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Amicus Curiae Brief of the American Civil Liberties Union of Massachusetts, Massachusetts Law Reform Institute, Pioneer Valley Workers Center, United Food and Commercial Workers Local 1459, University of Massachusetts Labor Relations and Research Center, and Professor Michael Wishnie in Support of Plaintiffs-Appellants

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COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
SJC-12548

ANA ARIAS-VILLANO, ADRIAN CERVANTES-ACOSTA, NOELIA GOMEZ-GARCIA, BEATRIZ PEREZ-HERNANDEZ, EDILMAR MORALES-MATIAS and DAVID PACHECO-HERRERA,

Plaintiffs-Appellants

v.

CHANG & SON ENTERPRISES, SIDNEY CHANG AND TSO CHANG

Defendants-Appellees

Amicus Curiae Brief of the American Civil Liberties Union of Massachusetts, Massachusetts Law Reform Institute, Pioneer Valley Workers Center, United Food and Commercial Workers Local 1459, University of Massachusetts Labor Relations and Research Center, and Professor Michael Wishnie in Support of Plaintiffs-Appellants

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

THE ISSUE PRESENTED FOR REVIEW

Whether the trial court erred when it ruled that the state statutory exemption for payment of overtime wages, which is restricted in scope to "laborers engaged in agriculture and farming on a farm," G. L. c. 151, § 1A[19], includes employees at an indoor bean sprout facility who are engaged solely in food processing and not in any way with cultivation, growing, or harvesting.

INTEREST OF THE AMICI

The amici are the American Civil Liberties Union of Massachusetts ("ACLUM"), the Labor Relations and Research Center, University of Massachusetts, Amherst ("Labor Center"), the Massachusetts Law Reform Institute ("MLRI"), the Pioneer Valley Workers Center ("PVWC"), the United Food and Commercial Workers Local 1459 ("UFCW 1459"), and Professor Michael Wishnie, Yale Law School.

The American Civil Liberties Union of Massachusetts is an affiliate of the national ACLU. Among the rights ACLUM defends through direct representation and as an amicus are workers' rights to due process and equal protection. *E.g.*, *Messing*,

Rudavsky and Weliky v. Pres. & Fellows of Harvard College, 436 Mass. 347 (2002) (workers' right to information in employment discrimination cases). ACLUM's interest is longstanding as evidenced by its amicus participation in *Consolidated Cigar Corp. v. Dept. of Public Health*, 372 Mass. 844, 844 (1977), a case that addressed the same 1967 session law that added section 1A(19) to Chapter 151, the statute at issue here (in the context of access to migrant farm labor camps).

The Labor Relations and Research Center at the University of Massachusetts (Amherst) is an integrated program of graduate education, research, and direct service to workers and the labor movement. Its research and educational mission address the rise of inequality that has accompanied the rapid growth of low-wage, non-standard and contingent employment. The Center provides labor organizations and government policy-makers with fact-driven research evaluating the social, economic and technological forces driving changes in labor markets and relations.

The Massachusetts Law Reform Institute is a statewide non-profit law and poverty center. Its mission is to advance economic, social and racial

justice for low-income persons and communities. For fifty years, MLRI has engaged in legislative, administrative and judicial advocacy on behalf of its clients and as part of that advocacy has participated as amicus curiae in numerous appellate cases concerning employment. MLRI has a strong interest in ensuring that the state's employment statutes, including G.L. c. 151, be applied in a manner consistent with the public policy set forth in section 1 of that chapter, that no worker in the Commonwealth should be employed at a wage that is "oppressive and unreasonable."

The Pioneer Valley Workers Center's mission includes empowering low-wage workers to improve and defend their employment and labor rights. PVWC membership includes immigrant workers employed in low-wage jobs in the food chain economy, e.g., farm labor, food processing and packing, restaurant work and food services employment throughout the Pioneer Valley. The PVWC provides organizing and support activities for workers who have experienced wage theft or discrimination in those jobs.

UFCW Local 1459 is the largest union in western Massachusetts and an affiliate of the United Food and

Commercial Workers International Union (AFL-CIO), comprised of 1.3 million members. Established in 1938, UFCW 1459 has approximately 5000 members and represents workers at the Stop & Shop grocery chain, five food cooperatives, and other retail food sellers and producers. UFCW 1459's mission includes securing enforcement of federal and state wage and hour laws in the Pioneer Valley's low-wage labor markets, with a particular focus on the food economy, from the agricultural sector to food processing and retail establishments.

Michael J. Wishnie is the William O. Douglas Clinical Professor of Law and Counselor to the Dean at Yale Law School (institutional affiliation for identification only). He co-directs Yale's Worker & Immigrant Rights Advocacy Clinic, and his scholarship has addressed labor and employment issues specific to low-wage and immigrant workers. Wishnie is a former co-chair of the ABA Labor and Employment Section's Committee on Immigration (1998-2003), and a former member of the ABA Coordinating Committee on Immigration (representing the Section on Labor & Employment) (1998-2002). He has trained attorneys in

the Boston Regional Office of the U.S. Department of Labor, Office of the Solicitor of Labor.

STATEMENT OF THE CASE

The Amici adopt the Statement of the Case as presented by the Plaintiffs-Appellants ("Chang workers" or "Chang employees") and note the following:

I. The Chang sprout processing facility

Chang, an indoor facility roughly the area of a football field, 44,000 square feet, uses seventeen percent of its space to hydroponically grow and harvest mung and soy bean sprouts. Record Appendix (hereafter "R.A.") I, 110, 120; R.A. III 32, 160. In the other eighty-three percent, the Chang workers labor in cavernous processing and production rooms, preparing sprouts for market.

Their jobs include cleaning the sprouts as well as weighing, sorting and packaging them in plastic bags. The workers then place the finished product on pallets for short-term storage in two refrigerated, walk-in coolers. From there, the packaged bean sprouts are moved on pallets to the indoor shipping and receiving docks. The facility also contains an employee break area and office space. R.A. I 120.

The entire facility is temperature-controlled because sprouts are particularly susceptible to food-borne illness outbreaks, chiefly from Lysteria Monocytogenes. R.A. II at 40. The Chang workers are prohibited from entering the grow rooms, staffed by two or three other employees, for fear of microbial contamination of the sprout seeds. R.A. II 172. Computer-controlled systems fertilize and monitor the bean sprouts during the five-day growing cycle. R.A. I 103.

The Chang facility is not a seasonal operation. Rather, beans sprouts are grown, harvested and then processed six days a week, fifteen hours each day for twelve months a year. R.A. II 9. Chang produces 280,000 pounds of sprouts weekly. R.A. II at 24. The Chang employees all routinely work significant overtime. Their workweek can extend up to 70 hours. R.A. I 57; R.A. III 160.

The Massachusetts Department of Public Health (DPH) licenses Chang's facility as a food processing plant. R.A. I 127. The Town of Whately, where Chang is located, similarly classifies Chang as a food processing facility. R.A.I at 125 (Certificate of Occupancy).

II. The Superior Court's Decision

Ten Chang Farm employees who worked in excess of forty hours per week cleaning, sorting and packaging bean sprouts filed this suit claiming they were illegally denied overtime wages required by G.L. c. 151, § 1A. Defendant Chang and Son Enterprises in response claimed that it did not have to pay overtime to these employees because G.L. c. 151, § 1A(19) exempts from the state overtime pay requirement "laborers engaged in agriculture and farming on a farm."

On cross motions for summary judgment, the trial court ruled for the employer, holding that these workers were subject to the agricultural overtime exemption even though they are not engaged in cultivation, growing or harvesting.

SUMMARY OF THE ARGUMENT

This case brings into sharp focus the difference between the federal and Massachusetts laws governing their respective overtime exemptions for agricultural workers. Brief ("Br.") 13-16, 21-22.

The federal Fair Labor Standards Act (FLSA) requires employers covered by the Act to pay time and a half to employees for time worked over forty hours

in a week. 29 U.S.C. § 207(a). FLSA contains an express exemption from this requirement for workers engaged in agriculture and defines "agriculture" expansively to include growers, planters and pickers, referred to as primary agricultural labor, as well as any other work performed incidental to or in conjunction with farming operations, referred to as secondary agriculture. Br. 11-12, 23-24.

By contrast, the agricultural exemption in the Massachusetts overtime statute, G.L. c. 151, § 1A(19), is significantly more restrictive. It denies overtime pay only if a laborer is "engaged in agriculture and farming on a farm." (emphasis added). The Massachusetts exemption, by its language and purpose, departs from FLSA and excludes from overtime protection a far narrower class of employees. It does not exclude workers engaged in food processing and packaging, as the Chang workers are. Br. 11-16, 21-22.

The court below failed to narrowly construe the Massachusetts agricultural exemption as a remedial law intended to benefit Massachusetts workers. Br.15-17. It ignored tenets of statutory construction by defining two distinct statutory terms in § 1A(19) - "agriculture" and "farming" - as being essentially

synonymous, and, in addition, ignored the conjunction "and" that joins these two terms. The conjunction "and" establishes a two-part test to determine if a laborer falls under the agricultural exemption: the employee must be engaged in both "agriculture" and "farming on a farm." The Chang workers are not farming on a farm. Br.17-20.

There was an additional statutory construction error. The lower court improperly infused federal law into the state exemption notwithstanding the Legislature's rejection of FLSA's language. Br.21-25. Other Massachusetts statutes incorporate FLSA's broad definition of agriculture to align those particular state laws with FLSA's definition of agriculture. In G.L. c. 151, the Legislature rejected this approach. Br. 27-28.

An analysis of the work performed demonstrates that the Chang employees are not engaged in "farming on a farm," and therefore not excluded from overtime by G.L. c. 151, § 1A(19). This conclusion is supported by governmental determinations that the Chang enterprise is a food processing facility and not a farm. Br. 28-32.

Finally, by construing the Massachusetts agricultural exemption broadly and without consideration of its remedial purpose, the trial court ruling exposes a vulnerable section of the state's workforce to exploitation. Br. 33-35.

ARGUMENT

INTRODUCTION

At issue is the scope of the Massachusetts agricultural exemption, subsection 19 of G.L. c. 151, § 1A, one of twenty provisos in the statute that excludes certain classes of workers from the requirement of overtime pay (time and a half the hourly rate). Section 1A(19) exempts an employer from paying the overtime rate when "a laborer [is] engaged in agriculture and farming on a farm." The terms, purpose, and context of the state agricultural exemption does not permit the Chang Farm to deny overtime to the employees who initiated this wage and hour claim.

Chapter 151, § 1A is a remedial law. Its purpose is to provide overtime protection to workers who are not covered by the federal Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq. See Swift v.*

AutoZone, Inc., 441 Mass. 443, 448-49 (2004). Accordingly, the twenty provisos to G.L. c. 151, § 1A are to be construed narrowly to effectuate the overall purpose of the statute. *See Lexington Educ. Assoc. v. Town of Lexington,* 15 Mass. App. Ct. 749, 752-53 (1983) (proviso to be strictly construed when excising a discrete group of employees from a remedial law's protection); *Mullally v. Waste Mgmt. of Mass., Inc.*, 452 Mass. 526, 531 (2008) (purpose of G.L. c. 151, § 1A is "to reduce the number of hours worked, encourage the employment of more persons, and compensate employees for the burden of a long workweek").

I. UNDER A PROPER CONSTRUCTION OF CHAPTER 151, § 1A(19), THE CHANG WORKERS ARE NOT ENGAGED IN *"FARMING ON A FARM"* AND THUS ARE ENTITLED TO OVERTIME PAY.

The federal Fair Labor Standards Act (FLSA), enacted in 1938, exempts from its overtime protections "any employee employed in agriculture," 29 U.S.C. § 213(a)(6). (emphasis added). FLSA defines agriculture expansively to include, "farming in all its branches," 29 U.S.C. § 203(f), including "the cultivation and tillage of the soil," as well as "any practices [...] performed by a farmer or on a farm as incident to or

in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." *Id.* FLSA's broad agricultural overtime exemption undeniably applies to the Chang workers.

By its terms and legislative design, the Massachusetts overtime provision, G.L. c. 151, § 1A, intentionally departs from FLSA, extending overtime protection to workers not covered by the federal law. *See Swift*, 441 Mass. 443, 448-49 (2004). The Massachusetts agricultural exemption, G.L. c. 151, § 1A(19), unlike the federal law, does not exclude all laborers in the agricultural sector.

In order to deny an employee overtime pay pursuant to the § 1A(19) exemption, the employer must prove three facts: that an employee is 1) engaged in "agriculture" and 2) is also engaged in "farming"; 3) that takes place "on a farm." Chang fails to meet these statutory criteria. *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 170 (2000)(party claiming exemption from statutory provision bears the burden of showing entitlement to exemption).

A. The purpose and context of Chapter 151, § 1A(19) demonstrate that it is a remedial statute intended to protect workers excluded from overtime by the federal law's expansive agricultural overtime exemption

Chapter 151, § 1A, first enacted in 1946, belongs to a body of remedial law that has raised the floor for Massachusetts workers above that set by federal protections.[1] These laws include: a higher minimum wage, G.L. c. 151, § 1 ($11.00/hour currently and always 50 cents higher than the federal minimum); a more protective standard to address misclassifying workers, G.L. c. 149, § 148B (creating strong presumption of employee rather than independent contractor status); and pay equity and transparency, G.L c. 149, § 105A (broadening definition of 'comparable work' and banning retaliation for

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[1] Notable early twentieth century legislation includes: Massachusetts becoming the first state to enact a minimum wage law to protect women and children. *See* Act of June 4, 1912, c. 706, 1912 Mass. Acts 780. In 1946, two decades before the enactment of Title VII, racial discrimination in employment was outlawed by the Fair Employment Practice Act. *See* History of the Massachusetts Commission Against Discrimination, http://www.mass.gov/mcad/about/mcad-history.html (last accessed June 21, 2018). Now codified as G.L. c. 151B, this law has broad scope, adding gender in 1965 and disability and sexual orientation in 1984 and 1989 respectively. *Id.* In 2010, c. 151B, § 4(9½) banned employers' improper use of applicant and employee criminal history. The Legislature in October 2018 strengthened this protection by decreasing time limits for mandatory disclosure to employers of misdemeanor convictions. Senate Bill No. 2371.

disclosure of wage to coworkers, effective July 1, 2018).

Chapter 151, § 1A(19) was enacted in 1967 as part of a series of legislative measures to "insulate farmworkers from potential exploitation." *Consolidated Cigar Corp. v. Dept. of Public Health*, 372 Mass. 844, 849 (1977).[2] The purpose of these statutes was to address the "absence of federal or state protections ... [that] seems destined to [subject farmworkers] to a continual life of poverty and deprivation." 1967 Senate Doc. No. 1303.

Under this package of legislative reforms the Massachusetts Department of Public Health was authorized to inspect migrant farm labor camps to ensure workers had educational and recreational opportunities, freedom of movement, and visitation rights. This oversight sought to combat the oppression and exploitation experienced by farmworkers who historically were subject to farm employers' "company town" mentality. G.L. c. 111, § 128H; 105 C.M.R 420 (farm labor camp sanitary code).

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[2] It was only in 1966 that some farmworkers were included FLSA, providing a $1.00 per hour minimum wage. 29 U.S.C. § 206.

At that historic moment the Legislature established for the first time a minimum wage for farm labor, G.L. c. 151, § 2A ($1.30 per hour and 30 cents higher than the federal minimum), a definition of "agricultural and farm work," G.L. c. 151, §2, and the overtime exemption that excludes only those "laborer[s] engaged in agriculture and farming on a farm." G.L. c. 151, § 1A(19).[3]

The agricultural overtime exemption in G.L. c. 151, § 1A(19) should be construed in this context, i.e., as part of a remedial statutory scheme with the overall purpose of protecting Massachusetts workers who remain vulnerable to the "burden of a long work week" as a result of the shortfalls of federal law. *See Mullally,* 452 Mass. 526, 531 (2008); *DiFiore v. American Airlines, Inc.,* 454 Mass. 486, 490 (2009) (statute to be construed in light of legislative intent to avoid "the mischief or imperfection to be

[3] Notably, Massachusetts enacted these laws in the midst of the historic nationwide grape boycott led by the United Farm Workers Union and its president, Cesar Chavez, *See* Steven Roberts, *26 Grape Growers Sign Union Accord Boycott Nears End,* NYT, July 30, 1970, https://www.nytimes.com /1970/07/30/archives/26-grape-growers-sign-union-accord-boycott-nears-end-26-grape.html (last accessed June 23, 2018); Frank Bardacke, *Trampling Out the Vintage: Cesar Chavez and the Two Souls of the United Farm Workers,* 261-307 (Verso 2017),and not long after the massive civil rights that ushered into law the 1964 Civil Rights Act, Pub. L. 88-352, 78 Stat. 241.

remedied" and to achieve the "main object to be accomplished").

B. The trial court misread the plain language of the Massachusetts agricultural exemption by failing to distinguish between employees who are engaged in "agriculture" but not engaged in "farming on a farm."

As a proviso the agricultural exemption in G.L. c. 151, § 1A is to be construed strictly "within the words as well as within the reason" of the statute and its overall purpose. *Woods v. Exec. Office of Cmtys. and Dev.*, 411 Mass. 599, 605 (1992) (strictly construing proviso in housing voucher program to favor assistance for low income tenants). The lower court here disregarded the statutory text and these principles of strict construction.

1. The trial court erred by defining the phrase "agriculture and farming on a farm" without considering the definitions in Chapter 151.

The trial court failed to consider G.L. c. 151, § 2, the "Definitions" that govern Chapter 151. *Goodrow*, 432 Mass. at 170 (before turning to common usage to construe statutory terms, courts look to whether statute defines the term). Section 2 defines the phrase "agricultural and farm work," as "labor on a farm and the growing and harvesting of agricultural,

floricultural and horticultural commodities." This phrase, while somewhat different from the text of § 1A(19), is instructive in understanding what the Legislature meant by the phrase key phrase "agriculture and farming on a farm" in § 1A(19).

Notably, the definition of "agricultural and farm work" provided by Section 2 does not support the conclusion reached by the trial court, i.e., that the Chang workers are denied overtime because they are engaged in "agriculture and farming on a farm." To the contrary, the definition in Section 2 of "agricultural and farm work" is decidedly narrow, including only the "growing and harvesting" activities performed by farm labor.

There is no indication that the definition includes the exclusively post-harvesting work performed by the Chang workers of sorting, cleaning and packaging bean sprouts, doing so in a separate part of the facility segregated from the grow rooms where the sprouts are planted, grown and harvested. Thus, the relevant definition in Section 2, if viewed as essentially coterminous with the phrase "agriculture and farming on a farm," would not include the Chang workers because they are not laborers

engaged in "growing and harvesting" agricultural commodities.

2. The trial court's definition of "agriculture and farming on a farm" did not provide each term with a separate and distinct meaning.

The trial court made two additional and interrelated errors of statutory construction. First, the court failed to ascribe separate and distinct meanings to the terms "agriculture," "farming," and "on a farm." Second, the court incorrectly treated as surplusage the conjunction "and" that joins the term "agriculture" with the phrase "farming on a farm."

The lower Court defined the terms "agriculture" and "farming" as being synonymous notwithstanding that, by their ordinary and approved usage, agriculture denotes a far wider ranger of economic activities than does farming. *See Bolster v. Comm. of Corps and Taxation,* 319 Mass. 81, 84 (1946) (statutory phrasing negates possibility Legislature intended terms "annuity" and "life estate" to be used inter-changeably).

The trial court correctly defined "agriculture" expansively, relying on the definition of "agriculture" from the Merriam-Webster Dictionary (11th

ed. 2005), as the "science, art or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees *the preparation and marketing of the resulting products.*" R.A. III 166 (emphasis added).

The trial court's definition of "farming," which is a subset of agriculture, inexplicably was equally expansive. The court wrote that "working on a farm (i.e. to be 'farming')" includes "everything from planning the crop, selecting the seeds, operating complex machinery, deciding when and how much to plant, fertilizing, growing, harvesting, transporting the harvested crops to a central location, and *preparing the crops for distribution and everything in between.*" R.A. III 167 (emphasis added).

The court concluded that the two core terms in § 1A(19) – "agriculture" and "farming" were both "broad, and intentionally so" and drew no meaningful distinction between them. R.A. III 167. Tellingly, the trial court's definition of "farming" referenced no state or federal law or regulation or any secondary source. See *Woods,* 411 Mass. at 604 (rejecting interpretation of federal statute authorizing remedial

housing vouchers because there was "no practical difference" between two distinct statutory terms).

This failure to draw a distinction between the conjunctively joined terms "agriculture" and "farming" creates an illogical tautology in G.L. c. 151, § 1A at odds with the rule of construction requiring that each term in a statute be given full effect and that no term be rendered "inoperative or superfluous". *Souza v. Registrar of Motor Vehicles*, 456 Mass. 594, 601(2012). Under the lower court's interpretation, its finding that an employee is engaged in "agriculture," is the beginning and the end of the analysis. There is no need to prove the other element of the exemption, "farming on a farm," because, according to the trial court, "farming" encompasses virtually the same activities, i.e., "everything" from "planning the crop" to "preparing the crops for distribution and everything conceivable in between." R.A. III 167.

But this is not what the statute says. The statute makes clear that there are two elements, not one, required to satisfy the exemption: a laborer must be engaged in both "agriculture and farming on a farm."

There is no indication that the Legislature intended for the conjunction "and" in § 1A(19) to be either ignored or repurposed as the disjunctive "or". The Legislature did not provide employers with a menu of two options from which to choose in order to deny overtime wages to employees. *Town of Somerset v. Dighton Water Dist.*, 347 Mass. 738, 743 (1964) (the word "and" in a statute should not be construed disjunctively unless it furthers a recognized legislative purpose); *Swift*, 441 Mass. at 448-49 (overtime statute to be construed in light of its broad remedial purpose).

C. The trial court's over-broad construction of G.L. c. § 1A(19) is improperly derived from FLSA.

Massachusetts case law is clear that our courts are to depart from federal precedent when it is "dictated by some principle of Federal law not found in the law of Massachusetts." *Vasys v. Metro Dist. Comm'n.*, 387 Mass. 51, 54 (1982). When the terms of a state statute differ in material respects from an otherwise analogous federal statute, it is to be inferred that the Legislature considered and rejected legal standards embodied or implied in the language of

the federal law. *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 432-433 (1983).

The trial court's ruling is at odds with this principle. It ignores the remedial purpose that state wage and hour laws serve, i.e., to provide protections for workers not covered by federal law. *Goodrow,* 432 Mass. at 170-71 (FLSA does not preempt states from establishing more protective hours law).

The trial court's construction of § 1A(19), while not a verbatim recitation of FLSA's broad agricultural overtime exemption, is remarkably close. *Compare* 29 U.S.C. § 203(f),

> "Agriculture" includes farming in all its branches [...] includ[ing] the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities [...] performed by a farmer *or* on a farm as an incident to *or* in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(emphasis added) *with* the trial court's conclusion that § 1A(19) exempts from overtime wage payment

> everything from planting the crop, selecting the seeds, operating complex machinery, deciding when and how to plant, fertilizing, growing, harvesting, transporting the harvested crops to a central location, and

preparing the crops for distribution and everything in between.

R.A. III 167 (referring to "farming").

The trial court took no note of the radically different texts of FLSA and § 1A(19), a difference that indicates the Massachusetts Legislature "considered and rejected" FLSA's broad and all-inclusive agricultural exemption. *See Globe Newspaper Co.*, 388 Mass. at 432-433. The trial court in effect adopted wholesale the broader scope of the federal statute's agricultural exemption. This approach runs afoul of *Vasys*, which directs this state's courts to reject federal precedent when "dictated by some principle of Federal law not found in the law of Massachusetts." 387 Mass. at 54.

II. THE TERM "*LABORER ENGAGED IN AGRICULTURE AND FARMING ON A FARM*," DOES NOT INCLUDE EMPLOYEES WHO EXCLUSIVELY WORK IN A POST-HARVEST FACTORY SETTING PROCESSING BEAN SPROUTS.

A. Massachusetts denies overtime pay only when laborers meet both prongs of the agricultural overtime exemption.

The trial court began its analysis by correctly stating that G.L. c. 151, § 1A(19) does not align with the more expansive federal overtime exemption for agricultural workers, enacted as part of FLSA in 1938. 29 U.S.C. § 203(f); *see* R.A. III 165. Congress

intended FLSA's express definition of agriculture to be expansive, embracing "two distinct branches," referred to as primary agriculture and secondary agriculture. *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762 (1949). *See also* 29 C.F.R. §780.128 (defining primary agriculture) and 29 C.F.R. § 780.129 (defining secondary agriculture).

Section 203(f) defines primary agriculture as "farming in all its branches" and expressly includes "the cultivation, growing and harvesting of any agricultural or horticultural commodity." *See Farmers Reservoir & Irrigation Co.*, 337 U.S. at 762. FLSA's definition of secondary agriculture is expansive. It includes "things other than farming," *id.*, i.e. "practices (including forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." 29 U.S.C. §203(f); see *Farmers Reservoir & Irrigation Co.*, 337 U.S. at 763.

As the trial court recognized, the Legislature "purposefully" departed from federal law and chose not to insert into § 1A(19) FLSA's extremely broad

agricultural exemption that exempts workers engaged either in primary agriculture, i.e., farming, "*or*" secondary agriculture[4]. See R.A. III 165. Instead, under Massachusetts law, the employer must show that the employee is "engaged in agriculture" "*and*" engaged in "*farming on a farm.*"

By rejecting the use of FLSA's expansive definition of agriculture in the text of § 1A(19), the Legislature chose not to deny overtime pay to workers who were engaged in secondary agriculture, i.e., activities incident to, or in conjunction with, farming but who were not engaged in primary agriculture, i.e. "farming on a farm."

Indeed, nothing in the trial court's decision provides an explanation based in policy or principle for its ruling that the Chang workers were engaged in "farming on a farm." This lacuna is all the more perplexing given the trial court's explicit finding that the Legislature *purposefully* rejected FLSA's sweeping definition of agriculture, which expressly encompasses work "performed by a farmer or on a farm

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[4] In contrast to G.L. c. 151, § 1A(19), the federal agricultural exemption uses the term "or" to join the terms defining primary agriculture with the terms defining secondary agriculture, to create the expansive reach of the federal exemption. *See* 29 U.S.C. §203(f) *supra* at 24.

as an incident to or in conjunction with such farming operations . . ." 29 U.S.C. § 203(f).

The trial court offers no explanation for why, in its view, the Legislature, on the one hand, *purposefully* defined the Massachusetts agricultural exemption in terms that radically departed from the parallel FLSA provision and, on the other hand, intended a result identical to what would be required under the far more expansive FLSA exemption. See R.A. III 163-164.

The decision below creates the impression that the Legislature was aimlessly going around in circles when it enacted § 1A(19) and defies two governing principles of statutory construction: first, that exemptions are to be construed to avoid an "illogical result." *Casseus v. Eastern Bus Co.*, 478 Mass. 786, 801 (2018); *AIDS Support Group of Cape Cod, Inc. v. Barnstable*, 477 Mass. 296, 301 (2017); and, second, that "[a]n intention to enact a barren and ineffective statutory provision is not lightly to be imputed to the Legislature." *Neff v. Com. Ind. Accidents*, 421 Mass. 70, 75-76 (1995).

B. The Legislature did not intend for laborers engaged in post-harvesting food processing to be denied overtime.

In G.L. c. 151, §1A(19), the Legislature rejected the language in FLSA. In contrast, in other statutes, the Massachusetts Legislature has adopted or incorporate FLSA's broad definition of agriculture. This juxtaposition supports the Chang workers' position here.

Consider, for example, G.L. c. 128, § 1A,[5] the enabling statute for the state's Department of Agriculture. This statute closely mirrors the FLSA definition of agriculture. Its FLSA-derived broad definition - encompassing primary and secondary agriculture - was subsequently used to define agriculture in other Massachusetts laws where a broad

[5] "Farming or agriculture shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market." G.L. c. 128, § 1A (added in 1952, c. 386).

construction matches the legislative purpose. *E.g.* G.L. c. 7, § 23B (establishing preference for products grown in the Commonwealth; added by St. 2006, c. 123, § 4); G.L. c. 40, § 8L (establishing municipal agricultural commission; added in 2016, c. 218, § 23), and G.L. c. 40A, § 3 (prohibiting local zoning from regulating agricultural land, St. 1975, c. 808, § 3).

It is significant that these other statutes incorporate this expansive definition, each using the same phrase, *"as defined in section 1A of chapter 128."* (emphasis added). Had the Legislature wanted FLSA's broader agricultural exemption to also apply to the overtime statute, it would have included the same or similar language to effectuate that result, but it did not. *Green v. Wyman-Gordon Co.*, 422 Mass. 551, 554 (1996) (assuming that Legislature was aware of existing statutes when enacting subsequent laws).

C. Classification of Chang as a food processing facility supports these workers' claim to overtime.

A finding that the Chang workers are not included within the § 1A(19) exemption is supported by state and local government determinations that have categorically rejected regulating the Chang facility as a farm. The Department of Public Health (DPH) has

classified and licensed the Chang facility as a food processing facility. R.A. I 127; G.L. c. 94, § 305C. Similarly, the Town of Whately classifies the Chang facility a factory for purposes of occupancy. R.A. I 122-123, 127; 780 C.M.R. § 302.1.

These determinations matter. Like the test in *Casseus,* 478 Mass. at 795, they are based on the *nature* of the work performed in the facility and not on the physical proximity of growing and harvesting to the Chang Workers' post-harvesting labor. The relevant regulations govern facilities that weigh, package and process food; they do not regulate farms. R.A. I 127; R.A. III 37-38. The Chang workers' job duties are governed by the same DPH guidelines that regulate bread bakers and cucumber picklers who are entitled to overtime pay. This serves as another reason why the Chang workers are not subject to the agricultural exemption governing only laborers who are "farming on a farm."[6]

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[6] Pennsylvania mushroom workers employed in light and temperature sensitive indoor growing facilities are not considered exempt agricultural laborers under that state's labor relations statute. *Blue Mt. Mushroom Co. v. Pa. Labor Relations Bd.*, 735 A.2d 742 (Comm. Pa. 1999). The court interpreted the definition of agricultural labor by relying in part on the General Safety Act, 43 Pa. Cons. Stat. § 25-1, which regulates workplace safety in facilities other than farms. The court concluded that employees working at

Processing and packaging of bean sprouts may fall under the broad definition of secondary agriculture, but the work of the Chang employees cannot reasonably be construed to be primary agriculture, i.e., "farming on a farm." Workers engaged in secondary agriculture are excluded from overtime by FLSA, but specifically not excluded due to the "farming on a farm" requirement in the Massachusetts exemption. By giving the phrase "farming on a farm" "no practical effect," the trial court failed to focus on the actual work performed. *Casseus,* 478 Mass. at 801. Consequently, the trial court arrived at a finding characterized by *Casseus* as an "absurd outcome." 478 Mass. at 801.

The trial court rested its statutory interpretation on its desire to avoid creating "an artificial and potentially confusing line in the sand for exemptions between actions taken to grow and harvest produce, and cleaning and packaging it for same; at the same location."(sic) R.A. III at 166.

But there is nothing "artificial" about deciding that growing and harvesting produce falls on one side

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mushroom growing facilities were not agricultural laborers because the state workplace safety law did not consider mushroom growing facilities to be farms. *Blue Mt. Mushroom Co.*, 735 A.2d at 749. Similarly, Massachusetts law regulates bean sprout growing and processing as a food manufacturing facility and not as a farm.

of the line, i.e., within the agricultural overtime exemption, and that post-harvest work in a food processing factory like Chang's fall on the other.

The California appellate courts have addressed a very similar issue of "line drawing" in agricultural labor and adopted an approach more in line with the structure and purpose of the Massachusetts agricultural exemption. In *Bains v. Dept. of Ind. Rel.*, 244 Cal. App.4th 1120, 1122-23 (2016), the court held that laborers on a farm working in fixed structures like Chang's, drying prunes for market, are entitled to a higher overtime premium than workers who harvest the prunes from trees and transport them to the drying structures.

Bains rejected the employer's argument – similar to that advanced by Chang - that proximity to harvesting deprives the fixed-structure workers of the higher overtime rate. *Id.* That court recognized two classes of workers. One was engaged in harvesting and transporting produce to the place of processing or distribution. *Id.* at 1124. These workers were not entitled to the higher pay rate.

The other class workers, entitled to the higher pay rate, included laborers whose job duties resemble

the Chang workers', i.e., workers engaged in "any operation performed in a permanently fixed structure ... on the farm ... for the purpose of preparing agricultural products for market ... and include all operations incidental thereto." *Id.* (emphasis added) (citation to California Code of Regulations omitted).[7]

Of particular relevance is the California Appeals Court's conclusion that proximity to harvesting was not disqualifying. Rather, the dividing line is whether, on one hand, a worker is engaged in harvesting or, on the other, as here, "is engaged in any operation in a permanently fixed structure" to prepare agricultural products for market and all operation incidental thereto." *Id.*

The *Bains* court drew a line that limited the scope of the California agricultural exemption consistent with that statute's overall remedial

[7] *Bains* has been superseded by passage of AB 1066, the Phase-in Overtime for Agricultural Workers Act of 2016. That legislation, among other things, phases in overtime wages for all agricultural workers after 40 hours of work in a week as well as for the first 8 hours on the seventh consecutive day of a workweek. The bill further requires double time after 12 hours of work in one day. The overtime and double time rates will be phased in over a four-year period, a provision that alters Wage Order No. 14, which now provides overtime after 10 hours of work in a day and 60 hours per week.

purpose. This court, in construing § 1A(19), should do no less.

D. The trial court's overbroad reading of the Massachusetts agricultural overtime exemption exposes a vulnerable sector of the Commonwealth's workforce to exploitation.

The Chang workers belong to a labor force that is part of the U.S. food system, the nation's largest source of employment, which employs 21.5 million workers. Massachusetts employed 15,000-plus workers in the agricultural sector with a hired farm payroll of $161,366,000 in 2012. *Snapshot of Massachusetts Agriculture,* www.mass.gov/files/documents/2016/08 /rf/snapshot-of-ma-ag-presentation.pdf (last accessed 6-20-2018. The four western counties of the Commonwealth employ approximately 5000 farm laborers whose yearly wages total approximately $41.5 million, around $8,305 per worker yearly. *See id.*

In the five key sectors of the food system - production, processing, distribution, retail, and service — poor working conditions, below average wages, abusive practices, and discrimination are commonplace. Food Chain Workers Alliance and Solidarity Research Cooperative, *No Piece of the Pie: U.S. Food Workers in 2016,* 5 (2016), http://solidarity

research.org/wpcontent/uploads/ 2017/06/FCWA_ NoPieceOfThePie_W.pdf. (last accessed 10-14-18). Immigrants comprise 18 per cent of all workers engaged in the core food occupations and industries, according to the U.S. Census Bureau. Food Chain Workers Alliance, *The Hands That Feed Us: Challenges and Opportunities for Workers Along the Food Chain,* 34 (2012), http://foodchainworkers.org/wpcontent/uploads /2012/06/Hands-That-Feed-Us-Report.pdf (last accessed 10-14-2018). The potential for exploitive treatment of workers in this sector is not seriously in dispute.

Since 2000, employment in the food chain economy has grown at a rate more than double that of all other industries. *Id.* at 5. Food chain employers pay their workers the lowest hourly median wage of all industries, $10 per hour. The median wage across all U.S. industries is $17.53 per hour. *Id.* at 14. Well over a third of the food chain workforce is non-white, and the majority of food industry jobs pay wages below the poverty level. *Id.* at 21, 23.

The $8.50 hourly wage paid by Chang is significantly below the national median hourly wage of $13 per hour in food processing. *No Piece of the Pie: U.S. Food Workers in 2016* at 15. Given their

substandard wages, it is not surprising that the Chang employees, like more than 40 per cent of the food industry workforce, routinely work for more than 40 hours per week to make ends meet. *The Hands That Feed Us: Challenges and Opportunities for Workers Along the Food Chain* at 24. Notably, most of these workers, unlike the Change employees, receive overtime.

CONCLUSION

This Court should reverse the Superior Court's summary judgment ruling for the employer and find, as a matter of law, that the Chang workers are not exempt agricultural laborers under Section 1A(19) of Chapter 151 of the General Laws.

Respectfully Submitted,

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ADDENDUM

Statutes

Regulations

M.G.L.A. 94 § 305C

§ 305C. Food processor or distributor licensing; application of section

The department shall issue and may renew on an annual basis a license to every person engaged in the business of processing or distributing food for sale at wholesale, including every person who prepares, manufactures, packs, repacks, cans, bottles, keeps, exposes, stores, handles or distributes food or who operates a food warehouse. Said license requirement shall not apply to any person who is a purveyor of fresh fruits and vegetables, a farmer who produces and sells raw farm products, including eggs, persons licensed under section ten B, forty, forty-eight A, sixty-five H, sixty-six or one hundred and twenty or licensed under chapter one hundred and thirty-eight, persons holding a permit under chapter one hundred and thirty, nor to any person who operates an establishment under the inspection of the meat inspection division of the bureau of animal industry of the United States department of agriculture.

Said license shall apply to one place of business only. Prior to issuing a license, the department shall inspect each place of business for which application is made. The department shall send a copy of each such license to the board of health of the city or town in which each licensee is located.

The fee for each license and for each annual renewal thereof shall be determined annually by the commissioner of administration under the provisions of section three B of chapter seven.

No person shall carry on the business of a food processor or food distributor unless such person holds a valid license from the department. Any person who violates the provisions of this section shall be punished by a fine of not more than one thousand dollars. The superior court shall have jurisdiction to enjoin any violation of this paragraph or to take such other action as equity and justice may require.

Subject to the requirements of chapter thirty A, the department may refuse to issue or renew, suspend or revoke such license if (1) any statement in the license application or upon which the license was issued is determined to be false or misleading; (2) the applicant or licensee has been convicted of a crime relating to the processing, storage, distribution or sale of food in connection with the licensed business; (3) the applicant or licensee has failed to comply with any applicable provision of this chapter or any applicable rule or regulations; or (4), the applicant or licensee refuses to admit representatives of the department at any reasonable time for purposes of inspection. The commissioner may, without a prior hearing, suspend a license if he finds that such licensee is operating his business in a manner which is endangering or may cause imminent danger to the public health. In every case of suspension of a license without a prior hearing, the licensee shall be promptly afforded an opportunity for such hearing.

The department may make such rules and regulations as may be necessary for the enforcement of this section. Such rules and regulations may provide administrative penalties for the violation of any rule or regulation promulgated hereunder not to exceed five hundred dollars for any single violation.

Credits

Added by St.1956, c. 663, § 2. Amended by St.1970, c. 891, § 7; St.1987, c. 757, § 1.

M.G.L.A. 94 § 305C, MA ST 94 § 305C
Current through Chapter 108 of the 2018 2nd Annual Session

M.G.L.A. 128 § 1A

§ 1A. Farming, agriculture, farmer; definitions

"Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

Credits

Added by St.1952, c. 386. Amended by St.1960, c. 181; St.1987, c. 253; St.1989, c. 225; St.1995, c. 38, § 142.

M.G.L.A. 128 § 1A, MA ST 128 § 1A
Current through Chapter 108 of the 2018 2nd Annual Session

M.G.L.A. 151 § 1

§ 1. Oppressive and unreasonable wages; validity of contracts

Effective: January 1, 2017

It is hereby declared to be against public policy for any employer to employ any person in an occupation in this commonwealth at an oppressive and unreasonable wage as defined in section two, and any contract, agreement or understanding for or in relation to such employment shall be null and void. A wage of less than $11.00 per hour, in any occupation, as defined in this chapter, shall conclusively be presumed to be oppressive and unreasonable, wherever the term "minimum wage" is used in this chapter, unless the commissioner has expressly approved or shall expressly approve the establishment and payment of a lesser wage under the provisions of sections seven and nine. Notwithstanding the provisions of this section, in no case shall the minimum wage rate be less than $.50 higher than the effective federal minimum rate.

Credits

Added by St.1947, c. 432, § 1. Amended by St.1949, c. 777, § 1; St.1952, c. 558, § 1; St.1955, c. 762, § 1; St.1956, c. 740, § 1; St.1958, c. 620, § 1; St.1962, c. 134, §§ 1, 4; St.1964, c. 644, §§ 1, 4; St.1966, c. 679, §§ 1, 4; St.1971, c. 892, § 1; St.1972, c. 752, § 1; St.1973, c. 1192, § 4; St.1974, c. 685, §§ 1, 2; St.1977, c. 946, §§ 1 to 4; St.1985, c. 760, §§ 1 to 3; St.1990, c. 306, § 1; St.1995, c. 196, §§ 1, 2; St.1999, c. 47, §§ 1 to 3; St.2006, c. 271, § 1, eff. Jan. 1, 2007; St.2006, c. 271, § 2, eff. Jan. 1, 2008; St.2014, c. 144, §§ 28, 31, eff. Jan. 1, 2015; St.2014, c. 144, § 29, eff. Jan. 1, 2016; St.2014, c. 144, § 30, eff. Jan. 1, 2017.

M.G.L.A. 151 § 1, MA ST 151 § 1
Current through Chapter 108 of the 2018 2nd Annual Session

M.G.L.A. 151 § 1A

§ 1A. Overtime pay; excluded employments

Effective: November 26, 2003

Except as otherwise provided in this section, no employer in the commonwealth shall employ any of his employees in an occupation, as defined in section two, for a work week longer than forty hours, unless such employee receives compensation for his employment in excess of forty hours at a rate not less than one and one half times the regular rate at which he is employed. Sums paid as commissions, drawing accounts, bonuses, or other incentive pay based on sales or production, shall be excluded in computing the regular rate and the overtime rate of compensation under the provisions of this section. In any work week in which an employee of a retail business is employed on a Sunday or certain holidays at a rate of one and one-half times the regular rate of compensation at which he is employed as provided in chapter 136, the hours so worked on Sunday or certain holidays shall be excluded from the calculation of overtime pay as required by this section, unless a collectively bargained labor agreement provides otherwise. Except as otherwise provided in the second sentence, nothing in this section shall be construed to otherwise limit an employee's right to receive one and one-half times the regular rate of compensation for an employee on Sundays or certain holidays or to limit the voluntary nature of work on Sundays or certain holidays, as provided for in said chapter 136.

This section shall not be applicable to any employee who is employed:--

(1) as a janitor or caretaker of residential property, who when furnished with living quarters is paid a wage of not less than thirty dollars per week.

(2) as a golf caddy, newsboy or child actor or performer.

(3) as a bona fide executive, or administrative or professional person or qualified trainee for such position earning more than eighty dollars per week.

(4) as an outside salesman or outside buyer.

(5) as a learner, apprentice or handicapped person under a special license as provided in section nine.

(6) as a fisherman or as a person employed in the catching or taking of any kind of fish, shellfish or other aquatic forms of animal and vegetable life.

(7) as a switchboard operator in a public telephone exchange.

(8) as a driver or helper on a truck with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section two hundred and four of the motor carrier act of nineteen hundred and thirty-five,[1] or as employee of an employer subject to the provisions of Part 1 of the Interstate Commerce Act[2] or subject to title II of the Railway Labor Act.[3]

(9) in a business or specified operation of a business which is carried on during a period or accumulated periods not in excess of one hundred and twenty days in any year, and determined by the commissioner to be seasonal in nature.

(10) as a seaman.

(11) by an employer licensed and regulated pursuant to chapter one hundred and fifty-nine A.

(12) in a hotel, motel, motor court or like establishment.

(13) in a gasoline station.

(14) in a restaurant.

(15) as a garageman, which term shall not include a parking lot attendant.

(16) in a hospital, sanitorium, convalescent or nursing home, infirmary, rest home or charitable home for the aged.

(17) in a non-profit school or college.

(18) in a summer camp operated by a non-profit charitable corporation.

(19) as a laborer engaged in agriculture and farming on a farm.

(20) in an amusement park containing a permanent aggregation of amusement devices, games, shows, and other attractions operated during a period or accumulated periods not in excess of one hundred and fifty days in any one year.

M.G.L.A. 151 § 2

§ 2. Definitions

Effective: July 1, 2017

The following words and phrases as used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

"A fair wage", a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this chapter the commissioner without being bound by any technical rules of evidence or procedure (1) may take into account the cost of living and all other relevant circumstances affecting the value of the service or class of service rendered, (2) may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer in the absence of an express contract as to the amount of the wage to be paid, and (3) may consider the wages paid in the commonwealth for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards.

"A mandatory order", an order the violation of which is subject to the penalties prescribed in subsection (2) of section nineteen.

"An oppressive and unreasonable wage", a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.

"Commissioner", the director of the department of labor standards.

"Department", the department of labor standards.

"Occupation", an industry, trade or business or branch thereof or class of work therein, whether operated for profit or otherwise, and any other class of work in which persons are gainfully employed, but shall not include professional service, agricultural and farm work, work by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions, work by seasonal camp counselors and counselor trainees or work by members of religious orders. Occupation shall also not include outside sales work regularly performed by outside salesmen who regularly sell a product or products away from their employer's place of business and who do not make daily reports or visits to the office or plant of their employer.

"Agricultural and farm work", labor on a farm and the growing and harvesting of agricultural, floricultural and horticultural commodities.

Credits

Added by St.1947, c. 432, § 1. Amended by St.1948, c. 362; St.1952, c. 558, §§ 2, 3; St.1954, c. 174; St.1959, c. 190; St.1967, c. 718, §§ 2, 2A; St.1970, c. 760, § 13; St.1973, c. 1192, § 5; St.1981, c. 351, § 240; St.1996, c. 151, §§ 439 to 441; St.2003, c. 26, §§ 577, 578, eff. July 1, 2003; St.2011, c. 3, § 144, eff. Mar. 27, 2011; St.2017, c. 47, § 68, eff. July 1, 2017.

M.G.L.A. 151 § 2, MA ST 151 § 2
Current through Chapter 108 of the 2018 2nd Annual Session

29 U.S.C.A. § 203(f)
§ 203. Definitions
Effective: March 23, 2018

As used in this chapter--

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

29 U.S.C.A. § 203, 29 USCA § 203
Current through P.L. 115-188. Also includes P.L. 115-190, 115-191, and 115-193. Title 26 current through P.L. 115-193.

29 U.S.C.A. § 207
§ 207. Maximum hours
Effective: March 23, 2010

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966--

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C.A. § 213(a)
§ 213. Exemptions
Effective: March 23, 2018

(a) Minimum wage and maximum hour requirements

The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and 207 of this title shall not apply with respect to--

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock;

29 U.S.C.A. § 213, 29 USCA § 213
Current through P.L. 115-188. Also includes P.L. 115-190, 115-191, and 115-193. Title 26 current through

P.L. 115-193

43 P.S. § 25-1

§ 25-1. Definitions

The term "establishment" shall mean any room, building or place within this Commonwealth where persons are employed or permitted to work for compensation of any kind to whomever payable, except farms or private dwellings, and shall include those owned or under the control of the Commonwealth, and any political subdivision thereof, as well as school districts.

The term "department" shall mean the Department of Labor and Industry.

Credits

1937, May 18, P.L. 654, No. 174, § 1.

43 P.S. § 25-1, PA ST 43 P.S. § 25-1
Current through 2018 Regular Session Acts 1 to 27 and 31

420.001: Purpose

105 CMR 420.000 is intended to protect the health, safety and well-being of occupants of farm labor camps and to promote the general welfare.

302.6 through 302.10.1.3 Add the following sections and subsections as follows:

302.6 Masonry Parapets. The following exception applies to requirements in 780 CMR 34.00 for masonry parapets:

Exception: If the height-to-thickness ratio of an unbraced unreinforced masonry parapet does not exceed 2.5, then bracing is not required. For the purpose of this exception, the height shall be measured from either the level of tension anchors or the roof sheathing, whichever is lower.

302.7 Structural Requirements Pertaining to Roofing Work.

1. Structural requirements of parapets of unreinforced masonry required by sections 403.5 and 707.3.1 of 780 CMR 34.00 shall only apply when the intended alteration requires a permit for reroofing and when roof covering is removed from the entire roof diaphragm and not by the 25% roof area trigger found in sections 403.5 and 707.3.1 of 780 CMR 34.00.

2. Structural requirements of roof diaphragms resisting wind loads in high-wind regions required by sections 403.8 and 707.3.2 of 780 CMR 34.00, when the intended alteration requires a permit for reroofing, shall only apply when roof covering is removed from the entire roof diaphragm and the building is located where the ultimate design wind speed is greater than 150 mph and the building is Risk Category IV in accordance with Table 1604.5 of 780 CMR.

302.8 Structural Requirements Pertaining to Major Alterations.

1. Structural requirements required by sections 403.6 and 907.4.5 of 780 CMR 34.00 for unreinforced masonry walls shall apply to buildings in seismic design category B in addition to categories C, D, E, and F found in these sections and shall require roof and floor levels to be anchored to the walls.

2. Structural requirements required by sections 403.7 and 907.4.6 of 780 CMR 34.00 for unreinforced masonry parapets shall apply to buildings in seismic design category B in addition to categories C, D, E, and F found in these sections.

302.9 Provisions for Change in Occupancy Classification to R, I, or E-Use. Notwithstanding other requirements in 780 CMR 34.00, *see* 780 CMR 9.00: *Fire Protection Systems* and applicable provisions of 527 CMR: *Board of Fire Prevention Regulations* for certain carbon monoxide detection requirements when a change of occupancy classification to R, I, or E-Use occurs.

302.10 Fire Detection Systems in R-2 Uses Which Are Not Currently Equipped with Sprinklers. When 780 CMR 34.00 requires a smoke detection system in an R-2 Use and does not additionally require an NFPA 13, 13R, or 13D system installed throughout the building, then subsections 302.10.1 through 302.10.3 shall apply.

302.10.1 Heat Detection. If a building fire alarm system is provided, a heat detector shall be provided inside each dwelling unit within six feet of the entrance door. The heat detectors shall be connected to the building fire alarm system and cause a general alarm throughout the building upon activation. This shall also apply to the R-2 Use of a mixed use building.

Exception: Buildings containing three units or fewer and not provided with a building fire alarm system that comply with 302.10.3.1.

302.10.2 Common Area Detection. If a building fire alarm system is provided, smoke detectors shall be provided in the common areas of the building. The common area detectors shall be connected to the building fire alarm system and cause a general alarm throughout the building upon activation. This shall also apply to the R-2 Use of a mixed use building.

Exception: Buildings containing three units or fewer and not provided with a building fire alarm system that comply with 302.10.3.1.

302.10.3 Dwelling Unit Detection. Interconnected dwelling unit smoke detection shall sound within that dwelling unit only.

Exception: For buildings of three stories or fewer used exclusively as R-2 Use with six or fewer dwelling units and with at least two means of egress serving each dwelling unit, the fire detection system may comply with the all of the following requirements:

1. Interconnected dwelling unit smoke detection shall sound within that dwelling unit only.

2. Area smoke detection shall be provided throughout common uses spaces, including shared means of egress.

3. A heat detector shall be provided inside each dwelling unit within six feet of doors serving common areas.

Upon activation of either the common area smoke detection or the heat detection, a general alarm shall be sounded throughout the building.

302.10.3.1 Buildings with Three Dwelling Units or Fewer. In buildings containing three units or fewer, which are not protected with sprinklers and which are not provided with a building fire alarm system, each dwelling unit shall have additional interconnected smoke detectors on the stairway side of all doors leading to common interior stairways. If there is a common basement, a separate interconnected system of smoke detectors, including smoke detectors on the stairway side of all doors leading to interior stairways, shall be provided to serve the basement level only.

The Massachusetts Administrative Code titles are current through Register No. 1367, dated June 15, 2018

Mass. Regs. Code tit. 780, § 302, 780 MA ADC 302

29 C.F.R. § 780.128

§ 780.128 General statement on "secondary" agriculture.

The discussion in §§ 780.106 through 780.127 relates to the direct farming operations which come within the "primary" meaning of the definition of "agriculture." As defined in section 3(f) "agriculture" includes not only the farming activities described in the "primary" meaning but also includes, in its "secondary" meaning, "any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market delivery to storage or to market or to carriers for transportation to market." The legislative history makes it plain that this language was particularly included to make certain that independent contractors such as threshers of wheat, who travel around from farm to farm to assist farmers in what is recognized as a purely agricultural task and also to assist a farmer in getting his agricultural goods to market in their raw or natural state, should be included within the definition of agricultural employees (see Bowie v. Gonzalez, 117 F. 2d 11; 81 Cong. Rec. 7876, 7888).

SOURCE: 37 FR 12084, June 17, 1972; 73 FR 77238, Dec. 18, 2008; 74 FR 26014, May 29, 2009; 76 FR 18859, April 5, 2011, unless otherwise noted.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201-219. Pub.L. 105-78, 111 Stat. 1467.

Current through June 22, 2018; 83 FR 29209.

29 C.F.R. § 780.129

§ 780.129 Required relationship of practices to farming operations.

To come within this secondary meaning, a practice must be performed either by a farmer or on a farm. It must also be performed either in connection with the farmer's own farming operations or in connection with farming operations conducted on the farm where the practice is performed. In addition, the practice must be performed "as an incident to or in conjunction with" the farming operations. No matter how closely related it may be to farming operations, a practice performed neither by a farmer nor on a farm is not within the scope of the "secondary" meaning of "agriculture." Thus, employees employed by commission brokers in the typical activities conducted at their establishments, warehouse employees at the typical tobacco warehouses, shop employees of an employer engaged in the business of servicing machinery and equipment for farmers, plant employees of a company dealing in eggs or poultry produced by others, employees of an irrigation company engaged in the general distribution of water to farmers, and other employees similarly situated do not generally come within the secondary meaning of "agriculture." The inclusion of industrial operations is not within the intent of the definition in section 3(f), nor are processes that are more akin to manufacturing than to agriculture (see Bowie v. Gonzales, 117 F. 2d 11; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Holtville Alfalfa Mills v. Wyatt, 230 F. 2d 398; Maneja v. Waialua, 349 U.S. 254; Mitchell v. Budd, 350 U.S. 473).

SOURCE: 37 FR 12084, June 17, 1972; 73 FR 77238, Dec. 18, 2008; 74 FR 26014, May 29, 2009; 76 FR 18859, April 5, 2011, unless otherwise noted.

AUTHORITY: Secs. 1-19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201-219. Pub.L. 105-78, 111 Stat. 1467. Current through June 22, 2018; 83 FR 29209.

CERTIFICATE OF COMPLIANCE

Attorney for amici hereby certifies that this brief complies with the rules of this Court pertaining to the filing of briefs, including, but not limited to Massachusetts Rules of Appellate Procedure 16(a)(6), 16(e), 16(f), 16(h), 18 and 20.

s/ Harris Freeman
Harris Freeman

Date: October 19, 2018

CERTIFICATE OF SERVICE

I, Harris Freeman, state under the penalties of perjury that on October 19, 2018, I caused two copies of the foregoing to be served upon David G. Gabor, counsel for the Defendants-Appellees, by sending by first class mail to him at The Wagner Law Group 99 Summer St. 13th Floor Boston, MA 02110, upon Sandra E. Lundy, Esq., Lundy Legal, LLC, 1309 Beacon St., Suite 300, Brookline, MA 02446 and upon Susan Garcia Nofi, counsel for Plaintiff-Appellants, Central West Justice Center, One Monarch Pl., Suite 350, Springfield, MA 01144.

s/ Harris Freeman
Harris Freeman

Date: October 19, 2018