

Migrant And Seasonal Agricultural Worker Protection Act

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Objective

The objective of the Act is to provide for the protection of migrant and seasonal agricultural workers.

Coverage

The Migrant and Seasonal Agricultural Worker Protection Act was enacted January 14, 1983. The Act contains provisions similar to those of the Farm Labor Contractor Registration Act of 1963 that this act repealed. The Act requires any person who desires to engage in any activity as a farm labor contractor to obtain a Certificate of Registration separately authorizing each contracting activity. A farm labor contractor is any person who, for a personal fee, or on behalf of another person, recruits, solicits, hires, furnishes or transports any number of workers (excluding members of the contractor's immediate family) for agricultural employment, whether within a state or across state lines.

"Person" includes any individual, partnership, association, business trust, or corporation, legal representative, or any organized group of persons. "Fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor. "Immediate family" of the contractor includes only a spouse; children, stepchildren, and foster children; parents, step-parents, and foster parents; and brothers and sisters.

The Act establishes specific protection for migrant and seasonal agricultural workers. "Agricultural employment" is defined very broadly to include virtually all aspects of employment in agriculture. In addition to on-farm employment, the definition includes handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

It is important to note that the Act appears to be concerned only with migrant and seasonal farm workers. However, the terms migrant and seasonal agricultural worker, for purposes of this Act, are defined to include any individual who is employed in agriculture, or who performs agricultural labor on a seasonal or other temporary basis. The key element of these definitions is that any individual who is performing agricultural work of a seasonal or temporary nature is covered under the Act. The Act does not include immediate family members of an agricultural employer or a farm labor contractor,

or any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States.

Employers who own or operate a farm and recruit farm workers solely for their own operations are exempt from the Act. An individual who has incorporated for business purposes is also exempt from the Act.

Other exemptions from the Act include:

1. An employer's regular or full-time employee who engages in farm labor contractor activities exclusively for the employer.
2. Common carriers engaged solely in transporting farm workers.
3. Any person who engages in contracting activity within a 25-mile intrastate radius of the person's permanent home and does not engage in contracting activity for more than 13 weeks in a calendar year.
4. Any custom combine, hay harvesting, or sheep shearing operation.

There are some additional exemptions, but these do not apply to Ohio agricultural employers or farm labor contractors typically involved in farm labor activities in the state.

Farm Labor Contractor Provisions

Farm labor contractors covered by the Act have several specific responsibilities. They must:

1. Register with the U.S. Department of Labor. A Certificate of Registration must be carried at all times while engaged in farm labor contracting activities and shown to appropriate persons when dealing as a farm labor contractor. Any full-time or regular employee who may act in behalf of a registered contractor must register with the U.S. Department of Labor. A Certificate of Registration as an employee of a farm labor contractor must be carried at all times while engaging in farm labor contracting work. Farm labor contractors may apply for registration at any local office of the Ohio Bureau of Employment Services. Certificates of Registration are generally effective for a period of twelve months, from the date of issuance, unless suspended or revoked. The certificates and cards may be denied, suspended, or revoked for failure to comply with the Act.
2. Notify the U.S. Department of Labor within 30 days of any change in address.
3. Apply to amend the Certificate of Registration whenever the farm labor contractor intends to:
 - a. engage in another farm labor contracting activity not included in the original certificate,

- b. use, or cause to be used, another vehicle than that covered by the certificate, to transport any migrant or seasonal agricultural worker, or
 - c. use, or cause to be used, another real property or facility to house any migrant agricultural worker other than that covered by the certificate.
1. Not recruit, hire, employ, or use, with knowledge, the services of any individual who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

A farm operator who deals directly with a farm labor contractor must make sure that the contractor is properly registered before using the contractor's service. The user must determine that the farm labor contractor/crew leader has a valid U.S. Department of Labor Certificate of Registration that authorizes the contractor to perform the services required by the user. Contractors who house or transport workers must have certificates specifying these activities. For example, a farmer may arrange for the crew leader to transport workers. The farmer must examine the crew leader's Certificate of Registration to determine whether or not transportation of workers is authorized. If workers are transported by a crew leader not authorized to provide transportation, both the farmer and the crew leader may be cited for and assessed civil money penalties for unauthorized activities.

Migrant And Seasonal Worker Protection

Each covered farm labor contractor, agricultural employer, and agricultural association that recruits any migrant or seasonal agricultural worker have the following responsibilities under the Act:

1. At the time of recruitment, inform each worker in writing, in a language in which the worker is fluent, of all living and working conditions, including location of work site, crops and operations on which the worker may be employed, wages, housing facilities, transportation and insurance, the period of employment, charges to be made for the services provided, the existence of any labor dispute at the work place, or any kickback arrangement between the farm labor contractor and local commercial or retail merchants who deal with the workers.
2. Post the "Migrant and Seasonal Agricultural Worker Protection Act" poster in a conspicuous place at the place of employment. This poster which sets out the rights and protections for workers under the Act may be obtained from the U.S. Department of Labor.
3. The employer of any migrant agricultural worker must provide at the place of employment and on request of the worker, a written statement of the conditions of employment. Such information is to be provided in English and if necessary in Spanish or another language common to migrant or seasonal agricultural workers not fluent in English.

4. Clearly post, in a language in which the worker is fluent, the terms and conditions of occupancy for housing owned or controlled by the farm labor contractor, agricultural employer or agricultural association. (All housing must comply with federal and state health standards outlined in the migrant labor camp section of this Handbook.)
5. Farm labor contractors, agricultural employers and agricultural associations which employ migrant and seasonal workers:
 - a. will pay wages when due and provide an itemized written statement of earnings and deductions.
 - b. will not require workers to purchase any goods or services solely from such employer.
 - c. shall not violate the terms of a working arrangement without justification.

Record Keeping

Farm labor contractors, agricultural employers, and agricultural associations that employ any migrant or seasonal agricultural worker are required to maintain payroll records of workers recruited for their benefit. The farmer must have these records even if the workers are paid directly by the contractor.

These payroll records must show, for each worker:

1. name;
2. permanent address;
3. Social Security number;
4. the basis on which wages are paid;
5. the number of piecework units earned, if paid on a piecework basis;
6. the number of hours worked;
7. the total pay period earnings;
8. the specific sums withheld and the purpose of each sum withheld; and
9. the net pay.

Payroll records are to be retained for at least three years from the end of the period of employment.

Motor Vehicle Safety

The Act establishes specific safety vehicle standards for vehicles used to transport migrant or seasonal agricultural workers. These standards apply whether the worker is on

the farm or on the road. These standards do not apply to agricultural machinery and equipment nor to migrant or seasonal workers being transported by other family members of the employer.

The farm labor contractor, agricultural employer or agricultural association may not transport any migrant or seasonal worker in any vehicle the employer owns, operates, controls, or causes to be operated unless the employer has an insurance policy or liability bond. The required limits for bodily injuries to, or death of, one person is \$100,000. The required limit for bodily injuries to, or death of, all persons injured or killed in any one accident (subject to a maximum of \$100,000 for bodily injuries to, or death of, one person) is \$300,000 if the passenger equipment is for 12 passengers or less and \$500,000 if the equipment is for more than 12 passengers. The required limit for loss or damage in any one accident to property of others (excluding cargo) is \$50,000. Any licensed insurance agent can sell this insurance.

Penalties

Any person who willfully and knowingly violates the Act or any regulation under the Act is subject to a fine up to \$1,000 or up to one year in prison. The Act also provides a civil money penalty sanction up to \$1,000 per violation.

Any person claiming to be aggrieved by a violation of the Act or regulations under the Act by another person may file suit in a United States District Court.

No person may intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker where the worker has with just cause filed a complaint or initiated a proceeding under this Act. Workers who believe they have been discriminated against may file a complaint with the Secretary of Labor within 180 days after the violation occurs.

Responsible Agency

Additional information may be obtained from any local office of the Ohio Bureau of Employment Services (OBES). See the section on unemployment insurance in this handbook for a listing of local OBES offices. Local offices of OBES can provide the necessary forms and accept applications for

Cincinnati
525 Vine
Street,
Suite 880
Cincinnati,
OH 45202-
3268
513-684-2902
Cleveland
Room 817, Federal Office Building

registration of farm labor contractors and farm labor contractor employees. The OBES will forward the applications to the appropriate regional office of the Wage and Hour Division of the Employment Standards Administration.

1240 East 9th Street
Cleveland, OH 44199-2054
216-522-3892

Columbus
Room 646,
Federal
Office
Building

The agency responsible for certification and enforcement of the Migrant and Seasonal Agricultural Worker Protection Act is the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. Ohio area offices of the Division are:

200 North High Street
Columbus, OH 43215-2475
614-469-5677

Internet Resources

<http://www.dol.gov/dol/asp/public/programs/handbook/mspa.htm>

References

"Migrant and Seasonal Agricultural Worker Protection Act," WH Publication 1465, Revised July 1989.

"Migrant and Seasonal Agricultural Worker Protection Act," Poster, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

"Migrant and Seasonal Agricultural Worker Protection Act," 29 USC 1801, Public Law 97-470, 96 Stat. 2583, January 14, 1983.

Regulations, Part 500 Migrant and Seasonal Agricultural Worker Protection, WH Publication 1455, Revised December 1986.

Migrant and Seasonal Agricultural Worker Protection Act, WH Publication 1376, Revised April 1983.