CULTIVATING COMPLIANCE

An Agricultural Guide to Federal Labor Law

UNITED STATES DEPARTMENT OF LABOR

The U.S. Department of Labor's Wage and Hour Division (WHD) administers and enforces some of the nation's most comprehensive federal labor laws, and conducts investigations to determine compliance. These laws cover most employment throughout the United States and its territories, including most agricultural employment.

This guide provides agricultural employers with basic information about compliance with federal labor law. WHD administers and enforces the law without regard to the immigration status of employers or workers.

The Department of Labor offers this guide as a public service. The guide contains general information and does not carry the force of law or legal opinion. The United States Code, the Federal Register, and the Code of Federal Regulations remain the official sources for statutory and regulatory information.

Many states also enforce similar labor laws; employers must comply with all federal and state laws that apply to them.

WORKING TERMS AND CONDITIONS

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Every agricultural employee must receive information about the working terms and conditions of the job. Employers have different obligations for different types of workers.

- If the worker lives permanently in the area, the employer is only required to tell him or her about the job, unless the worker asks for a written copy of the contract.
- If the worker does not live in the area permanently, the employer is required to give him or her a written contract of terms and conditions when recruited.

The contract must be in writing, and in a language the employee understands. The written contract must include:

- The location of the work
- The time period the work will cover
- The type of work, including the crops to be harvested

- The wage rates, including any piece rates
- Any benefits, such as housing or transportation, and the cost, if any
- Whether workers' compensation or state unemployment insurance is provided (and information about the workers' compensation)
- The existence of any employee-initiated work stoppage or slowdown at the worksite
- Whether the grower or its agents will receive any commissions or other benefits from any sales made to the workers
- Any other working terms or conditions

If at any time during employment any employee asks for a written copy of the contract, the employer must provide it.

Employers must display the yellow Department of Labor Migrant and Seasonal Worker Protection Act (MSPA) poster in a conspicuous place at the worksite. This poster describes the rights and protections employers must provide to workers.

PAY

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Employers must keep accurate records of all employees' work time, and must pay employees the correct wages for all hours that they work.

The employer must keep a record of each employee's actual hours of work every day. In addition to their primary job responsibilities, employees' work time may also include things like:

- waiting for a machine to be fixed
- waiting for a field to dry
- travel between fields during the day

- time at work when the employee is not free to leave the worksite (for example, waiting for loading trucks to return to the field)
- short rest breaks (for example, 10- or 15-minute breaks)
- longer rest breaks when the employee is not free from his or her job duties

The federal minimum wage is $7.25 per hour. This is the least an employer can pay for an hour of covered work, unless the operation qualifies for an exemption from minimum wage requirements. This is true whether the employer pays by the hour or by a piece rate. If an employee paid a piece rate does not produce enough to earn $7.25 per hour, the employer must make up the difference.

An employer may be required to pay more than $7.25 per hour if **any** of the following is true:

- The employer promised a higher wage when the employee was recruited or hired
- The employee works in a jurisdiction with a higher minimum wage

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- The employee is paid by how much is picked (a “piece rate”) and picks enough to earn more than $7.25
- State law requires the employer to pay overtime
- The employer is required to pay federal overtime because the employee performed non-agricultural work and worked over 40 hours in that workweek. (*Agricultural work is exempt from overtime under federal labor law*.)

Employers are required to pay employees no less often than every two weeks, or semi-monthly. Employers are not permitted to pay any employee late.

Employers must provide a paystub to each employee on each pay day. This is required regardless of the basis of pay. Employers should encourage employees to save their paystubs. Paystubs must include:

- hourly rate, or piece rate and the number of units earned, for each activity
- correct number of hours worked
- total earnings for the pay period
- amount and purpose of any deductions, such as for taxes, rent or meals
- net pay
- employer's name, address, and identification number
- worker's name, address, and social security number

RECORDKEEPING

Employers must keep accurate and complete payroll records. There is no required form for these records, but they must include:

- Employee's full name as used for Social Security purposes. If an identifying symbol or number is used in place of name on any time, work, or payroll records, it must be kept on the same record with the employee's legal name.
- Home address, including zip code
- Birth date, if younger than 19
- Gender
- Occupation
- Time and day of week the employee's workweek begins
- Hours worked each day and total hours worked each workweek
- Basis of employee's wages (for example, "$9 per hour," "$440 per week," or "piecework")

- Regular hourly pay rate
- Total daily or weekly straight-time earnings
- Total overtime earnings for the workweek
- All additions to and deductions from the employee's wages and the purpose of each deduction
- Total wages paid each pay period
- Date of payment and the pay period covered by the payment

Payroll records must be kept for at least three years. Records used for computing wages, such as time sheets or field tally totals, must be kept for at least two years.

TRANSPORTATION

TRANSPORTATION

If an employer provides transportation to workers, it must be safe. *It must meet these requirements, at a minimum*:

- A separate seat for each passenger
- Seats that are securely attached to the vehicle
- Windows that are not broken or cracked
- Properly attached doors with handles that open and close
- Adequate ventilation

- No holes or rusted areas inside the vehicle
- Adequate heating for cold weather
- Working brakes, lights, and turn signals
- Tires with adequate tread and tires of equal size
- Working horn
- Seatbelts, when required by state law
- Working windshield wipers
- Non-leaking exhaust and fuel systems
- Side and rearview mirrors

In addition, the driver must be licensed to drive the vehicle, meet the applicable motor carrier safety standard, and must obey all driving and traffic rules. Each vehicle must have the required amount of insurance coverage.

Agricultural employers and associations who contract for these services must use only farm labor contractors authorized by the U.S. Department of Labor for the services they provide (housing, transporting and/or driving). This information, including expiration dates of authorizations, is found on the Farm Labor Contractor Certificate of Registration that each contractor must carry at all times. Employers should ask to see this card before hiring a farm labor contractor.

Farm labor contractors that transport workers must be registered with the U.S. Department of Labor, and must have transportation authorization for each vehicle they plan to use and driving authorization for each driver.

Employers may be able to charge some employees for transportation to and from the worksite, but this charge must be reasonable, and it must be disclosed in the work contract.

Examples of Inadequate Transportation

No Fixed Seats

Broken Windshield

Inadequate Tire Tread

HOUSING

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If an employer provides housing to workers, or owns or controls a facility that houses migrant or H-2A workers, it must be safe and sanitary. *It must meet these requirements, at a minimum*:

- A bed for each person
- Hot and cold running water
- Heat available when it is cold outside.
- Windows that open to provide adequate air flow in each room

- Screen doors with self-closing devices
- Adequate lighting
- No signs of infestations (no rodents, pests, insects, roaches in the housing)
- Clean kitchen area with a place to store food so it doesn't spoil
- Durable, clean trashcans with lids that keep out flies and rodents
- Place to wash and dry clothes
- First aid kit
- Fire extinguisher
- Sanitary bathrooms
- Separate toilets for men and women, with at least one toilet for every 15 people and an adequate amount of toilet paper
- At least one shower for every 10 people (*every 15 people in some older camps*)
- The area around the housing should be clean (no sewage, trash, or weeds)

The owner and the person in charge of the housing are responsible for keeping the housing safe and sanitary.

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Farm labor contractors that house workers must be registered with the U.S. Department of Labor, and must have housing authorization for each building used to house agricultural workers.

Employers may be able to charge some employees for housing, but this charge must be reasonable and must be disclosed in the work contract.

Examples of Inadequate Housing Conditions

No Screen Door

Unsanitary Bathroom

Inadequate Sleeping Area

IN THE FIELDS

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If an employer employed 11 or more workers on any day in the past 12 months to do hand labor in the fields, they may be required to provide drinking water and other facilities. Some states have their own requirements that are different from the federal requirements described here. Employers must comply with all applicable laws.

DRINKING WATER

Employers must provide plenty of cool, clean drinking water for the entire work shift and at least one clean drinking cup for each worker, free of charge. Employers must provide this water free of charge for all employees even if the employer sells sodas or other drinks.

TOILET AND HAND WASHING FACILITIES

If the workers will be in the fields for more than three hours (including travel time to and from the fields), employers must also provide one toilet and one hand washing station for every 20 workers. If there are 21 workers, they must provide two toilets and two hand washing stations.

Toilets must be close to where the employees work. They must be clean and free of pests, and have self-closing doors that lock from the inside. There must be enough toilet paper for all workers for the entire day.

Hand washing stations must be near the toilets. They must be stocked with clean water and enough soap and clean towels for every use, and provide a place to dispose of used towels.

Employers must tell employees where they can get drinking water, use the toilet, and wash their hands.

H-2A REQUIREMENTS

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These additional rules apply to H-2A employers

Any requirement that applies to H-2A workers also applies to those in “corresponding employment." A worker in corresponding employment is one who does the same work as the H-2A worker OR any work included on the H-2A job order. This is true even if the worker was not originally hired to do that work. For example, if a U.S. worker works alongside H-2A workers picking the crops that are listed on the H-2A job order, that U.S. worker is entitled to the same protections as H-2A workers when doing the same work as the H-2A worker OR any work included on the H-2A job order.

The purpose of the H-2A program is to provide employers with a legal workforce when the employer can demonstrate qualified U.S. workers are unavailable to perform the work.

H-2A employers are required by law to:

- Hire willing and qualified U.S. workers when they are available, and keep a record of efforts to recruit U.S. workers.
- Offer and provide U.S. workers at least the same benefits, wages and working conditions offered or provided to H-2A workers. Employers cannot offer more hours or a higher rate of pay to H-2A workers. (Employers may provide U.S. workers with a higher wage or with more hours or greater benefits than the H-2A workers receive.)
- Disclose in the job offer to all potential workers any experience or productivity requirement for doing the available job. These requirements must be applied equally to both U.S. and H-2A workers. Employers are not allowed to reject U.S. workers for failing to meet an experience requirement that is not applied to H-2A workers. Employers cannot require U.S. workers to pick a certain amount if they do not have the same standard for H-2A workers.
- Disclose any deductions from pay not required by law to the Employment & Training Administration (ETA), *which will decide whether to approve them*, in the job offer and in the contract with the worker if approved.

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- Pay costs associated with recruiting their workforce, including any costs associated with each worker's visa.
- Forbid an agent or a foreign labor recruiter to seek or receive money or other payments from the foreign workers. (*Recruiting costs are the employer's responsibility.*)
- Employers covered by the FLSA must reimburse an H-2A employee's inbound transportation and visa-related expenses in the first workweek to the extent that these costs otherwise would bring the worker below the FLSA minimum wage. In addition, the employer must reimburse all of the worker's reasonable costs for his or her initial trip to the worksite if he or she completes 50% of the contract period.

- Pay for transportation, daily food expenses and lodging, where necessary, for the worker's return trip at the end of a completed contract period. FLSA-covered employers must reimburse outbound transportation expenses to the extent that the cost would otherwise bring the worker below the FLSA minimum wage for the worker's final workweek, even if the worker does not complete the contract period.
- Employers may not intimidate or discriminate against any worker who files a complaint, testifies, consults with an attorney or legal assistance program employee, or otherwise exercises or asserts his or her H-2A related rights.
- If an H-2A worker is fired or quits before the contract period is over, the employer must notify the National Processing Center and the Department of Homeland Security.

DISCLOSURE:

- Employers of H-2A workers not already lawfully working in the United States must give them a written contract about the job no later than the date the worker applies for a visa.
- Any other workers doing the same agricultural work as the H-2A workers or any other work included on the H-2A job order must be given a written contract no later than their first day of work.

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- If an employer uses the H-2A program, the written contract with the H-2A worker must include additional information on the minimum benefits, wages, and working conditions, including information on free and safe housing, meals, free daily transportation, inbound and outbound transportation, the guaranteed number of hours during the contract, items that will be provided to do the job, the frequency of pay, and deductions. The contract should also explain what will happen if the contract is terminated, if the worker abandons the job, or if the worker is terminated for cause.

RECORDKEEPING AND PAY

- Employers of H-2A workers must also display the green Department of Labor H-2A employee rights poster in a conspicuous place at the worksite.
- Paystubs must include:
  - The number of hours offered (showing offers in accordance with the 3/4 guarantee separate from any hours offered over and above the guarantee)
  - The beginning and ending dates of the pay period
  - The worker's total earnings for the pay period

- The worker's hourly rate and/or piece rate of pay
- The hours actually worked by the worker
- An itemization of all deductions made from the worker's wages
- If piece rates are used, the units produced daily
- The employer's name, address and FEIN

- H-2A employers must also keep a record of the number of hours of work offered each day to each H-2A and corresponding worker, the amount of and reasons for any and all deductions taken from the worker's wages, the worker's earnings, the amount of hours actually worked each day by the worker, the time the worker began and ended each workday, the rate of pay (both piece rate and hourly if applicable), the worker's earnings per pay period, and the workers' home address.

TRANSPORTATION

Employers of H-2A workers must provide them with free transportation to and from the worksite from employer-provided housing. Workers in corresponding employment are also entitled to this benefit.

ENFORCEMENT

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Agricultural employers must comply with the requirements of all laws that apply to them. These may include the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the labor provisions of the H-2A visa program, and the field sanitation provisions of the Occupational Safety and Health Act (OSH Act). Employers who fail to comply with these laws may face appropriate action by the Wage and Hour Division.

WHD selects the most appropriate remedy in each individual case. Remedies for violations include:

- Payment of back wages and liquidated damages to workers who have been underpaid under the FLSA
- Payment of civil money penalties under the FLSA, MSPA and/or H-2A
- An injunction preventing the shipment of goods produced in violation of the FLSA (“hot goods”)
- Suspension or revocation of a Farm Labor Contractor’s certificate with DOL and placement of the contractor on the public list of ineligible contractors
- Debarment of an H-2A employer from using the program for 1-3 years

KEY ENFORCEMENT CONCEPTS

Liquidated Damages Money paid to an employee, equal to the amount of back wages due, when he or she has been underpaid under the FLSA. For example, if an employee was underpaid by $100 because of a violation of the FLSA, the employer may owe the employee $100 in back wages plus an additional $100 in liquidated damages.

"Hot goods" The Fair Labor Standards Act generally prohibits the shipment in commerce of goods produced in violation of its minimum wage, overtime, or child labor provisions. The Wage and Hour Division may bring actions in federal court under the FLSA to prevent the shipment of goods produced in violation of the FLSA.

Retaliation Prohibited It is a violation for any person to discriminate against, harass, etc., in any way any employee who has complained about violations of the FLSA, MSPA, H-2A program and/or OSH Act, or who has cooperated with DOL in an investigation.

CONTACT THE WAGE AND HOUR DIVISION

If you have questions or need additional information, please contact the Wage and Hour Division.

Voice: **1-866-4US-WAGE (1-866-487-9243)**
TTY/TDD: **1-877-889-5627**
Online: **www.dol.gov/whd/ag**

You will be directed to the nearest WHD office for trained professional assistance. You may visit any of our more than 200 offices in person, or you may call or email for information. You do not need to give your name or any other identifying information. All services are provided free of charge. Language interpretation services available.

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