

Understanding Wage and Hour Requirements for Agricultural Employers

The U.S. Department of Labor's Wage and Hour Division enforces three separate and distinct federal laws establishing minimally acceptable labor standards for wages and working conditions that may impact agricultural employers or associations. These labor standards are set forth in the Fair Labor Standards Act (minimum wage, overtime pay, child labor and recordkeeping requirements), the Migrant and Seasonal Agricultural Worker Protection Act (vehicle safety, housing safety and health, disclosure of wages and working conditions, farm labor contractor registration and other requirements), and OSHA Field Sanitation (drinking water, toilets and hand-washing for field workers).

This article will explain the very basic provisions of these multi-faceted laws but if more information is desired, please call the Department of Labor's toll-free help line at 1-866-4USWAGE (1-866-487-9243). Information also is available on the Internet at www.wagehour.dol.gov.

The Fair Labor Standards Act (FLSA)

Virtually all employees in agriculture are covered by the FLSA since they produce goods for interstate commerce. There are, however, some exemptions which exempt certain employees from the minimum wage provisions, the overtime pay provisions, or both.

Employees that are employed in agriculture, as defined in the FLSA, are exempt from the overtime pay provisions. Thus, they do not have to be paid time and one-half their regular rates of pay for hours worked in excess of forty in a single workweek.

The FLSA's definition of agriculture excludes work performed on a farm that is not incidental to or in conjunction with such farmer's farming operation. It also excludes operations performed off a farm if performed by those employed by someone other than the farmer whose agricultural products are being processed.

Any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

Although exempt from the overtime requirements of the FLSA, agricultural employees must be paid no less than the minimum wage – currently \$7.25 per hour. There are numerous restrictions on the employment of minors who are less than 16 years of age, particularly in occupations declared hazardous by the Secretary of Labor. Substantial civil money penalties are prescribed for violations of the monetary and child labor provisions of the law. The FLSA also requires that specified records be kept.

The coverage provisions and scope of State laws and regulations may vary significantly with that of the FLSA. Please consult with the appropriate State Department of Labor or visit www.dol.gov/esa/programs/whd/state/state.htm.

The Migrant & Seasonal Agricultural Worker Protection Act (MSPA)

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. MSPA also requires farm labor contractors to register with the U.S. Department of Labor.

A Farm Labor Contractor is someone who, for money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes or transports migrant and/or seasonal agricultural workers or, provides housing to migrant agricultural workers. Agricultural employers, agricultural associations and their employees are not included in the term.

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

Before performing any farm labor contracting activity, a farm labor contractor must register with the U.S. Department of Labor and obtain a certificate of registration. A farm labor contractor must be specifically authorized to provide housing or transportation to migrant or seasonal agricultural workers prior to providing the housing or transportation. Persons employed by farm labor contractors to perform farm labor contracting activities must also register with DOL.

Each person or organization that owns or controls a facility or 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 at the housing site where it can be seen or be given to the workers.

Agricultural associations, agricultural employers, and farm labor contractors must assure 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.

Agricultural associations, agricultural employers, and farm labor contractors must inform migrant and seasonal agricultural workers about prospective employment, including the work to be performed, wages to be paid, the period of employment, whether state workers' compensation or state unemployment insurance will be provided.

OSHA Act Field Sanitation

The Occupational Safety and Health Act of 1970 was enacted to assure safe and healthful working conditions for working men and women. In 1987, the Occupational Safety and Health Administration issued regulations establishing minimum standards for field sanitation in covered

agricultural settings. Authority for enforcing these field sanitation standards in most states has been delegated to the Wage and Hour Division.

In general, the field sanitation standards apply to any agricultural establishment employing 11 or more workers on any one day during the previous 12 months, to perform “hand labor.” “Hand labor” includes hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops, including mushrooms, and the hand-packing of produce in the field into containers, whether performed on the ground, on moving machinery, or in a shed.

Covered agricultural employers must provide potable drinking water, suitably cool and in sufficient amounts, dispensed in single-use cups or by fountains, located so as to be readily accessible to all employees.

Covered agricultural employers must provide one toilet and handwashing facility for every 20 employees, located within a quarter-mile walk, or if not feasible, at the closest point of vehicular access. Pre-moistened towelettes, once allowed by some state regulators, cannot be substituted for handwashing facilities. Toilets and hand-washing facilities are not required for employees who do field work for three hours or less each day, including travel to and from work.

Employers must maintain such facilities in accordance with public health sanitation practices, including upkeep of water quality through daily change (or more often if necessary); toilets clean, kept sanitary, and operational; handwashing facilities refilled with potable water as necessary and kept clean, sanitary, and safe; and proper disposal of wastes from the facilities.