



Working with Farm Labor Contractors

Labor Management Guidebook

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Purpose of This Guidebook

Complying with all laws and regulations is expected for all stakeholders involved in agriculture production. This can become complicated when utilizing a Farm Labor Contractor (FLC) and requires a good understanding of your obligations in this relationship.

Agricultural employers who use the services of a Farm Labor Contractor (or an employee of them) are almost always in a situation of joint employment with the FLC in regards to the employees.

Where a joint employment relationship exists, each of the employers must ensure that the employee receives all employment legal rights, such as accurate and timely disclosure of the terms and conditions of employment, complete wage statements, wage payments when due, safe and adequate housing and transportation. Both parties may be held liable if either party fails to comply with the law.

H-2A Labor Contractors (H-2ALCs) are required to be registered under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and are obligated to meet all FLC requirements for both H-2A and all corresponding workers. In addition to meeting all FLC requirements, there are some specific requirements of H-2ALCs that are noted in this document.

This handbook is designed to help you better understand:

- what is a Farm Labor Contractor and what is Farm Labor Contractor Employee?
- what are my obligations to the workers hired by an FLC?
- can I be liable for the FLCs actions or inaction?

What is a Farm Labor Contractor (FLC) or Farm Labor Contractor Employee (FLCE)?

A Farm Labor Contractor¹ (FLC) or Farm Labor Contractor Employee² (FLCE) is someone who receives compensation in return for providing any of the following services to migrant and/or seasonal agriculture workers:

- Furnishing – providing workers as needed or wanted
- Recruiting – the process of attracting or selecting someone for a job
- Employing – giving work to someone
- Soliciting – asking for or trying to obtain someone to work
- Hiring – employing someone to work for wages
- Transporting – driving workers to and from the field
- Housing – facility must comply with federal and state safety and health standards

Often times an FLC is known as a crew leader, supervisor or crew boss.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires an FLC or FLCE to obtain federal certificate of registration prior to performing any farm labor contracting activities.

Before performing any labor contracting activity, an FLC and/or FLCE must be registered with the U.S. DOL and obtain a certificate of registration. In addition, your state may have additional labor law or FLC requirements.

If you have additional questions related to the definition or role of an FLC/FLCE you can call the Wage and Hour Division's toll-free help line:

1-866-4USWAGE (1-866-487-9243)

TTY: 1-877-889-5627

Monday-Friday 8 a.m. to 5 p.m.

Contact the Wage and Hour Division³

¹ Agricultural employers, agricultural associations and their employees are not included in the term.

² A Farm Labor Contractor Employee (FLCE) is a person employed by a FLC who performs farm labor contracting activities on their behalf.

³ https://www.dol.gov/whd/contact_us.htm

Finding a Farm Labor Contractor Who is Registered

To legally operate as FLCs, individuals and companies must register⁴ with the U.S. Department of Labor (US DOL). Additionally, an FLCE, any employee of an FLC who perform farm labor contracting activities, must also register with US DOL. There are special registration requirements for farm labor contractors that intend to house, transport, or drive a migrant or seasonal agricultural worker.

Registered FLC Listing

This list contains the name and physical address of all current certificate of registration holders, as well as the expiration date of the certificate of registration and the certificate number generated by the DOL Wage and Hour Division. The list also indicates if the contractor has been authorized to house workers, to use vehicles to transport workers, or to drive such vehicles.

Link to MSPA Registered FLC Listing: <https://www.dol.gov/whd/regs/statutes/FLCList.htm>

Registered FLCE Listing

The list contains the name of all current FLCE certificate holders and the farm labor contractor whose name appears on each employee's certificate of registration, as well as the start date, expiration date, and the certificate number generated by the Wage and Hour Division. The list also indicates if the FLCE has been authorized to drive vehicles used to transport migrant or seasonal agricultural workers.

Link to MSPA Registered FLCE listing: <https://www.dol.gov/whd/regs/statutes/FLCEList.htm>

Ineligible FLCs & FLCEs

US DOL maintains a list of individuals and corporations whose authorization to operate as a farm labor contractor or an employee of a farm labor contractor has been revoked. To determine whether a contractor has been declared ineligible by Wage Hour, go to the link: https://www.dol.gov/whd/regs/statutes/mspa_debar.htm

BEST PRACTICE:

Always validate each FLC's registration number on the US DOL website to help ensure it is current and that the FLC has not been declared "ineligible." This website is also available to help ensure an employee of the FLC, an FLCE has not been declared "ineligible".

⁴ Agricultural associations are typically not considered farm labor contractors and do not have to register.

What to Do When Hiring a Farm Labor Contractor

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires all FLC's or FLCE's to have a valid certificate of registration with proper endorsements. If the FLC is driving, transporting, or housing workers, the certificate must have endorsements for those activities.

Growers should ask for:

- Certificate of registration – request a copy of the FLC and any corresponding FLCE's federal certificate of registration and any state license that may be required. The registration certificate and endorsement check-boxes look like this.

Employment Standards Administration
Wage and Hour Division

Farm Labor Contractor Certificate of Registration

No. C- _____
Expires _____

Name _____

I certify that the person named above is registered pursuant to the Migrant and Seasonal Agricultural Worker Protection Act and is authorized to perform the following activities covered by the Act: Recruit, solicit, furnish, hire and employ:

Transportation	<input type="checkbox"/>	Authorized	<input type="checkbox"/>	Not Authorized
Housing	<input type="checkbox"/>	Authorized	<input type="checkbox"/>	Not Authorized
Driving	<input type="checkbox"/>	Authorized	<input type="checkbox"/>	Not Authorized

Transportation and/or Housing Authorization is specified on this Certificate.

Approved _____ Date _____
(Assistant Regional Administrator) WH-511 (6/96)

The following vehicle(s) is/are authorized to transport migrant and seasonal agricultural workers within the meaning of the Act as specified below unless such authorization is otherwise terminated.

Yr.	Make and Model	Serial or Motor No.	No. of Seats in Vehicle	Authorization Ending

Worker's Compensation Insurance Holders (if applicable):

C- _____ Date _____
Name _____

Social Security Account No. _____
Social Security Employer ID No. _____
Perm. Home Address _____
(City or Town) _____ (State) _____ (ZIP Code) _____

Date of Birth _____ Height _____ Weight _____
(Month, Day, Year)

This certificate is based on the Migrant and Seasonal Agricultural Worker Protection Act and regulations issued thereunder, and on my application for registration. It may be revoked or suspended, or its renewal denied, for noncompliance with the Act or regulations, including applicable requirements for transporting and housing migrant workers. Such noncompliance may constitute a criminal offense.

(Signature of Holder) (Title)

Location of Facilities or Real Properties:

1) _____
Type of Construction _____ No. of Units _____
Owner's Name _____
Mailing Address _____

2) _____
Type of Construction _____ No. of Units _____
Owner's Name _____
Mailing Address _____

Based on the contractor's submission, housing is authorized at the above locations unless such authorization is otherwise terminated:

C- _____ Date _____
Name _____

Additional FLC Legal Requirements include:

- properly paying their workers,
- maintaining completed I-9 forms,
- hiring workers at or above minimum age requirements,
- training their workers,
- not assigning tasks that legally a worker should not be assigned,
- compliant housing accommodations, if FLC is authorized to provide housing, and
- legal, safe transportation with appropriate vehicle insurance and licensing, if FLC is authorized to provide transportation.⁵

BEST PRACTICES:

1. Consider checking references of any FLC and any corresponding FLCE you are considering hiring.
2. **Due to potential joint-employment liability** you may have when working with an FLC, consider verifying that the FLC's practices meet all legal requirements listed above.
3. You can also directly manage some or all of the processes listed above.
4. Consider paying all workers directly to ensure accurate and timely payment of wages and taxes.

⁵ See: Farm Labor Contractor Certification of Registration form WH-511 (page 6 of this guidebook).

Grower's Checklist for Working with a FLC or any corresponding FLCE

Prior to a FLC providing services, confirm the FLC:

- ☐ Has a valid federal certificate of registration⁶ and appropriate valid driver's licenses with them (and their FLCEs if applicable) at all times
- ☐ Has proof of posting of all required posters and announcements
- ☐ Is authorized for ALL services being provided for the grower:
 - Housing
 - ☐ Proper housing endorsement for housing activities
 - ☐ Current pre-occupancy housing inspection certificate for each facility
 - ☐ H-2ALCs must provide housing at no cost to H-2A workers and to workers in corresponding employment who are not reasonably able to return to their residence within the same day
 - ☐ H-2ALCs must provide each covered worker with three meals per day, at no more than the DOL specified cost⁷, or furnish free and convenient cooking and kitchen facilities where workers can prepare their own meals
 - Transportation – require the following on all vehicle(s):
 - ☐ Proper transportation endorsement on the FLC and FLCE registration card
 - ☐ Appropriate auto insurance coverage
 - ☐ Proof vehicle(s) are registered and registration fees are paid
 - ☐ Proof of periodic safety checks and preventative maintenance, as required by law
 - ☐ H-2ALCs must provide all transportation to include inbound and outbound as well as daily transportation at no cost
 - Driving – require the following⁸:
 - ☐ Proper driving endorsement on the FLC registration card
 - ☐ Doctor's certificate
 - ☐ Appropriate valid driver's license
- ☐ Understands field sanitation requirements and has reached agreement with grower regarding who (Grower or FLC)⁹ will provide field sanitation for workers (potable drinking water, single-use cups, toilets and handwashing facilities with soap and single-use towels)
- ☐ Has completed I-9 records for all workers
- ☐ Has hired workers at or above minimum age requirements and will not assign tasks that legally a worker should not be assigned¹⁰
- ☐ Is clear about who (Grower or FLC) will provide training for workers
- ☐ Has documentation of workers compensation insurance (if workers are H-2A and check if your state

⁶ See previous section, "Finding a Farm Labor Contractor Who is Registered", for resources to determine the validity of a federal certificate of registration, for a FLC and a FLCE.

⁷ https://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm.

⁸ Note: FLCEs must meet these requirements if driving

⁹ Field sanitation must be provided by Grower and/or FLC.

¹⁰ <https://www.dol.gov/general/topic/youthlabor/agriculturemployment>

has additional insurance requirements)¹¹.

- ☐ FLC has provided the information as listed in the MSPA WH-516 disclosure form or H-2ALC has provided copy of H-2A Labor Certification (9142) to all workers

Upon completion of work, growers should require the following documentation from the FLC:

- ☐ Copy of itemized wage statements given to workers and payroll records for each pay period¹²
- ☐ Copies of year-end W-2's
- ☐ Proof of payment of all employment taxes
- ☐ H-2ALCs must guarantee to offer each covered worker employment for a total number of hours equal to at least 75% of the workdays in the contract period, called the "three-fourths guarantee."
- ☐ H-2ALCs must pay all covered workers at least the highest of the following wage rates: the adverse effect wage rate (AEWR), the applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or state minimum wage.
- ☐ H-2ALCs must obtain a surety bond that covers liability incurred during the term of the work contract period listed on the H-2A application and must remain in effect for a period of at least 2 years from the expiration date of the labor certification.

BEST PRACTICE:

Consider paying all workers directly to ensure accurate and timely payment of wages and taxes.

¹¹ State may have additional insurance requirements. For example, North Carolina requirements may be found here <http://www.ic.nc.gov/wcinsrgmt.html> and requirements for Kentucky may be found here http://insurance.ky.gov/static_info.aspx?static_id=27&MenuID=88&Div_id=15.

¹² FLC must maintain records for 3 years

Identifying Human Trafficking

Indirect hiring of workers through the use of intermediaries such as FLCs can under some circumstances increase exposure of agricultural employers to the risk of farm workers being exploited in their immediate operations as well as in their extended supply chains. These circumstances may range from workers' exposure to hazards arising from inadequate training and provisions to safeguard the workers' health and safety, substandard working and living conditions, to wage discrepancies and possibly forced labor and human trafficking. Migrant workers who pay high recruitment fees to be placed in a job are particularly vulnerable and can be prime targets for exploitation.

The following may help agricultural employers be aware of these risks and identify situations where a worker may be at risk:

Circumstances that may indicate a worker is or has been a victim of trafficking:

- Accompanied by a controlling person or boss; not speaking on own behalf, threatened, intimidated
- Deceived about terms and conditions of work
- Lack of control over personal schedule, money, I.D., travel documents; restriction of movement
- Sub-standard working and living conditions; no access to justice or grievance mechanisms
- Debt owed to employer/ crew leader, withholding of wages, inability to leave job
- Excessive hours worked against their will
- Bruises, depression, fear, overly submissive or isolated

Questions that may help identify a victim of trafficking:

- Are you being paid?
- Can you leave your job if you want to?
- Can you come and go as you please?
- Have you or your family been threatened?
- What are your working and living conditions like?
- Where do you sleep and eat?
- Do you have to ask permission to eat/sleep/go to the bathroom?
- Are there locks on the doors/windows so you cannot get out?
- Has your identification or documentation been taken from you?

For more information please see Interfaith Center on Corporate Responsibility's Best Practice Guidance on Ethical Recruitment of Migrant Workers:

<http://www.iccr.org/sites/default/files/iccrsbestpracticeguidanceethicalrecruitment05.03.17-execsummary.pdf>

Where to Get Help

If you believe you have identified someone in a trafficking situation contact:

911 Emergency

For urgent situations, notify local law enforcement immediately by calling 911. You may also want to alert the National Human Trafficking Resource Center described below so that they can ensure response by law enforcement officials knowledgeable about human trafficking.

1-888-3737-888 National Human Trafficking Resource Center

Call the National Human Trafficking Resource Center to report a tip; connect with anti-trafficking services in your area; or request training and technical assistance, general information, or specific anti-trafficking resources. The Center is equipped to handle calls from all regions of the United States.

BEST PRACTICE:

Be alert to signs of human trafficking and take immediate action.

Putting This Guidance into Action

Ask yourself the following questions and see if you come up with the right answer.

1. What should you do if you find out a person, who provides farm labor contractor services, is not registered?

- Do not hire the person. It is illegal to hire an unregistered farm labor contractor and the grower could be held liable for any violations that contractor causes while employed by the grower.
- Find a registered FLC. The Department of Labor maintains a list that contains the name and physical address of all current certificate holders, as well as the expiration date and the certificate number generated by the DOL Wage and Hour Division. The list also indicates if the contractor has been authorized to house workers, to use vehicles to transport workers, or to drive such vehicles.

FLC Listing: <https://www.dol.gov/whd/regs/statutes/FLCList.htm>

2. I am an agricultural grower/employer. Do I need a farm labor contractor license?

- It depends:
 - You ***are not required*** to have this license if you recruit, solicit, employ, furnish, transport, or hire workers to work on your own farm, for your own business or share non-H2A¹³ workers with a neighbor who does not pay you for this
 - You ***are required*** to have this license if you recruit, solicit, employ, furnish, transport or hire workers for another grower's land, ***for a fee or other "valuable consideration"***.

3. I suspect a worker may be a victim of human trafficking, what should I do?

- For urgent situations, notify local law enforcement immediately by calling 911. You may also want to alert the National Human Trafficking Resource Center (1-888-3737-888).

¹³ It is not permitted to share H-2A workers. Additional information can be found at:

Growers: 29 CFR 655.121(a)(1) through (3): <https://www.gpo.gov/fdsys/pkg/CFR-2012-title20-vol3/pdf/CFR-2012-title20-vol3-sec655-121.pdf>

H-2ALCs: 29 CFR 655.132 & 655.133(b)(1): <https://www.gpo.gov/fdsys/pkg/CFR-2010-title20-vol3/pdf/CFR-2010-title20-vol3-sec655-132.pdf>

Acknowledgement

These materials have been compiled by the Farm Labor Practices Group (the “FLPG”). The FLPG is a group of key stakeholders including manufacturers, buyers, growers, government and non-governmental organizations, whose purpose is to facilitate constructive dialogue about farm labor practices. The goal of the FLPG is to help stakeholders in production of labor-intensive crops better understand and comply with applicable labor laws and regulations, and to foster improved farm labor practices, where needed, that shape a worker’s experience on the farm.

Current members of the FLPG are:

- Alliance One International, Inc.
- Altria Client Services, Inc.
- Farm Labor Organizing Committee
- Interfaith Center on Corporate Responsibility
- Japan Tobacco, Inc.
- North Carolina Agribusiness Council (*advisory member*)
- North Carolina Department of Labor – Bureau of Agricultural Safety and Health (*advisory member*)
- North Carolina Farm Bureau (*advisory member*)
- Office of the Consul General of Mexico in Raleigh (*advisory member*)
- Philip Morris International Management Inc.
- RJ Reynolds Tobacco Company
- Tobacco Growers Association of North Carolina
- United States Department of Labor -- Wage and Hour Division
- Universal Leaf North America U.S., Inc.

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