



Farm Labor 101: Helping Fruit and Vegetable Producers Understand Agricultural Labor Laws

Mid-Atlantic Fruit and Vegetable Conventions

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Understanding Ag Labor

Why its important

- **Producers subject to numerous complex federal and state agricultural labor laws**
- **Failure to comply could result in fines/penalties**



Is a worker an employee?

Employee or Independent Contractor

- **Employers must provide employees with certain rights and benefits**
- **Not extended to independent contractors**



Is a Worker an Employee?

Right to Control

- **Generally considered an employee if right to control worker's behavior regarding work**



Right to Control

Do you give the worker instructions?

- **When, where, and how to work**
- **Tools and equipment to be used**
- **Order the work must be performed**



Right to Control

Do you provide the worker training?

- **Employers often train workers to perform services in a particular manner**
- **Independent contractors ordinarily use own methods**



Right to Control

What are the financial aspects of the job?

- Reimburse worker's expenses
- No significant investment in tools
- Payment
 - Employee: hourly, weekly, or monthly period
 - Independent contractor: generally flat fee or time and material



Do you provide benefits?

- **Worker provided employee type benefits**
 - **Insurance**
 - **vacation pay**
 - **sick pay**
 - **pension plan**



Apprenticeships

- **Worker agrees to work for fixed time period (usually at low wages) in exchange for learning a trade**
- **Considered an employee**



Internships

- Intended to provide work experience
- Internships in the “for-profit” private sector are considered employees unless exemption applies



Internships **Exemption**

- Training similar to that given in educational environment;
- Experience for benefit of intern;
- Internship does not displace regular employees;



Internships **Exemption**

- **Employer receives no immediate advantage from activities of intern;**
- **Employer and intern understand intern not entitled to wages; and**
- **Intern not entitled to a job at conclusion of internship**



Immigration Reform and Control Act

Overview

- **Employers must verify each employee's identity and eligibility to work in U.S.**
 - **applies to all employers**
 - **both U.S. citizens and non-U.S. citizens**



Form I-9 **Requirements**

- **Employee must complete Section 1**
 - **Name**
 - **Address**
 - **Date of birth**
 - **SS or INS number**
 - **Providing SS voluntary unless E-Verify used**
 - **Citizenship or immigration status**



Form I-9 **Requirements**

- **Employer must complete Section 2**
 - **check documents submitted by employee to establish identity and eligibility**
 - **Examples: U.S. passport, Resident Alien Card**



Form I-9 **Requirements**

- **Retain Form I-9 for 3 years after date of hire or 1 year after date employment ends**
 - **whichever is longer**
- **Present filed Form I-9 if inspected**



Form I-9 **Reverification**

- **When current employee's authorization documentation expires**
 - **employer must re-check documents and re-verify on Form I-9 that employee still authorized**
 - **not required for U.S. citizens**



Form I-9 **Rehires**

- **Previous Form I-9 may be used to re-verify employment authorization of rehire if:**
 - **Former employee rehired within 3 years; and**
 - **Form I-9 was previously completed for employee; and**
 - **Authorization documentation on previous Form I-9 has not expired**
- **Once re-verified, employer must update previous Form I-9 to reflect date of rehire**



Form I-9 **Authorization Expiration**

- **Authorization on previous Form I-9 expires**
 - **Employer must re-check the worker's authorization documentation and**
 - **Update rehire date on previous Form I-9**



Form I-9 **Rehires**

- **Former employee rehired after 3 years**
 - **employer must re-check worker's authorization documentation and**
 - **complete new Form I-9**



PA New Hire Reporting Program

Overview

- **Purpose**
 - **child support agency**
 - **unemployment compensation and/or public assistance fraud**



PA New Hire Reporting Program **Requirements**

- **All employers**
- **All employees**
 - **New employees**
 - **Rehired employees**
- **Within 20 days**



New Hire Reporting **Federal Rule**

**Employers must report newly hired employees
to State Directory of New Hires in state where
employee works**



New Hire Reporting

Employed in more than one State

- **Send information to each state where employees work OR**
- **Select one state where employees work and report all new hires to that state's New Hire reporting office**
 - **Must register with U.S. Department of Health and Human Services**



FLSA

Fair Labor Standards Act of 1938

- **Sets the federal standards for overtime, minimum wage, and child labor**
- **Requires an employment relationship**
- **Contains partial agricultural exemption**



Overtime Agriculture is Exempt

- **FLSA**

- Workers employed solely in agriculture not entitled to overtime pay

- **PA**

- Labor on a farm is exempt from overtime requirements



Minimum Wage

FLSA

- Unless exemption, workers must be paid federal minimum wage rate (\$7.25 per hour)
- Agricultural employees not entitled to minimum wage if an agricultural exemption applies



Minimum Wage **Pennsylvania**

- **PA minimum wage rate (\$7.25 per hour)**
- **Farm labor is exempt from PA minimum wage**
 - **Seasonal farm workers, however, must be paid at least the minimum wage or piece-rate equivalent**



PA Seasonal Farm Worker

- **Person commuting daily from permanent residence to work site not considered PA seasonal farm worker**
 - **unless the transportation provided by farm labor contractor**



PA Seasonal Farm Worker **Farm Labor Contractor**

- **Recruits, solicits, hires, furnishes or transports 5 or more seasonal farm workers**
 - **Excludes immediate family members**
 - **Does not apply to farmer for own use**



FLSA **Agriculture**

- **Farming and branches performed by farmer on a farm incident to or in conjunction with farming operations**
- **Practices (whether or not farming practices) performed either by a farmer or on a farm incident to or in conjunction with farming operation**



FLSA Practices?

- **Established part of agriculture**
- **Subordinate to farming operation**
- **Not an independent business**
- **Ordinarily performed incidental to farming operations**
- **Test: How many that produce the commodity perform the practice**



FLSA Agricultural Exemption

- Immediate family members
- Principally engaged in livestock production



FLSA **Agricultural Exemption**

- **Local hand harvest laborers who:**
 - **Commute daily from their permanent residence;**
 - **Paid on piece-rate basis; AND**
 - **Engaged in agriculture fewer than 13 weeks during preceding calendar year**



FLSA **Agricultural Exemption**

- **Non-local minors**
 - **16 years of age or under;**
 - **Hand harvesters;**
 - **paid on a piece-rate basis;**
 - **employed on same farm as their parent, AND**
 - **Paid same piece-rate as those over 16**



FLSA

Agricultural Exemption

Do not use more than 500 “man days” of agricultural labor in any calendar quarter of the preceding calendar year

- **Man day is any day during which an employee performs agricultural work for at least one hour**
- **10 workers X 6 days X 8 weeks = 480 (exempt)**
- **11 workers X 6 days X 8 weeks = 528 (not exempt)**



FLSA **Child Labor**

- **At any age, minor may work in any job on farm his or her parents own or operate**
- **16 years old may work in any agricultural job, whether hazardous or not, with no work hour restrictions**



FLSA Child Labor

- 14 or 15 years old
 - may work outside of school hours
 - in any non-hazardous agricultural job



FLSA **Child Labor**

- **12 or 13 years old may work**
 - **outside of school hours**
 - **in any non-hazardous agricultural job**
 - **where their parent works OR with written parental consent**



FLSA **Child Labor**

- **Under 12 years old**
 - **with written parental consent**
 - **may work outside of school hours**
 - **in any non-hazardous agricultural job**
 - **on small farm exempt from federal minimum wage provisions**



Pennsylvania Child Labor

- Minors under 14 permitted to work on a farm if employed by the farmer
- At any age, minor may work in any job on a farm that his or her parents own or operate



Pennsylvania **Child Labor**

- **Work hours for minors differ based on age and whether during school term or vacation**
- **Minors may not work more than 5 consecutive hours without 30 minute break**



MSPA

Migrant and Seasonal Agricultural Worker Protection Act

- **Wages, housing, transportation, disclosures and recordkeeping**
- **Applies to:**
 - **Agricultural employers**
 - **Agricultural association**
 - **Farm labor contractors**



MSPA

Farm Labor Contractor

For a fee, recruit, solicit, hire, employ, furnish, house, or transport migrant or seasonal agricultural workers



MSPA

Farm Labor Contractor

- **Must register with U.S. Department of Labor**
- **Must carry/present registration card**
- **Employers may not use FLC unless employer verifies FLC registration**
 - **through checking registration card or calling DOL**



MSPA

Workers Covered

- **Migrant agricultural workers**
 - temporary or seasonal agricultural work and required to be away overnight from their permanent residence.
- **Seasonal agricultural workers**
 - temporary or seasonal agricultural work and not required to stay overnight from their permanent residence



MSPA

Disclose Employment Information

- **Place of employment, wage rate, types of activities, period of employment, transportation, housing, and insurance**



MSPA

Disclose Employment Information

- **Migrant workers**
 - in writing (language of the worker)
 - at the time of the worker's recruitment
- **Seasonal workers**
 - verbally at the time of hire
 - written disclosure upon request



MSPA

Disclose Employment Information

- **Poster**
 - **at job site**
 - **prominently displayed**
 - **In language common to worker**
 - **explaining worker's rights and protections under MSPA**



MSPA **Requirements**

- **Wages**
 - Every 2 weeks or semi-monthly
 - Written, itemized statement of earnings
- **Payroll records**
 - Maintain for 3 years



MSPA **Requirements**

- **Housing**

- **Comply with all federal and state safety and health laws**

- **Transportation**

- **Vehicle liability and property insurance of \$100,000 per seat; with total amount not to exceed \$5,000,000 per vehicle**



MSPA **Joint Employment**

- **Both responsible for MSPA compliance**
 - **Written disclosures**
 - **Postings at worksites**
 - **Proper wage payment**
 - **Compliance with working arrangements**
 - **Maintenance of payroll records**



Joint Employment

How determined

- **Who controls work**
 - Directing work
 - Hiring firing
 - Determine rates of pay
- **Who controls economic reality of work**
 - Provide tools/equipment
 - Payroll, issues checks, pays taxes



OSHA **Overview**

- **Place of employment must be free of recognized hazards**
 - **Remove, guard, warn, post**
- **Report if accident results in death, hospitalization, amputation or loss of eye**
- **Does not apply to immediate family members**



OSHA **Field Sanitation**

- **11 or more field hand laborers any one day during previous 12 months**
 - **Drinking water**
 - **Toilet**
 - **Hand washing**
- **Exempt from toilet and hand washing for employees working fewer than 3 hours per day**



OSHA **Field Sanitation**

- **Inform of importance of good hygiene**
- **Instruct to use water and sanitary facilities**
- **Instruct to drink water frequently on hot days**
- **Instruct to urinate as frequently as necessary**
- **Instruct to wash hands**



H-2A Program **Overview**

- **Temporary or seasonal need**
 - **Less than 1 year**
 - **Event/time of year where labor needs are higher**
- **Not enough able, willing, and qualified U.S. workers available to fill the proposed position**



H-2A Program Overview

- No strike or lockout
- Full-time
- $\frac{3}{4}$ guarantee



H-2A Program Must Provide

- Free housing
- 3 meals a day or facilities
- Free use of tools/equipment



H-2A Program

Must Pay Highest Rate

- **Adverse Wage**
- **Prevailing Wage**
- **Minimum Wage**
 - **Federal**
 - **State**



H-2A Program **Transportation**

- **To place of employment (from home)**
- **Between housing and worksite**
- **From place of employment (to home)**



Step One

Receive Job Order Approval

- **Submit job order to State Workforce Agency (SWA) serving area of intended employment**
- **Must be submitted to SWA 75 calendar days but no fewer than 60 calendar days before date of need**



Step Two

Accept SWA Referrals and Begin Recruitment

- **SWA begins recruiting and referring U.S. workers**
- **50% Rule**
 - Hire all qualified U.S. workers until 50% of contract has expired
 - Starts from date of need on application
- **Prepare initial recruitment report detailing recruitment efforts**



Step Three

Receive Consideration for Application

- Submit H-2A application documents to ETA Chicago NPC no less than 45 calendar days before date of need
- Upon acceptance for consideration, ETA Chicago NPC will contact SWA requesting
 - SWA place job order in intrastate and interstate clearance and
 - SWA schedule an inspection for employer-provided housing



Step Four

Fulfill Pre-Certification Requirements

- **Recruit U.S. workers**
 - **advertise job opportunity**
 - **contact former U.S. workers**
 - **submit recruitment report**
- **Provide workers' compensation documentation**



Step Four

Fulfill Pre-Certification Requirements

- **Housing: rental or public accommodation**
 - **Employer submits safety documentation to DOL**
- **Housing: employer-provided housing**
 - **SWA sends housing certification directly to DOL**



Step Five

Receive H-2A Certification

- **Receive written notice granting, partially granting, or denying application for certification**
 - **No later than 30 calendar days before date of need**
 - **Employers granted or partially granted certification must pay certification fee of \$100 plus \$10 for every certified worker**
 - **Total fee for each employer not to exceed \$1,000**



Step Six

Petition USCIS for Admission of H-2A Workers

- **Employer files Form I-129 petition with U.S. Citizenship and Immigration Services**



Step Seven

Workers Apply for Visa and Admission

- Workers apply for H-2A visa from U.S. embassy or consulate.
- Workers seek U.S. admission from U.S. Customs and Border Protection at a U.S. port of entry
 - May enter U.S. one week prior to start of approved period and may remain in U.S. for 30 days after H-2A petition expires



Step Eight

Comply with Applicable Laws and Regulations

- **Form I-9**
- **Notifying workers unless subsequent H-2A employment, must leave the U.S. at the completion of the contract or upon separation from employer**



Step Eight

Comply with Applicable Laws and Regulations

Notifying DHS within 2 work days if worker:

- **does not report to work within 5 workdays of start date**
- **completes job 30 days or more before end date**
- **is terminated by employer before completing job**
- **fails to report to work for 5 consecutive work days without consent of employer**



The Center for Agricultural and Shale Law

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