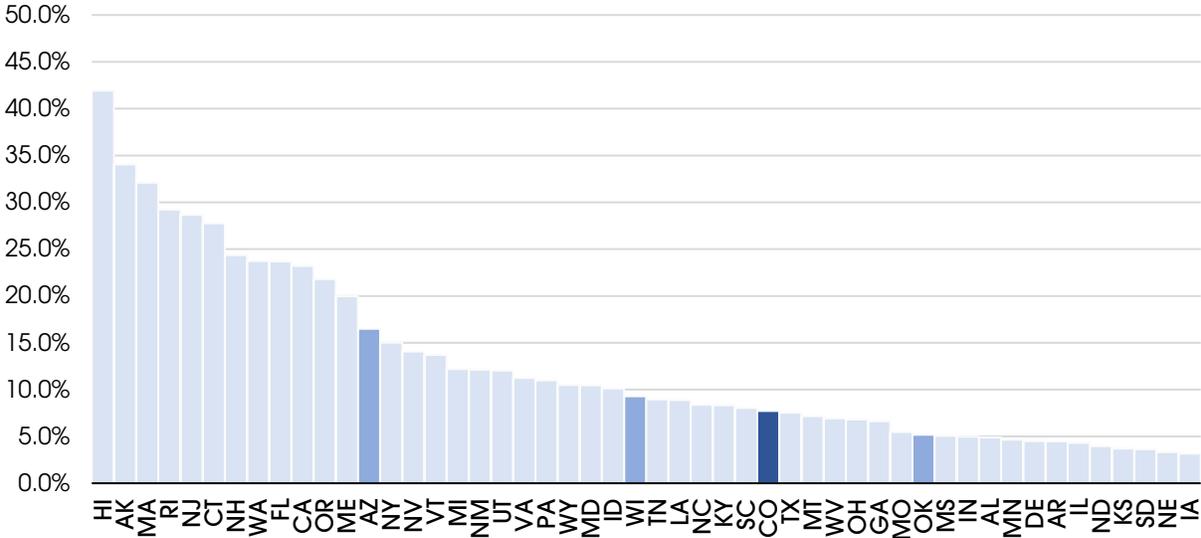
Note: The shaded bars for New York, North Carolina, and Mississippi represent the 75th percentile, the median, and the 25th percentile among states, respectively.

Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Using the 2017 Census of Agriculture, we can see where Colorado falls in comparison to other states in terms of the share of operating expenses going towards labor costs. That year, Colorado had the 19th lowest share in the country behind Montana (9.0 percent), Texas (8.8

percent) and Ohio (8.8 percent). Nationally, labor costs represented 12.0 percent of farms' aggregate operating expenses, more than in Colorado that year.

Figure 22
Labor Costs as a Share of Revenues by State, 2017



Note: The shaded bars for Arizona, Wisconsin, and Oklahoma represent the 75th percentile, the median, and the 25th percentile among states, respectively.

Source: Colorado Center on Law and Policy analysis of the 2017 Census of Agriculture, National Agricultural Statistics Services, U.S. Department of Agriculture

Figure 22 shows labor costs as a share of revenues for farms in all states in the United States. As with the comparison of labor costs to operating expenses, Colorado is competitive relative to other states. At 7.7 percent, we ranked 20th in the country, just one spot below our ranking in Figure 21. Iowa had the lowest labor costs as a share of revenue of any state in the country in 2017, spending 3.2 percent of revenues on labor costs. Even if we incorporate the increased labor costs due to overtime (either at 40 hours or under CDLE’s proposed thresholds), we are confident that Colorado farms would still be competitive nationally in terms of labor costs.

SB21-087 provides us with an opportunity to reverse our state’s long-term policy of treating farmworkers differently in our labor laws. Given the origins for this exclusion were racially based, it is imperative that CDLE provide farm workers with the same protections enjoyed by other workers in Colorado. While we do not deny that farm work is unique from other forms of work, it is not clear why that uniqueness justifies a policy that has resulted in over 40 percent of farmworkers experiencing poverty or near poverty in 2019. Workers should not be exploited based on the type of work they chose to do. All work is valuable, and all workers deserve the same minimum level of pay and protections. CCLP strongly believes that farmworkers should receive overtime pay at a rate of 1.5 times their normal wage rate if working more than 40 hours per workweek, 12 hours per workday, or twelve consecutive hours without regard to the starting and ending time of the workday (excluding duty free meal periods), whichever results in the greater payment of wages.