

Testimony of Rebecca Dixon

National Employment Law Project

In Support of Lowering the Overtime Threshold for Farmworkers to 40 Hours Per Week

**Video Hearing before the New York State
Department of Labor
Farm Laborers Wage Board
Albany, New York**

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Thank you for the opportunity to testify today. My name is Rebecca Dixon and I am the Executive Director of the National Employment Law Project (NELP). We urge that the wage board follow the lead of California and Washington State and extend to farmworkers the right to overtime pay after 40 hours per week—a right that virtually all other workers in New York have enjoyed for decades.

The discriminatory exemption of farmworkers from labor protections like overtime is, in the words of President Biden, an “unconscionable race-based exclusion[] put in place generations ago” that must be ended.¹ Its historical origins are in Jim Crow compromises by Congress that were aimed at preserving the plantation economy in the South. Lawmakers carved out the then largely Black agricultural workforce from New Deal benefits and labor protections, guarding the ability of white landowners to exploit and economically subordinate Black southerners. Today in New York this exemption operates to deny equal protection to the state’s largely Latinx farmworkers.

Last year Congress addressed this shameful history of denying equal labor protections to farmworkers at a U.S. House of Representatives hearing titled, “From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act,” at which I was honored to testify.²

Here is an overview of that history: In the 1930s, when lawmakers drafted the federal Fair Labor Standards Act (FLSA), Southern lawmakers were adamant that regulating minimum wages and overtime pay for farmworkers would overturn the social and racial hierarchies of the plantation system in the South—where most U.S. farmworkers lived and where most of those workers were Black.³ For example, Georgia Democratic Representative Edward Cox argued that, by setting equal labor standards for Black and white workers in underpaid sectors, the Fair Labor Standards Act would allow for the “elimination and disappearance of racial and social distinctions ... [that] determine the relationship of our various groups of people in the South.”⁴ As Florida Representative James Mark Wilcox similarly explained, “[T]here is another matter of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. There has always been a difference in the wage scale of white and colored labor. ... You cannot put the Negro and the white man on the same basis and get away with it.”⁵

Black-led civil rights organizations, such as the NAACP Legal Defense Fund and the Urban League testified during the FLSA hearings about the disparate impact on Black workers, who would be excluded from labor protections. But powerful Southern Democrats went ahead and passed FLSA with these exemptions that solidified the segregation of Black workers in the South into specific occupations based on the legacy of slavery.

In 1966, the FLSA was finally expanded to cover some farmworkers with the minimum wage. But as important as the long overdue expansion of minimum wage coverage was, the omission of a corresponding overtime pay requirement after 40

hours has left farmworkers subject to overwork and exploitation—and denied them the equal protection of our employment laws.

The history has been similar in New York. For decades, farmworkers remained entirely excluded from the right to overtime pay that virtually all other workers who do vital manual labor in New York have long enjoyed. In 2019, the legislature then extended a minimal right to overtime pay after 60 hours a week—a meager standard that no other workers in the state are subject to. This unfair treatment consigns New York’s disproportionately Latinx farmworker workforce to overwork and substandard pay—and the high poverty rates that come with them.

The racial history and impact of the farmworker overtime exemption doesn’t mean that today’s farm employers in New York harbor ill will towards their workforces. You have heard at these hearings from farm employers who are people of good will struggling to make a living in a challenging industry. The current farm labor staffing model relies on structurally racist employment laws that accept as the norm a model of overwork and substandard pay not tolerated in any other industry. It does not have to continue this way.

Behind this structural inequity are individuals, families, and communities, each with their own stories, but all seeking the ability to thrive. In this case we all happen to count on their skills and valuable contributions, every time we sit down to eat. We are all in relationship with these farm employers and workers – we do not have to remain in relationship with this unjust system.

It is time once and for all to redress this inequity by finally guaranteeing to farmworkers the same overtime pay protections that virtually all other laborers have long enjoyed. With an appropriate phase-in period, New York can and should follow California and Washington State’s lead and transition its farm economy to a system that ends overwork and substandard pay by finally affording farmworkers the equal protection of the law. Thank you for the opportunity to submit this testimony.

Endnotes

¹ The White House, "[Statement by President Joseph R. Biden, Jr. in Support of Washington State's Overtime Bill for Farm Workers](#)" (May 11, 2021).

² Testimony of Rebecca Dixon, "[From Excluded to Essential: Tracing the Racist Exclusion of Farmworkers, Domestic Workers, and Tipped Workers from the Fair Labor Standards Act](#)," Hearing before the U.S. House of Representatives Education and Labor Committee, Workforce Protections, Subcommittee (May 3, 2020).

³ Sean Farhang and Ira Katznelson, *The Southern Imposition: Congress and Labor in the New Deal and Fair Deal*, *Studies in Amer. Political Dev.* 19 at 14-15 (Spring 2005) (for this analysis, the South included 17 states: the 11 ex Confederate states, plus Delaware, Kentucky, Maryland, Missouri, Oklahoma and West Virginia).

⁴ *Id.* at 14.

⁵ *Id.*