

# Supreme Court rules for farm workers on piece-rate pay

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Efrain Jimenez, left, and Felipe Lopez prune cherry trees Jan. 23, 2015 near Zillah, Wash. They're pruning trees on a piece rate, rather than working on an hourly basis. (GORDON KING/Yakima Herald-Republic)

In an opinion that could dramatically alter the way farmers pay their workers, the state Supreme Court ruled Thursday that employees who are paid a piece rate must be compensated separately for rest breaks.

The court unanimously sided with workers in a 17-page opinion that farm workers paid by the task — such as pounds picked or bins filled — are entitled to rest-break pay above the negotiated piece rate.

The decision could drive up the cost of labor in Central Washington's fruit production industry, where the workforce makes up about half the average farmer's operating costs.

"What this means is a higher cost of production," said Mike Gempler, executive director of the Washington Growers League, a Yakima association that represents farmers in labor issues.

The ruling is the result of a portion of a class action lawsuit by Skagit County berry farm laborers in federal court, which sent the rest break pay question to the state Supreme Court. The Supreme Court heard arguments in the case during a March session at Heritage University in Toppenish.

State regulations mandate that employers cover the cost of 10-minute rest breaks every four hours for all workers in all industries. Farming is no exception.

However, the case was less clear when applied to piece-rate work compensated by unit instead of time.

In the case, piece workers accused Sakuma Brothers Farms of denying them rest breaks; the farm owners argued that the rest breaks were already included in the negotiated piece rate pay.

The court sided with the workers.

“Sakuma’s interpretation is not only inconsistent with the plain language of (the Washington Administrative Code), it is contrary to the regulation’s basic purpose,” wrote Justice Mary Yu, author of the opinion.

The whole point of paid rest breaks is to encourage workers to take a breather from time to time for their own health, she reasoned. Folding the breaks into piece rate wages encourages employees to work through them instead.

In the wake of the ruling, “They won’t be penalized for taking rest breaks to which they are entitled,” said Dan Ford, an attorney with Columbia Legal Services in Seattle, which represented the workers.

Bob Ferguson, state attorney general, also praised the decision. He had filed an amicus, or friend-of-the-court, brief in support of the workers in the case.

State agricultural groups were consulting with attorneys and each other Thursday to understand the details of the ruling and how to implement them.

“We’ll comply with the law,” said Jon DeVaney, president of the Washington State Tree Fruit Association, a Yakima group that represents packing houses and growers.

Requiring separate rest break pay could open up growers to pay challenges for other activities on farms that don’t directly involve production, such as walking from field to field, emptying apple bags and moving ladders, said Brendan Monahan, a Yakima attorney who often represents growers.

“Unproductive time, I think, is going to be a hotly litigated area,” said Monahan, who wrote a friend-of-the court brief on behalf of some agricultural groups.

Also, in their ruling, the justices disregarded the history of farming, which has long relied on piece rate, Monahan said.

“I think they’ve ignored the fundamental contract between farmers and farm laborers and the historical underlying accord that has been in place for decades,” he said.

The extra labor costs could add up quickly for Central Washington fruit growers, who paid \$915 million in wages in 2013, according to the most recent statistics from the state Employment Security Department. However, costs are difficult to calculate because growers pay to harvest some varieties by hour, not by bin. Even when they do pay by the bin, they sometimes instruct workers not to fill bins all the way.

However, the rest-break ruling could add about \$1 per apple bin to the cost of harvest, based on 2013 piece rate wages, and the industry has been harvesting in the neighborhood of 6 million bins a year recently. At that rate, apple growers alone could be on the hook for an extra \$6 million per year.

Seasonal workers, usually harvesters, are the most likely to be paid by the piece. Apples are by far the state's most valuable crop and account for the most seasonal employees.

A worker picking four apple bins per day at \$24 per bin, or \$12 per hour, will end up taking home an extra \$20 per week. The grower paying those wages to 200 pickers will shell out an additional \$32,000 for an eight-week harvest.

Monahan also expects growers to face claims for back wages, though the justices took no position on whether their ruling should be retroactive. State law allows workers to claim back wages and double damages for up to three years.

Monahan estimates that pear and apple growers could face claims worth more than \$25 million in back wages, double damages, interest and attorneys fees.

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