

On January 17, 2009, the federal regulation addressing nursery activities was amended to include the production of Christmas trees within those activities considered to be “agriculture” for purposes of federal wage and hour law. As a result, workers engaged in the planting, pruning, and harvesting of Christmas trees are considered to be agricultural employees who are not required to receive overtime compensation for hours worked beyond 40 in a week. The text of the federal regulation is provided below. In its enforcement of the state’s overtime regulations, the Bureau of Labor and Industries has adopted the definition of agriculture in the amended federal regulation, which includes activities related to the production of Christmas trees.

29 CFR § 780.205 Nursery activities generally and Christmas tree production.

(a) The employees of a nursery who are engaged in the following activities are employed in agriculture:

- (1) Sowing seeds and otherwise propagating fruit, nut, shade, vegetable, and ornamental plants or trees, and shrubs, vines, and flowers;
- (2) Handling such plants from propagating frames to the field;
- (3) Planting, cultivating, watering, spraying, fertilizing, pruning, bracing, and feeding the growing crop.

(b) Trees produced through the application of extensive agricultural or horticulture techniques to be harvested and sold for seasonal ornamental use as Christmas trees are considered to be agricultural or horticultural commodities. Employees engaged in the application of agricultural and horticultural techniques to produce Christmas trees as ornamental horticultural commodities such as the following are employed in agriculture:

- (1) Planting seedlings in a nursery; on-going treatment with fertilizer, herbicides, and pesticides as necessary;
- (2) After approximately three years, re-planting in lineout beds;
- (3) After two more seasons, lifting and re-planting the small trees in cultivated soil with continued treatment with fertilizers, herbicides, and pesticides as indicated by testing to see if such applications are necessary;
- (4) Pruning or shearing yearly;
- (5) Harvesting of the tree for seasonal ornamental use, typically within 7 to 10 years of planting.

(c) Trees to be used as Christmas trees which are gathered in the wild, such as from forests or uncultivated land and not produced through the application of agricultural or horticultural techniques are not agricultural or horticultural commodities for purposes of sec. 3(f).