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## FAIR LABOR STANDARDS ACT

The Fair Labor Standards Act sets minimum wage, child labor and recordkeeping standards which apply to farmworkers.

The federal minimum wage is \$4.25 per hour. Farmworkers who are subject to the Act must be paid no less than this rate even when paid on a salary or piece rate.

Most farmworkers do not have to be paid time and a half when they work over 40 hours in a week.

### COVERAGE

The standards apply to farmworkers who are employed:

- a. by an employer whose annual gross income is at least \$500,000.00 or
- b. in the production of agricultural goods which will leave the state directly or indirectly and become part of interstate commerce.

These groups are workers who cultivate the soil; grow or harvest crops; and raise livestock, bees, fur-bearing animals, or poultry. Those who do such work in greenhouses, nurseries, and hatcheries are also included.

In addition, the standards cover employees who do work incidental to their employer's own

farming operations, regardless of whether they are employed directly by a farmer or by an independent labor contractor. Incidental work includes delivery of farm products to market, working in packing sheds, picking fruit, and threshing grain. If farmworkers work on products not grown by their own employer, they may have to be paid at least one and one-half times their regular rate of pay for all hours worked over 40 in a week.

### EXEMPTIONS

The following are exempt from the Act:

Farmworkers whose employer did not use more than 500 "man-days" of agricultural labor in any calendar quarter of the previous calendar year (a "man-day" is defined as any day during which an employee, excluding members of the employer's immediate family, does agricultural work for at least one hour); thus, small farms are exempt from the standards;

Members of an employer's immediate family;

Local hand-harvest workers who are paid on a piece rate basis and who worked fewer than 13 weeks in agriculture during the preceding calendar year;

Migrant hand-harvest workers 16 years of age and younger who are employed on the same farm as their parents and who receive the same piece rate as older employees on the same farm;

Employees principally engaged in range production of livestock.

#### RECORDS

An employer subject to the standards must keep accurate records of earnings, hours worked, and other information required by the department, and must make the records available for inspection by representatives of the department. A record of hours must be kept for employees who are paid on a "contract" or "piece-rate" basis.

#### CHILD LABOR

Youths aged 16 and above may work in any farm at any time.

Youths aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor. The school hours in the school district in which the work is being performed controls.

Youths aged 12 and 13 may work in jobs not declared hazardous outside school hours either with written parental consent or on the same farm where their parents are employed.

Minors under 12 years of age may not work on farms whose workers are subject to the minimum wage provisions of the FLSA. On all other farms, they may work in non-hazardous jobs

outside school hours with written parental consent.

Local youths aged 10 and 11 may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 IF THEIR EMPLOYERS HAVE OBTAINED SPECIAL WAIVERS FROM THE SECRETARY OF LABOR.

#### ENFORCEMENT

Serious violations may result in civil or criminal action. When employers have illegally underpaid workers, the Department of Labor may recover back wages for the workers either administratively or through court action. Also, workers have a right to file suit in federal court to collect back wages due. Employers may face penalties of up to \$1000 for each child labor violations.

The FLSA prohibits employers from dismissing or retaliating against workers because they file complaints, testify, or in any way exercise their rights under the Act on their own behalf or on behalf of others.

For information call you nearest office of the U.S. Department of Labor Wage and Hour Division.

MIGRANT AND SEASONAL AGRICULTURAL WORKER  
PROTECTION ACT

**OBJECTIVE**

The Migrant and Seasonal Agricultural Workers Act (MSPA) protects migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations and providers of migrant housing. All persons and organizations subject to the act must observe certain rules when recruiting, soliciting, hiring, employing, transporting, or housing these workers or when furnishing them to other employers.

Certain persons and organizations, such as small businesses, some seed and tobacco operations, labor unions, and their employees, are exempt from the act.

**REGISTRATION REQUIREMENT**

Before performing any farm labor contracting activities, farm labor contractors must register with the U. S. Department of Labor and obtain certificates of registration specifying the types of activities they are authorized to perform. Persons employed by farm labor contractors and perform such activities also must register with the department. Application for registration can be made at local offices of the state

employment service. Certification may be denied suspended, or revoked for violations of any provisions of MSPA.

Farm labor contractors and farm labor contractor employees must carry proof of registration and show it to workers, agricultural employers, agricultural associations, and any other persons with whom they deal as contractors.

Agricultural associations, agricultural employers, and their employees are not considered farm labor contractors and do not have to register. Before they engage the services of any farm labor contractor, however, they must take reasonable steps to insure that the contractor has a labor department certificate valid for the services to be performed. The department has a toll free number (1-800-800-0235) for inquiries about the validity of certificates.

**OTHER REQUIREMENTS**

Agricultural associations, agricultural employers, and farm labor contractors are responsible for:

**Disclosure:** Informing migrant workers and seasonal day-haul workers about prospective employment in writing when they are being recruited, and providing to other seasonal workers such information in writing upon request when they are offered work. Information must be written in English,

Spanish, or other languages, as appropriate. Thereafter, migrant and seasonal workers have a right to receive upon request a written statement of such information.

**Wages:** Paying workers their wages when due, and giving them itemized, written statements of earnings for each pay period, which include any amount deducted and reasons for the deductions.

**Records:** Keeping complete and accurate payroll records for all workers. In addition, farm labor contractors must give any other farm labor contractor, agricultural employer, or agricultural association to whom they supply workers, copies of payroll records for each worker supplied to that particular contractor, employer or association.

**Transportation:** Assuring that vehicles used or caused to be used by a farm labor contractor, agricultural employer, or agricultural association to transport workers are properly insured, are operated by licensed drivers, and meet federal and state safety standards.

**Poster:** Displaying conspicuously at the job site a poster setting forth the rights and projections of the workers. Posters are available from the Wage and Hour Division.

**Working arrangements:** Complying with terms of the working arrangements they have made with workers.

**Housing standards:** Each person or organization which owns or controls real property used for housing migrant workers must comply with federal and state safety and health standards. A written statement of the terms and conditions of occupancy must be posted conspicuously at the housing site or given to workers.

#### OTHER PROVISIONS

Before farm labor contractors can house migrant workers in housing they own or control, they must be authorized to do so by the Department of Labor. This is done by submitting an application to the department and the housing is inspected and found to meet the minimum standards of federal regulations.

Farm labor contractors must comply with the terms of written agreements made with agricultural employers and agricultural associations.

#### ENFORCEMENT

During investigations, Wage and Hour Investigators may enter and inspect premises (including vehicles and housing), review and transcribe payroll records, and interview workers to determine whether their employers are in compliance with MSPA.

Investigators may advise violators to make changes necessary to achieve compliance. They also may recommend assessment of civil money

penalties and revocation of certificates of registration. Failure to comply with the act may result in civil or criminal prosecution.

Administrative actions under the act include penalties of up to \$1,000 per violation and, in the case of farm labor contractors, revocation of existing certificates and denial of certification in the future. To insure compliance with the act, the Secretary of Labor may seek court injunctions prohibiting further violations and may bring criminal charges. Courts may assess fines of up to \$10,000 and prison terms of up to three years in criminal cases.

In addition to the above remedies, individuals whose rights under MSPA have been violated may file suite directly in federal court for damages.

For information call your nearest office of the U.S. Department of Labor - Wage and Hour Division.

#### IMMIGRATION AND NATURALIZATION SERVICE (INS)

The Immigration Reform and Control Act (IRCA) of 1986 requires all employers of "Special agricultural workers" engaged in seasonal agricultural work to provide certain information to the Federal government.

A reportable worker is one who:

--Has an Immigration and Naturalization Service (INS) Alien Registration Number in the A90000000 series (that is, "A-9" followed by any seven digits), and

--Is employed in seasonal agricultural services for one or more work days of at least four hours after October 1, 1988.

From October 1, 1988, through September 30, 1992, agricultural employers must file a signed, certified copy of Form ESA-92 (Work-day Report) each quarter if they have employed any reportable workers. This form must be used to report the number of work-days of at least 4 hours for each reportable worker employed in seasonal agricultural services. This information will be used to help determine the need for admitting any additional, or replenishment, agricultural workers to the U.S.

Also, from October 1, 1989, through September 30, 1991, agricultural employers must furnish to all replenishment agricultural workers on each payday a record of each day employed in seasonal agricultural services.

#### Recordkeeping:

From October 1, 1988, through September 30, 1982, employers of reportable workers must create and maintain records containing each worker's name, INS Alien Registration Number, Social Security Number, local and permanent addresses (including Zip Code), crops worked and tasks performed, and hours worked each day. Records may be in any recordkeeping format.

Employers must also retain a copy of each dated and signed Work-Day Report (ESA-92) submitted to the Federal Government and the number of work-days employed in seasonal agricultural services. Records must be available for inspection by Department of Labor officials and must be retained for at least three years, except that records pertaining to replenishment agricultural workers must be kept at least five years.

Form ESA-92 is available at the U.S. Department of Labor's Wage and Hour Division Area Offices, the U.S. Department of Agriculture's (USDA) county extension service offices, county offices of the USDA's Agricultural Stabilization and Conservation Service, and the Immigration and Naturalization Services, Border Patrol offices.

#### OSHA TEMPORARY LABOR CAMP AND FIELD SANITATION REGULATIONS

##### OBJECTIVE

The purpose of the Occupational Safety and Health Act is to assure, as far as possible, every working man and woman in the nation safe and healthful working conditions and to preserve our human resources. The OSHA temporary labor camp and field sanitation regulations are part of OSHA's effort which is consistent with the agency's purpose.

##### COVERAGE

All temporary labor camps provided for farm employees are subject to the OSHA regulations. There is no licensing procedure under the OSHA regulations.

The field sanitation regulations provide requirements for farm employers where eleven or more farm employees are engaged in hand-labor operations in the field on any given day.

Inspections are made on a random basis and in response to employee complaints, or following a report of a fatality.

##### EMPLOYER PROVISIONS

An agricultural labor camp must be maintained in a condition that satisfies the minimum

requirements of the Code of Federal Regulations (29 CFR 1910.142) as previously indicated. It is also the duty of the camp operator to report immediately the local health officer the name and address of any person known to have or suspected of having a communicable disease. The filed sanitation regulations contained in 29 CFR 1928.110 are to ensure that drinking water, handwashing facilities and toilet facilities are provided to the farm workers.

#### EMPLOYEE PROVISIONS

There are no provisions specifically for employees.

#### RESPONSIBLE AGENCY

The following agency is responsible:

U. S. Department of Labor  
Occupational Safety and Health  
Administration  
525 Griffin Street  
Room 602  
Dallas, Texas 75202  
(214) 767-4731

or

For information call your nearest office of the U.S. Department of Labor - Occupational Safety and Health Administration.

#### EMPLOYMENT SERVICES (JOB SERVICE)

The U. S. Employment Service and State Employment Security Agencies operate about 1,800 local Job Service Offices to help jobseekers and employers. Job Service Offices help millions of jobseekers every year. The assistance offered includes interviewing, testing, counseling, referral to training and jobs. The Job Service system's basic purpose is to bring together individuals who are seeking employment and employers who are seeking workers. Other assistance and/or services provided by the local Job Service Offices are"

- Veterans Programs
- Targeted Job Tax Credit Program
- Older Worker Program
- Handicapped Program
- Interstate Job Program
- Migrant and Seasonal Farmworker Program:  
The MSFW Program is to help migrant and seasonal farmworkers and their families. The program is designed to: (1) provide training and supportive services to farmworkers who seek job opportunities that will enable them to secure employment, and (2) to help those who remain in the agriculture employment.



Local Job Service Offices serve any citizen or legal resident (including labor contractors, Migrant and Seasonal Farmworkers) of the United States who is able and desires to work.

**Any individual who is seeking employment opportunities should contact the nearest local State Employment Security Service Office for assistance.**

#### UNEMPLOYMENT INSURANCE

##### **AGRICULTURAL EMPLOYER COVERAGE**

Agricultural Employers who employ ten or more persons for at least one day in each of twenty weeks of a calendar year or pay wages of \$20,000 or more in a calendar quarter must pay federal and state unemployment insurance taxes. The federal unemployment tax, referred to as FUTA, is 6.2% of the first \$7,000 paid to each employee. An offset credit of 5.4% is provided when the employer pays into a state unemployment insurance program. Thus, FUTA is .8% of the first \$7,000 that each employee is paid.

The federal coverage provisions (\$20,000 payroll in a quarter and/or 10 or more persons for 20 weeks in a calendar year) are minimal, and some States have reduced the qualifying requirements. In Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), only Texas has qualifying provisions different than the federal minimum requirements. Texas requires Unemployment Insurance (UI) tax coverage when cash wages of \$6,250 are paid in a calendar quarter or 3 or more individuals are employed for at least one day each of 20 weeks during the calendar year. Employment of seasonal and migrant workers in Texas can also require coverage, irrespective of payroll or numbers of workers employed.

The Federal unemployment tax is paid annually using the IRS form 920; however, employers who will owe more than \$100 in Federal unemployment taxes in a calendar quarter are to make quarterly deposit using IRS form 8109B. State UI taxes are paid quarterly using prescribed State forms.

In order to insure that employers are not financially penalized through interest and/or penalties for late payment of UI taxes, it is important for all employers (crew leaders, farmers, ranchers, etc.) to contact the local State Employment Security Office (Employment Service and Unemployment Insurance Offices) and discuss the UI taxing requirements and the individual employer status regarding State/Federal Unemployment taxes.

**For information call your nearest State Employment Security Office.**

#### SOCIAL SECURITY

The employer is usually the person who pays the employee. This could be a farmer, farm labor contractor, agricultural association or a packing shed operator. You must report cash wages paid your employees by January 31 of each year if you:

- 1) Spend \$2,500 or more agricultural labor in a year; or
- 2) Spend less than \$2,500 but you pay an employee \$150 or more during the year.

If your employee commutes to work daily from his/her home for season picking fruit or vegetables by hand, you only need to report wages if you pay at least \$150 in cash to the employee.

You must also give your employees a W-2 Form by January 31. The W-2 shows how much you paid each employee and how much in taxes you withheld from their pay.

**For information call your Local Social Security Administration Office.**

## EMPLOYMENT ELIGIBILITY RECORDKEEPING REQUIREMENTS (INS)

The Immigration Reform and Control Act of 1986 (IRCA) requires all American businesses, including farmers, ranchers, labor contractors, and packing shed operations, to establish that their workers are in the country legally and have a right to work here. The law applies to all workers, American citizens and legal residents alike. Their eligibility to work in this county is established on a Form I-9. This form should be completed, documented and held on file for periodic review by INS and the Department of Labor, Wage and Hour Division as long as the person is an employee of said firm, and for at least one year beyond the day the employee is terminated or resigns. In the case of ex-employees, the Form I-9 should be held on record for a total of at least three years, including one year past the date of termination or resignation.

### DOCUMENTATION PROCESS

Immigration law prohibits employment discrimination based on Citizenship status or national origin. Persons should be hired based on their qualification for the job. Processing of an I-9 Form should come after hiring, before the end of the first workday.

Employees should be required to complete Section 1 of the I-9, including a signature and date, at the time of being hired. They

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may be allowed 3 days in which to provide documents proving their identity and right to work. A list of acceptable documents is outlined in the Handbook for Employers provided by INS.

I-D type cards issued by INS provide documentation for both identity and right to work. Numbers and expiration dates from these documents should be recorded under Column A in Section 2 of the I-9. Employers are encouraged to view both sides of any documentation presented, as expiration dates and qualifying information is often on the back of the document. Such diligence on the part of the employer also helps ensure that documents accepted are genuine and not issued by someone other than a government agency.

Employers are urged to see that no spaces are skipped on the I-9 and that both the employee and the employer sign the I-9 in the spaces provided on the form.

Expiration dates are important to make note of, in that affected employees must present something more in order to work beyond the initially listed expiration date. The original I-9 should be updated to substantiate the extended work authority. Updating should be initiated and dated.

Farmers, labor contractors and agricultural related industries should note that:

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- 1) Agents of the Immigration and Naturalization Service and the Department of Labor are authorized to examine I-9 Forms.
- 2) Record maintenance violators may be assessed fines of between \$100 and \$1000 per employee whose I-9 is not complete, retained or presented.
- 3) For hiring, or continuing to hire unauthorized employees, fines are:  
First violation - \$ 250 - 2000 per employee  
Second violation - \$2000 - 5000 per employee  
Subsequent Violation - \$3000 - 10000 per employee
- 4) Those found engaging in a continuing practice of knowingly hiring unauthorized employees may be fined \$3000 per employee and/or imprisoned for 6 months.
- 5) Those found engaging in fraud or false statements about visas, permits and identification documents may be fined through civil procedures or imprisoned up to 5 years.

**For information call your local office of Immigration and Naturalization Service.**

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#### **DISCLAIMER**

This booklet is designed for information purposes only. It is not an official interpretation of any law or regulation nor does it have the weight of law. The reader must assume responsibility for any action taken on the basis of any information contained in this booklet.