

AG ISSUES UPDATE

Edited by Sara Hricko

July 2023

USApple updates

Thought Leadership: Labor Law Changes Could Impact the Cost of Labor for Apple Farmers

Each new year brings changes to employment and labor laws that could impact your farming operation. Further, apple farmers and other agricultural businesses must comply with additional wage and hour laws that put into play other requirements for managing their labor. While the specifics of these laws can vary from state to state, there are several key issues that farmers should be up to date on to ensure their business remains compliant and profitable in 2023.

Increasing Minimum Wage

An increasing minimum wage is one of the most significant labor issues facing apple farmers today. While the federal minimum wage remains \$7.25 per hour, many states have implemented higher minimum wage rates, some exceeding \$15 per hour. Washington has the highest minimum wage in the U.S., at \$15.74 per hour.

Results from the 2022 USDA Farm Labor Survey showed that farm operators paid an average of \$17.72 per hour in 2022, up 7% from the previous year. For apple farmers relying on seasonal laborers, the high cost of complying with these increases will impact your bottom line.

Navigating Complex H-2A Laws

In 2023, the H-2A visa program will be vital to managing labor, particularly for farmers who rely on temporary workers. H-2A allows farmers to bring in foreign workers for seasonal agricultural work when there are not enough domestic workers to fill open positions.

More than 370,000 H-2A positions were filled in 2022, a number expected to increase in 2023. Further, the Adverse Effect Wage Rate (AEWR), the minimum rate that farmers must pay H-2A workers, is also increasing. Michigan's AEWR will rise over 12% to reach \$17.34 per hour, making H-2A labor very costly for apple farmers. In addition to high wages, farmers utilizing H-2A workers must cover housing, transportation, and meal costs. Any farmer can attest these costs add up and will impact the profitability of your harvest season.

Bryan Little, COO of Farm Employers Labor Service, outlined some of the changes to H-2A rules:

- The H-2A program minimum wage standard requires employers to pay H-2A employees the highest of the DOL-mandated AEWR, the prevailing wage, or the statutory minimum wage.
- Expands the types of organizations that may conduct "prevailing wage" surveys and reduces the number of data points prevailing wage surveys must include, potentially degrading the statistical validity of surveys and creating opportunities for worker advocates to make selective use of wage data to yield prevailing wage higher than the AEWR.
- Imposes new minimum per-occupant square footage on rental or public accommodation housing for H-2A workers.
- Requires meals must be provided in a timely and sanitary manner while imposing a vague standard for "nutritional adequacy."

According to Labor Law Attorney Sarah L. Wixson, the scope of impact of H-2A calculations is uncertain "due to changes in how the prevailing wage rates are calculated and applied. An overinclusive job description can mean everyone on your contract will be paid more. Cutting and pasting from last year's contract could get you in trouble this year."

Despite these challenges, the H-2A program is the only viable source of labor available for many farmers. It is recommended that farmers consult with a legal professional or implement a labor management solution to help them remain compliant with these complicated laws.

Best Practices for Farmers to Protect Themselves

Keeping track of changing wage rates and staying in compliance with a myriad of federal and state regulations is overwhelming. That's where FieldClock comes in, eliminating time clocks and punch cards, easing administrative burdens on employers while empowering employees. Our Employee Portal allows all employees, regardless of location or time of day, to check their hours and piece counts, eliminating the need to post activity sheets in centralized locations. With FieldClock, growers can see where their employees are in real-time and make management decisions accordingly.

Additionally, farmers can protect themselves and their businesses from the threat of labor law litigation by staying informed. Stay updated with legislative changes, and if you have questions, ask for help.

U.S. Apples Regain Access for India

USApple is thrilled with the announcement on June 22nd that India will lift its retaliatory tariffs on U.S. apples. We applaud the work of the Biden Administration and the Office of the U.S. Trade Representative that achieved this important victory.

USApple was an invited guest of the White House at the arrival ceremony for India's Prime Minister Narendra Modi today. "We were honored to be part of this important day for U.S.-India relations," said USApple President and CEO, Jim Bair.

With today's announcement, India will remove its retaliatory tariffs within 90 days. USApple's Board of Directors met with White House staff in March and advocated for this resolution.

"U.S. apple growers can now begin the work of competing for, and hopefully regaining, this critical market," said Bair. "We look forward to once again shipping great apples to this valued trading partner."

Prior to the U.S. imposing tariffs on steel and aluminum from India in 2018, the country was the number two market for U.S. apples – and quickly growing. When India retaliated by bringing total tariffs on U.S. apples to 70 percent, sales fell to nearly zero, costing U.S. growers half a billion dollars in sales.

India is now the world's most populous nation, and with this important trade resolution, U.S. growers have the opportunity to be one of their biggest apple suppliers once again.

Additional Source Updates

Xochitl Torres Small Confirmed as Deputy Secretary of USDA

WASHINGTON — Today, Agriculture Secretary Tom Vilsack made the following statement on the confirmation of Xochitl Torres Small as Deputy Secretary of the U.S. Department of Agriculture (USDA).

"Xochitl Torres Small has dedicated her career to serving the agriculture industry and the American people, and I have witnessed her lead with energy, authenticity and personal investment that I know will leave an impact on USDA for years to come. As the granddaughter of migrant farm workers, Xochitl experienced firsthand the challenges that many producers and rural communities face day in and day out. The hard work and determination she witnessed informs her commitment to public service and her respect for those we serve. Under her leadership, our Rural Development team has made record progress working to drive down energy costs, improve access to high-speed internet, expand processing capacity to help America's livestock producers attain fairer prices for their work, and provide affordable housing options for rural residents.

"At this critical time when USDA and the Biden-Harris Administration are laser-focused on mobilizing historic investments to rebuild our economy and secure healthier, more vibrant communities for future generations, I am grateful to have Xochitl's partnership at the helm of the People's Department. She has time and again met the moment with a collaborative approach and a can-do spirit, and I applaud Congress for confirming her as USDA's next Deputy Secretary."

Since October 2021, Torres Small has served as Under Secretary for Rural Development at USDA. Effective July 14, Rural Development Chief Operating Officer Roger Glendenning will serve as Acting Under Secretary.

Prior to joining USDA, Torres Small was a United States Representative for the fifth largest district in the country. As a Member of Congress, she served as a member of the House Agriculture Committee, the House Armed Services Committee and as chairwoman of the Oversight, Management, and Accountability Subcommittee of the House Homeland Security Committee. Xochitl was the first woman and first person of color to represent New Mexico's second congressional district. – *Moring Ag Clips* July 11th, 2023

USDA to Forecast Fruit Production

HARRISBURG, Pa. — The U.S. Department of Agriculture's National Agricultural Statistics Service (NASS) will conduct a forecast survey for 2023 Fruit Production Inquiry (apples and peaches) during August 2023. The survey will collect information about acreage and projected production from more than 350 growers in the Northeastern Region of the United States.

“The information from these surveys directly impacts our regions’ fruit growers by providing a forecast of fruit production in the Northeast,” said King Whetstone, director of the NASS Northeastern Regional Field Office. “Growers can use the survey results when making business plans and marketing decisions. USDA’s Farm Service Agency (FSA) relies on the average yields to administer farm programs. Cooperative Extension uses the data to provide needed outreach and education, and state departments and agencies of agriculture use the information to aid growers.”

In these surveys, NASS asks participants to answer a variety of questions about apples and peaches, depending on state and version of the questionnaire. For their convenience, survey participants have the option to respond online. As with all NASS surveys, all information from respondents is kept confidential as required by federal law.

NASS safeguards the confidentiality of all responses and publishes only state and national level data, ensuring that no individual producer or operation can be identified. NASS will compile, analyze, and publish survey results in the August 11, 2023 Crop Production report. All previous publications are available online at nass.usda.gov/Publications. For more information on NASS surveys and reports, call the NASS Northeastern Regional Field Office at (800) 498-1518. – *Moring Ag Clips* July 10th, 2023

Farm Workers Welcome Reintroduction of Bipartisan Farm Workforce Modernization Act

WASHINGTON — Congresswoman Zoe Lofgren (D-CA) and Congressman Dan Newhouse (R-WA) recently reintroduced the bipartisan Farm Workforce Modernization Act. This compromise legislation, carefully crafted in negotiations with agricultural workers and employers, would create a legal status for

undocumented agricultural workers already living and working in the United States. This bipartisan legislation was passed by strong bipartisan margins in the U.S. House of Representatives in both the 116th and 117th Congress.

“Immigrant farm workers put food on America’s table every day,” said UFW President Teresa Romero. “While some Members of Congress are quick to serve the needs of agricultural employers, the reintroduction of the Farm Workforce Modernization Act reminds us that any true and just effort at agricultural immigration reform must first do right by the immigrant workers who have been doing the hard work in the fields, farms, orchards, dairies, vineyards, and ranches of America for decades. If you feed America, you deserve the right to stay in America.”

“We are pleased to see the reintroduction of the Farm Workforce Modernization Act, a bipartisan bill that would protect the most vulnerable and essential workers from the threat of deportation,” said UFW Foundation CEO Diana Tellefson Torres. “For the contributions that farm workers have made to the nation during the pandemic and beyond, we urge Congress to pass this legislation. America’s food security depends on professional farm workers.” – *Morning Ag Clips, July 9th, 2023*

International Trade: United States and India Reach WTO Trade Agreement

On June 22, 2023, the Office of the U.S. Trade Representative (USTR) announced that the United States and India had reached an agreement resolving six ongoing disputes within the World Trade Organization (WTO). Under the agreement, India will lift retaliatory tariffs it had imposed on select U.S. products, including chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents, in exchange for resolving trade disputes involving certain steel products and renewable energy sector measures. The two countries reached the agreement during Indian Prime Minister Narendra Modi’s recent official state visit to the United States. – *Penn State Agricultural Law Weekly Review, July 3rd, 2023*

State’s Federal Broadband Funding Boosted \$117 Million With Penn State Extension Help

UNIVERSITY PARK, Pa. — Pennsylvania will receive nearly \$1.2 billion in federal funding to establish or improve high-speed internet service in unserved and underserved areas — an amount that would have been more than \$100 million smaller without the work of Penn State Extension, officials said.

Announced June 26 by President Joe Biden, the state's allocation is part of \$42.5 billion in broadband funding authorized by the Infrastructure Investment and Jobs Act.

The Pennsylvania Broadband Development Authority late last year contracted with Penn State Extension to develop and update state broadband service availability maps to enable the commonwealth to maximize its federal funding allocation for high-speed internet expansion under the act's Broadband Equity, Access, and Deployment program.

Subsequently, Penn State Extension educators developed public broadband spatial analysis and mapping tools and evaluated the accuracy of industry-provided data to inform the state's process of challenging discrepancies in Federal Communications Commission maps of broadband service availability. This work helped the authority to identify more than 50,000 Pennsylvania service-availability claims that appeared to be incorrectly reported as having access to high-speed internet and to submit challenges to the FCC by the Jan. 13 deadline.

The FCC upheld more than 28,000 of those service-availability challenges, resulting in an estimated \$117 million more in Pennsylvania's share of the federal funding, according to James Ladlee, state program leader for Extension's Emerging and Advanced Technology Initiative.

Ladlee said the average total allocation across all states and U.S. territories was just under \$743 million. "Partly as a result of Penn State's work, the commonwealth was one of only 19 states whose funding allocation topped \$1 billion," he added.

Harry Crissy, business and community vitality extension educator, noted that from the time Penn State Extension entered the contract with the Broadband Development Authority until the Jan. 13 deadline for service-availability challenges, there was little time to complete the mapping and analytical work.

"To meet the FCC's deadline and quickly identify service-availability gaps, our team of about 22 people spent much of December 2022 manually verifying nearly 13,000 random addresses — from every service provider in every county — against data filed with the FCC," Crissy said. "We then used the potential gaps identified in this first phase of the project to conduct a spatial analysis against the existing FCC and infrastructure claims to identify additional availability challenges. In the end, the authority submitted more than 50,000 total availability challenges based on this work."

Crissy and Ladlee also credited Extension Educator Tom Beresnyak for his role in helping to coordinate the project.

Ladlee pointed out that Extension previously worked in partnership with the state Public Utility Commission on mapping tools that helped the state obtain almost \$369 million in broadband funding under a different federal program, which is expected to enable up to 327,000 Pennsylvanians to gain high-speed internet access. He explained that improving the state's broadband map is an ongoing effort

that will help ensure accurate and equitable distribution of resources in the future. -*Morning Ag Clips*
June 29th, 2023