



New York Farm Bureau • 159 Wolf Road P.O. Box 5330 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

January 3, 2018

Michael Paglialonga  
NYS Department of Labor  
State Office Campus  
Building 12, Room 509  
Albany, NY 12240

RE: Proposed Rule Making: Chapter II of 12 NYCRR, Part 142, Call-In Pay, LAB-47-17-00011-P

Dear Mr. Paglialonga,

New York Farm Bureau (NYFB), the state's largest general farm advocacy organization, appreciates the opportunity to comment on the Department of Labor's proposed rule on employee scheduling. NYFB and its members have serious concerns with the proposed rule and would like to offer the following feedback to the Department. Even though the proposed regulation does not pertain to farmworkers who perform certain duties such as raising or harvesting any agricultural or horticultural commodity, because they are covered under a separate minimum wage order, the rule would still impact individuals who are employed on farms and engaged in non-farm labor such as retail, administrative, or seasonal tourism duties.

In section 142-2.3, employers would be required to pay workers an additional two hours of call-in pay when they report to work for a shift not scheduled at least 14 days in advance. Also, it would require employers to pay employees an additional four hours of call-in pay when their shift is cancelled less than 72 hours prior to the start of that shift.

Because of the weather-dependent nature of agriculture, it is difficult for farm employers to determine the schedule of any employee 14 days in advance. Additionally, employers might have to cancel certain employee shifts with short notice. This proposed regulation would add unnecessary costs to farm employers by forcing them to pay employees for time they were scheduled to work and additional hours when the employer had no control over the schedule or the weather.

The hours worked on a farm depend on the weather which makes it difficult to schedule employee shifts. If it turns out to be a rainy day, a farm will not be as busy selling produce to consumers and they will not need the same number of employees to work at the cash register. This situation would also happen if there is a snow storm and scheduled shifts are canceled for

employee safety. If there is good weather, the farmer might have to ask more employees to work on short notice. A farm winery may host a summer tasting event and may have to cancel due to rain, so the farmer would have to pay these employees extra even though they had no control over the schedule. The agricultural industry cannot be subjected to these proposed regulations because of the unpredictability of weather and its effect on farming.

Farming requires flexibility with employee scheduling especially during certain times of the year. It is important that flexibility is allowed in scheduling all types of farm employees. All agricultural related jobs are affected by the unpredictability aspect of farming and the proposed regulation should not be adopted for this reason.

For these reasons, NYFB urges the New York State Department of Labor to not move forward with the proposed Employee Scheduling "Call-in Pay" rules and keep the current regulations. Thank you for the opportunity to submit these comments on the proposed regulation.

Sincerely,

A handwritten signature in cursive script that reads "Renée St. Jacques". The signature is written in black ink and is positioned above the typed name and title.

Renée St. Jacques  
Assistant Director of Public Policy

Cc: Patrick Hooker, Deputy Secretary for Food and Agriculture  
Richard Ball, Commissioner of Agriculture and Markets