

# GOOD AGRICULTURAL PRACTICES (GAP)

## LABOR MANAGEMENT RESOURCES GUIDE



REVISED AS OF OCTOBER 2019

## Introduction

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 both farmers and farmworkers 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.

### **MEMBERS OF THE FLPG INCLUDE:**

- Alliance One International, Inc.
- Altria Client Services, LLC
- Interfaith Center on Corporate Responsibility
- JTI Leaf Services
- RAI Service Company
- PMI Global Services, Inc.
- Tobacco Growers Association of North Carolina
- Universal Leaf
- U.S. Department of Labor - Wage and Hour Division

### **CURRENT FLPG ADVISORY MEMBERS:<sup>1</sup>**

- Consulate General of Mexico in Raleigh
- North Carolina Agribusiness Council<sup>2</sup>
- North Carolina Department of Labor - Bureau of Agricultural Safety and Health
- North Carolina Farm Bureau<sup>2</sup>

These materials are shared for informational purposes only. The FLPG has made no effort to collect or share materials other than those that relate to United States federal regulations and procedures. The FLPG makes no representation as to their accuracy or completeness and warns that the materials may change or become out of date. These materials do not constitute legal advice. Each recipient of these materials should consult his or her own attorney or accountant to fully understand any legal obligations imposed by regulation and procedures discussed in these materials, as well as any other potentially applicable federal, state or local laws and regulations. This sharing of these materials is not intended to alter any recipient’s responsibility for complying with all applicable laws and regulations.

The FLPG is facilitated by the Keystone Policy Center. For questions regarding these materials or the FLPG, please contact Brad Sperber ([bsperber@keystone.org](mailto:bsperber@keystone.org)) or Franklin Holley ([fholley@keystone.org](mailto:fholley@keystone.org)).

<sup>1</sup>Advisory members have full voice in FLPG discussions but do not participate in voting on formal decisions.

<sup>2</sup>The North Carolina Agribusiness Council and North Carolina Farm Bureau are active members of the FLPG. Their role in the FLPG’s discussion of this Guide has been to provide technical assistance. Since their mandate is to represent the interests of their respective members, and to carry out the policies adopted by their members, they cannot endorse or take a position with respect to any recommended practices – or the rationales for those recommendations – that go beyond current relevant law.



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NOTE: The highlighted sections above are quick reference aides on critical areas of regulation.

Potential MSPA Violations Checklist

U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division



Name and address  
of person investigated

(Typed or stamped address of AO)

A review of your business operations subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) disclosed the potential violations of the Act shown on this preliminary report. The investigation report of the Compliance Officer(s) will be reviewed to establish whether there were MSPA violations and what, if any, further action will be taken by the Wage and Hour Division. If it is subsequently determined that civil money penalties are to be assessed against you for any or all of the MSPA violations disclosed, you will be advised by letter concerning specific violations involved and the civil money penalty amounts to be assessed. Persons who violate the provisions of MSPA are subject to both criminal and civil sanctions.

		MSPA Sections Violated							
		Migrant Workers	Both	Seasonal Workers	FLC	AE	AA	User	HP
Employment conditions disclosure	1. Failure to disclose employment conditions to workers	201(a), 201(g)		301(a), 301(f)					
	2. Failure to post MSPA poster at worksite	201(b)		301(b)					
	3. Misrepresenting employment conditions to workers	201(f)		301(e)					
Working arrangements	4. Breach of working arrangements with workers	202(c)		302(c)					
Recordkeeping	5. Failure to make/keep employer records	201(d)(1)		301(c)(1)					
	6. Failure to provide wage statement to workers	201(d)(2)		301(c)(2)					
	7. Failure to provide records to growers	201(e)		301(d)					
	8. Failure to maintain records provided by FLC	210(e)		301(d)					
Prompt payment	9. Failure to pay wages when due	202(a)		302(a)					
Worker purchases	10. Restricting workers' purchases of goods or services	202(b)		302(b)					
Housing standards	11. Failure to post housing conditions	201(c)		NA					
	12. Failure to ensure housing safety and health	203(a) and (b)		NA					
Transportation	13. Failure to provide safe transportation vehicles	401(b)(1)(A), 401(b)(2)(C)							
	14. Failure to ensure that each driver of a transportation vehicle has a valid license	410(b)(1)(B)							
	15. Failure to obtain prescribed insurance coverage for transportation vehicles	410(b)(1)(C)							
<b>General Provisions</b>									
Confirmation of registration	16. Utilizing services of unregistered FLC	402							
Discrimination	17. Discriminating against worker who files complaint or testifies, etc.	505							
Investigative interference	18. Interfering with DOL official during investigation	512(c)							
<b>Farm Labor Contractor Violations</b>									
Registration	19. Failure to register	101(a)							
	20. Failure to register employee	101(b)							
	21. Failure to exhibit certificate	101(c)							
	22. Knowingly made misrepresentations in application	103(a)(1)							
	23. Failure to comply with any court judgment or final order of the Secretary	103(a)(4)							
	24. Was not the real party in interest	103(a)(2)							
	25. Transported workers without certificate authorization	101(a)							
	26. Housed workers without certificate authorization	105(2)(c)							
	27. Failure to provide notice of change of permanent residence	105(1)							
	28. Failure to apply to amend certificate to engage in another contracting activity, to use another vehicle or to use another real property site for housing	105(2)							
Illegal aliens	29. Engaged illegal aliens	106							
Agreements with users	30. Failure to abide by agreements with employers and associations	404							
Compliance officer(s)	Date								
Name and title of individual receiving form	Date								

FLC- Farm Labor Contractor  
AE- Agricultural Employer  
AA- Agricultural Association  
User- User  
HP- Housing Provider

WH 517  
(3/86)

## **Fact Sheet #49: The Migrant and Seasonal Agricultural Worker Protection Act**

[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 (DOL).

### **Farm Labor Contractor Registration**

A Farm Labor Contractor (FLC) 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.

Before performing any farm labor contracting activity, a farm labor contractor must register with the U.S. Department of Labor (DOL) 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 also must register with DOL. Application for registration can be made at local offices of the State Employment Service.

Farm labor contractors and farm labor contractor employees who perform farm labor contractor activities must carry proof of registration and show it to workers, agricultural employers, agricultural associations, and any other person with whom they deal as contractors.

Agricultural associations, agricultural employers, and their employees are not considered farm labor contractors and do not have to register. However, before they engage the services of any farm labor contractor, they must take reasonable steps to ensure that the contractor has a DOL certificate of registration valid for the services to be performed. To inquire about the validity of a certificate, call the Wage and Hour Division's toll-free number **1-866-4USWAGE (1-866-487-9243)**.

### **Wages**

Agricultural associations, agricultural employers, and farm labor contractors must pay workers their wages when due, and give workers itemized, written statements of earnings for each pay period, including any amount deducted and the reasons for the deduction.

### **Housing**

Each person or organization which 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.

### **Transportation**

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.

## **Disclosure**

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.

Agricultural associations, agricultural employers, and farm labor contractors must provide required information to seasonal workers when they are offered work, in writing if requested; and to migrant workers and seasonal day haul workers in writing when they are being recruited. Workers compensation information, however, must be provided in writing to any type of worker. Information must be written in English, Spanish or other language common to the workers, as appropriate. Once hired, migrant and seasonal workers have a right to receive upon request a written statement of such information.

Agricultural associations, agricultural employers, and farm labor contractors must display a poster where it can be seen at the job site which sets forth the rights and protections of the workers ([posters](#) are available from the Wage and Hour Division).

## **Recordkeeping**

Agricultural associations, agricultural employers, and farm labor contractors must keep complete and accurate payroll records for all workers; in addition, farm labor contractors must give any other farm labor contractor, agricultural employer, or agricultural association to whom they supply workers, copies of payroll records for each worker supplied to that particular contractor, employer, or association.

## **Other Provisions**

Farm labor contractors must comply with the terms of written agreements made with agricultural employers and agricultural associations.

## **Exemptions**

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

## **Enforcement**

The Wage and Hour Division of the U.S. Department of Labor administers MSPA. During investigations, Wage and Hour investigators may enter and inspect premises (including vehicles and housing), review and transcribe payroll records, and interview workers to determine compliance with MSPA. Investigators may advise violators to make changes necessary to achieve compliance.

Administrative actions under MSPA include penalties of up to \$1,000 per violation and, in the case of farm labor contractors, revocation or suspension of existing certificates and denial of future certificates of registration. Failure to comply with MSPA may result in civil or criminal prosecution. To insure compliance with MSPA, the Secretary of Labor may seek court injunctions prohibiting further violations and may bring criminal charges. Courts may assess fines of up to \$10,000 and prison terms of up to three years in criminal cases.

In addition to the above remedies, individuals whose rights under MSPA have been violated may file suit directly in federal court for damages.

## **Where to Obtain Additional Information**

To register as a farm labor contractor, contact either the nearest office of State Employment Services, listed in most telephone directories under State government, or the [nearest office of the Wage and Hour Division](#), listed under U.S. Government, Labor Department.

**For more complete information regarding MSPA and related topics such as joint employment or the Fair Labor Standards Act (FLSA) minimum wage, overtime, and youth employment provisions, visit our Wage-Hour web site: [www.wagehour.dol.gov](http://www.wagehour.dol.gov) and/or call our Wage-Hour toll-free help line, available 8 a.m. to 5 p.m. in your time zone, at 1-866-4US-WAGE (1-866-487-9243).**

The MSPA statute appears at [29 U.S.C. §1801](#) et seq. The federal regulations implementing MSPA appear in [29 CFR Part 500](#).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

## Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)

**This fact sheet provides general information concerning the application of the H-2A requirements to the agricultural industry for H-2A applications submitted on or after March 15, 2010.**

### Introduction

The Immigration and Nationality Act (INA) authorizes the lawful admission of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. The Department of Labor's regulations governing the H-2A Program also apply to the employment of U.S. workers by an employer of H-2A workers in any work included in the ETA-approved job order or in any agricultural work performed by the H-2A workers during the period of the job order. Such U.S. workers are engaged in corresponding employment.

### Overview of Employer Contractual Obligations

**Recruitment of U.S. Workers:** In order for the Department of Labor to certify that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers, employers must demonstrate the need for a specific number of H-2A workers. In addition to contacting certain former U.S. employees and coordinating recruitment activities through the appropriate State Workforce Agency, employers are required to engage in positive recruitment of U.S. workers. H-2A employers must provide employment to any qualified, eligible U.S. worker who applies for the job opportunity until 50 percent of the period of the work contract has elapsed. Employers must offer U.S. workers terms and working conditions which are not less favorable than those offered to H-2A workers.

**Termination of Workers:** Employers are prohibited from hiring H-2A workers if the employer laid off U.S. workers within 60 days of the date of need, unless the laid-off U.S. workers were offered and rejected the agricultural job opportunities for which the H-2A workers were sought. A layoff of U.S. workers in corresponding employment is permissible only if all H-2A workers are laid off first. Employers may only reject eligible U.S. workers for lawful, job-related reasons.

In order to negate a continuing liability for wages and benefits for a worker who is terminated or voluntarily abandons the position, employers are required to notify the Department of Labor (DOL), and in the case of an H-2A worker the Department of Homeland Security, no later than two working days after the termination or abandonment.

**Rates of Pay:** The employer must pay all covered workers at least the highest of the following applicable wage rates in effect at the time work is performed: the adverse effect wage rate (AEWR), the

applicable prevailing wage, the agreed-upon collective bargaining rate, or the Federal or State statutory minimum wage.

Wages may be calculated on the basis of hourly or “piece” rates of pay. The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment and on a pay period basis must average no less than the highest required hourly wage rate.

**Written Disclosure:** No later than the time at which an H-2A worker applies for a visa and no later than on the first (1<sup>st</sup>) day of work for workers in corresponding employment, the employer must provide each worker a copy of the work contract – in a language understood by the worker – which describes the terms and conditions of employment. In the absence of a separate written work contract, the employer must provide each worker with a copy of the job order that was submitted to and approved by DOL. The work contract must include:

- the beginning and ending dates of the contract period as well as the location(s) of work;
- any and all significant conditions of employment, including payment for transportation expenses incurred, housing and meals to be provided (and related charges), specific days workers are not required to work (i.e., Sabbath, Federal holidays);
- the hours per day and the days per week each worker will be expected to work;
- the crop(s) to be worked and/or each job to be performed;
- the applicable rate(s) for each crop/job;
- that any required tools, supplies, and equipment will be provided at no charge;
- that workers’ compensation insurance will be provided at no charge; and
- any deductions not otherwise required by law. All deductions must be reasonable. Any deduction not specified is not permissible.

**Guarantees to All Workers:** H-2A employers 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.” For example, if a contract is for a 10-week period, during which a normal workweek is specified as 6 days a week, 8 hours per day, the worker would need to be guaranteed employment for at least 360 hours (e.g., 10 weeks x 48 hours/week = 480 hours x 75% = 360).

If during the total work contract period the employer does not offer sufficient workdays to the H-2A or corresponding workers to reach the total amount required to meet the three-fourths guarantee, the employer must pay such workers the amount they would have earned had they actually worked for the guaranteed number of workdays. Wages for the guaranteed 75% period will be calculated at no less than the rate stated in the work contract.

**Housing:** Employers 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. If the employer elects to secure rental (public) accommodations for such workers, the employer is required to pay all housing-related charges directly to the housing’s management.

In addition, employers are required to either provide each covered worker with three meals per day, at no more than a DOL-specified cost, or to furnish free and convenient cooking and kitchen facilities where workers can prepare their own meals.

Employer-provided or secured housing must meet all applicable safety standards.

**Transportation:** Employers must provide daily transportation between the workers' living quarters and the employer's worksite at no cost to covered workers living in employer-provided housing. Employer-provided transportation must meet all applicable safety standards, be properly insured, and be operated by licensed drivers.

**Inbound & Outbound Expenses:** If not previously advanced or otherwise provided, the employer must reimburse workers for reasonable costs incurred for inbound transportation and subsistence costs once the worker completes 50% of the work contract period. Note: the FLSA applies independently of H-2A and prohibits covered employees from incurring costs that are primarily for the benefit of the employer if such costs take the employee's wages below the FLSA minimum wage. Upon completion of the work contract, the employer must either provide or pay for the covered worker's return transportation and daily subsistence.

**Records Required:** Employers must keep accurate records of the number of hours of work offered each day by the employer and the hours actually worked each day by the worker.

On or before each payday (which must be at least twice monthly), each worker must be given an hours and earnings statement showing hours offered, hours actually worked, hourly rate and/or piece rate of pay, and if piece rates are used, the units produced daily. The hours and earnings statement must also indicate total earnings for the pay period and all deductions from wages.

**Additional Assurances and Obligations:** Employers must comply with all applicable laws and regulations, including the prohibition against holding or confiscating workers' passports or other immigration documents. In addition, employers must not seek or receive payment of any kind from workers for anything related to obtaining the H-2A labor certification, including the employer's attorney or agent fees, the application fees, or the recruitment costs. Employers must also assure that there is no strike or lockout in the course of a labor dispute at the worksite for the H-2A certification which the employer is seeking. In addition, employers cannot discriminate against – or discharge without just cause – any person who has filed a complaint, consulted with an attorney or an employee of a legal assistance program, testified, or in any manner, exercised or asserted on behalf of himself/herself or others any right or protection afforded by sec. 218 of the INA or the H-2A regulations.

## H-2A Labor Contractors

An H-2ALC is a person who meets the definition of an "employer" under the H-2A Program and does not otherwise qualify as a fixed-site employer or an agricultural association (or an employee of a fixed-site employer or agricultural association) and who is engaged in any one of the following activities in regards to any worker subject to the H-2A regulations: recruiting, soliciting, hiring, employing, furnishing, housing, or transporting.

While H-2A does not require labor contractors to register as such with the Department, any *person* who is subject to MSPA as a Farm Labor Contractor (FLC) must register with the Department and be issued an FLC Certificate of Registration prior to engaging in any farm labor contracting activity. In their H-2A applications, H-2ALCs required to be registered under MSPA are obligated to provide their respective MSPA FLC Certificate of Registration number and to identify the farm labor contracting activities they are authorized to perform.

In addition to meeting the same assurances and obligations as any other H-2A employer, H-2ALCs must fulfill the following requirements:

- list the name and location of each fixed-site agricultural business to which they expect to provide H-2A workers, the dates of each employment opportunity, and a description of the crops and activities the workers are expected to perform at each area of intended employment;
- submit a copy of each work contract agreement between the H-2ALC and the agricultural business to which they expect to provide workers;
- provide proof that all housing and transportation if provided or secured by the fixed-site employer complies with applicable safety and health standards; and
- obtain and submit the original surety bond with the H-2A Application.

**Surety Bond:** The surety bond must be written to cover 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. H-2ALCs must obtain the surety bond in the following amounts:

- \$5,000 for a labor certification with fewer than 25 employees;
- \$10,000 for a labor certification with 25 to 49 employees;
- \$20,000 for a labor certification with 50 to 74 employees;
- \$50,000 for a labor certification with 75 to 99 employees; and
- \$75,000 for a labor certification with 100 or more employees.

The bond must be payable to the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S-3502, Washington, DC 20210.

### **Where to Obtain Additional Information**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4US-WAGE (1-866-487-9243).**

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

**Worker Information—Terms and Conditions of Employment**

1. Place of employment: \_\_\_\_\_

2. Period of employment: From \_\_\_\_\_ To \_\_\_\_\_

3. Wage rates to be paid: \$ \_\_\_\_\_ per Hour Piece Rate \$ \_\_\_\_\_ per \_\_\_\_\_

4. Crops and kinds of activities: \_\_\_\_\_

5. Transportation or other benefits, if any: \_\_\_\_\_

Charge(s) to workers, if any: \_\_\_\_\_

6. Workers' compensation insurance provided: Yes  No

Name of compensation carrier: \_\_\_\_\_

Name and address of policyholder(s): \_\_\_\_\_

Person(s) and phone number(s) of person(s) to be notified to file claim: \_\_\_\_\_

Deadline for filing claim: \_\_\_\_\_

7. Unemployment compensation insurance provided: Yes  No

8. Other benefits: \_\_\_\_\_ Charge(s) \_\_\_\_\_

9. For migrant workers who will be housed, the kind of housing available and cost, if any: \_\_\_\_\_

Charge(s) \_\_\_\_\_

10. List any strike, work stoppage, slowdown, or interruption of operation by employees at the place where the workers will be employed. (If there are no strikes, etc., enter "None"):

\_\_\_\_\_

11. List any arrangements that have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None"):

\_\_\_\_\_

Name of Person(s) Providing This Information: \_\_\_\_\_

**Note:** The Department of Labor—Wage and Hour Division makes this form available in certain other languages to enable employers to satisfy the requirement that the terms and conditions of employment be disclosed in a language common to the workers. Contact the nearest office of the Wage and Hour Division to obtain such forms.

While completion of Form WH516 is optional, it is mandatory for Farm Labor Contractors, Agricultural Employers, and Agricultural Associations to disclose employment terms and conditions in writing to migrant and day-haul workers upon recruitment, and to seasonal workers other than day-haul workers upon request when an offer of employment is made to respond to the information collection contained in 29 CFR §§ 500.75-500.76. This optional form may be used to disclose the required information. Thereafter, any migrant or seasonal worker has the right to have, upon request, a written statement provided to him or her by the employer, of the information described above. This optional form may also be used for this purpose.

We estimate that it will take an average of 32 minutes to complete this collection of information, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Room S3502, 200 Constitution Avenue NW, Washington, D.C. 20210. **Do NOT send the completed form to this office.**



OMB No.: 1235-0002  
Vence: 08/31/2020

### Información Sobre el Obrero -Términos y Condiciones de Empleo

1. Lugar de empleo: \_\_\_\_\_
2. Período de empleo: De \_\_\_\_\_ a \_\_\_\_\_
3. Tasas de salarios a pagar: \$ \_\_\_\_\_ por hora Pago a destajo \$ \_\_\_\_\_ por \_\_\_\_\_
4. Cultivos y tipos de actividades: \_\_\_\_\_
5. Transporte u otros beneficios, si los hay: \_\_\_\_\_  
\_\_\_\_\_
- Gastos con cargo a los obreros, si los hay: \_\_\_\_\_
6. Seguro de Indemnización para obreros que se provee: Sí  No   
Nombre de la compañía de seguros: \_\_\_\_\_  
Nombre y dirección del (de los) asegurado(s): \_\_\_\_\_  
\_\_\_\_\_
- Persona(s) y número de teléfono de la(s) persona(s) a notificar para presentar reclamación: \_\_\_\_\_  
\_\_\_\_\_
- Fin de plazo para presentar reclamación: \_\_\_\_\_
7. Seguro de indemnización por desempleo que se provee: Sí  No
8. Otros beneficios: \_\_\_\_\_ Gasto(s) \_\_\_\_\_
9. En el caso de que los obreros migratorios necesiten alojamiento, el tipo de alojamiento disponible y el costo, si lo hay: \_\_\_\_\_  
\_\_\_\_\_
- Cargo(s): \_\_\_\_\_
10. Enumere cualquier huelga, paro de trabajo, retraso o interrupción de las operaciones por parte de los empleados en el lugar donde se empleará a los obreros. (Si no hay huelgas, etc., indique "Ninguna").  
\_\_\_\_\_  
\_\_\_\_\_
11. Indique cualquier acuerdo o convenio que se haya hecho con los propietarios del establecimiento o con los agentes para el pago de una comisión u otros beneficios por ventas hechas a los obreros. (Si no hay ningún acuerdo o convenio, indique "Ninguno"):  
\_\_\_\_\_  
\_\_\_\_\_

**Nombre de la(s) persona(s) que proporciona(n) esta información:** \_\_\_\_\_

Nota: La Sección de Horas y Sueldos del Departamento de Trabajo pone a la disposición este formulario en otros idiomas para permitirles a los empresarios que cumplan con el requisito de notificación de los términos y las condiciones en un idioma que sea común a los obreros. Póngase en contacto con la oficina más cercana de la Sección de Horas y Sueldos para obtener dichos formularios. Mientras que rellenar el Formulario WH-516 es opcional, se exige que los Contratistas de Trabajo Agrícola, los Empresarios Agrícolas y las Asociaciones Agrícolas les revelen los términos y las condiciones de empleo por escrito a los obreros migratorios y a los jornaleros de cargas al ser reclutados, y a obreros temporeros aparte de jornaleros de cargas a petición cuando se hace una oferta de empleo para responder a la compilación de información contenida en 29 CFR §§ 500.75 – 500.76. Se puede usar este formulario opcional para revelar la información exigida. De allí en adelante, cualquier obrero(a) migratorio(a) u obrero(a) temporero tiene derecho a recibir, a petición, una declaración escrita proveída a él/ella por el empresario con la información descrita arriba. También se puede usar este formulario opcional para este propósito. Se calcula que se tomará un promedio de 32 minutos para rellenar toda esta compilación de información, incluido el tiempo para repasar las instrucciones, buscar las fuentes de datos existentes, recolectar y mantener los datos necesarios y rellenar y repasar la compilación de la información. Si tiene algún comentario con respecto a este cálculo de obligación o cualquier otro aspecto de esta compilación de información. inclusive recomendaciones para reducir esta carga, envíelos a Administrator, Wage and Hour Division, Room S-3502. 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**NO Envíe a Esta Oficina el Formulario Con la Información.**

**No es necesario responder a esta información a menos que tenga un número válido de OMB.**

Formulario opcional WH-516 Español  
Rev. June 2011



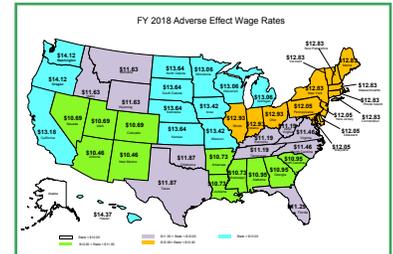
# Guidelines for Payment of Farm Labor

## Wage Statements

- **Migrant and Seasonal Agricultural Worker Protection Act (MSPA)** - Grower required to provide each worker an itemized written statement which includes: worker's total earnings; hourly rate and/or piece rate; if piece rate, units produced daily; total hours worked; all deductions; beginning and end date of pay period; employer's name, employer's address; Federal Employer Identification Number (FEIN) for each pay day; worker's name; worker's address; and SSN of each worker
  - ▶ [http://www.dol.gov/whd/forms/form\\_wh-501.pdf](http://www.dol.gov/whd/forms/form_wh-501.pdf)
- **H-2A** - Same as MSPA requirements but to include offered hours

## Wage Rates

- **MSPA** - Must be paid at least the promised/disclosed wage rate or whichever is higher—federal or state wage rate
- **H-2A** - Whichever is higher—federal, state, Collective Bargaining Agreement (CBA), prevailing piece rate/hourly rate, or Adverse Effect Wage Rate (AEWR)
  - ▶ <http://www.foreignlaborcert.doleta.gov/adverse.cfm>
- **Piece Rate Earnings** - Must be equal to or greater than applicable MSPA or H-2A rate
- **Corresponding Employment** - All workers employed by the H-2A employer working in a job description on the H-2A labor certification or doing the same agricultural work as the H-2A worker are engaged in corresponding employment. Those workers must be paid at least the H-2A wage rate



## Frequency of Pay

- **MSPA** - At a minimum, every 2 weeks
- **H-2A** - At a minimum, every 2 weeks
- To reduce financial liability, growers are encouraged to pay all workers directly

## Deductions from Pay

NOTE: All deductions from a worker's pay must be identified in the Terms and Conditions of Employment.

- **Social Security**
  - ▶ **H-2A** - Exempt (see IRS Guidance): <http://www.irs.gov/individuals/International-Taxpayers/Foreign-Agricultural-Workers>
  - ▶ **MSPA** - Deducted
- **Taxes (State & Federal):**
  - ▶ **H-2A** - Exempt (see IRS Guidance): <http://www.irs.gov/individuals/International-Taxpayers/Foreign-Agricultural-Workers>
  - ▶ **MSPA** - Deducted
- **Meals:**
  - ▶ **H-2A** - Employer must provide either adequate cooking facilities (at no charge to worker) or 3 meals a day, which may be deducted from pay. However, if providing 3 meals a day, the actual cost must be disclosed to the worker, and it cannot exceed the amount set by federal regulations:  
[http://www.foreignlaborcert.doleta.gov/meal\\_travel\\_subsistence.cfm](http://www.foreignlaborcert.doleta.gov/meal_travel_subsistence.cfm)
  - ▶ **MSPA** - If grower chooses to charge for meals, it must be disclosed, and the grower cannot make a profit.
- **Housing:**
  - ▶ **H-2A** - No deduction. Employer must provide housing at no cost to H-2A workers and corresponding workers who are not reasonably able to return to their residence within the same day
  - ▶ **MSPA** - If housing is provided, the employer must meet the Housing Safety & Health Checklist under OSHA 29 CFR 1910.142. Grower must disclose any changes for housing
- **Union Dues: if applicable, see page 63**
  - ▶ **H-2A & MSPA** - Deducted if worker is union member



**Wage Statement**  
(Optional Form)

**U.S. Department of Labor**  
**Wage and Hour Division**



Employee		Social Security No.		OMB No.: 1235-0002		Expires: 08/31/2020	
Permanent Address		Workweek Ending (Month, Day, Year)		Total Hours Worked in Week		Itemized Deductions	
Day/Date	Sun/	Mon/	Tues/	Wed/	Thurs/	Fri/	Sat/
Starting Time							
Quitting Time							
Hours Worked							
Crop/Task Units Done							
Rate of Pay (Hour- ly or Piece Rate)							
Daily Pay							
Employer Address							
Employer identification number							
	Total Gross Pay		FICA		Federal Tax		
			State Tax		Rent		
			Food		Transportation		
			Other		Other		
			Total Deductions		Net Pay (Amount Due Employed)		Date Paid:

**Instructions**

Properly filled out, this optional form will satisfy the requirements of sections 201 (d), (e), and (g) and sections 301 (c), (d), and (f) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). 29 U.S.C. §§ 1821(d)-(e),(g), 1831(c)-(d),(f); 29 C.F.R. § 500.80. This form also satisfies statutory requirements under section 11 (c) of the Fair Labor Standards Act (FLSA). 29 U.S.C. § 211(c).

**PAYROLL INFORMATION:** Enter the month, day and year on which the MSPA worker's payroll workweek ends. Enter the calendar date of the day worked. Enter the time work started and ended each day. Enter the total time actually worked each day. Subtract bona fide meal periods. Crop/Task - Units done - Enter the kind of work (such as picking oranges per bin) and the number of units produced if the employee is paid on a piece work or task basis. Enter the hourly or piece rate of pay. Enter the amount of the gross daily pay computed at the hourly and/or piece rate.

**ITEMIZED DEDUCTIONS:** In addition to FICA (Social Security), federal tax, state tax, and rent, food, and transportation deductions (if any), enter any other specified deductions in right column and then transfer to left column. Subtract total deductions from total Gross Pay. Enter the result as Net Pay (Amount Due Employee). Enter date worker is paid.

**PUBLIC BURDEN STATEMENT**

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. This collection of information is authorized by MSPA sections 201(d) and 301(c). 29 U.S.C. §§ 1821(d), 1831(c), 1851-1853; 29 C.F.R. § 500.80. While use of this form is optional, it is mandatory for MSPA-covered entities to maintain the information and to provide it in written form. 29 U.S.C. §§ 1821(d),(e),(g), 1851, 1853, 1854; 29 C.F.R. § 500.80. The DOL uses this form to determine employer compliance with the MSPA.

We estimate it will take an average of one (1) minute to complete this collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspects of this information collection, including suggestions for reducing this burden, send them to the U.S. Department of Labor, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.**

**Declaración de Salario**  
(Formulario Opcional)

**Departamento De Trabajo De EEUU**  
Sección de Horas y Sueldos



Obrero: \_\_\_\_\_ OMB No.: 1235-0002 Vence: 08/31/2020  
 Dirección Permanente: \_\_\_\_\_ Número del Seguro Social: \_\_\_\_\_  
 Semana laboral que termina (mes, día, año)

Día/fecha	domingo/	lunes/	martes/	miércoles/	jueves/	viernes/	sábado/	Total de horas trabajadas en la semana	DEDUCCIONES ENUMERADAS
Hora de comenzar									FICA
Hora de terminar									Impuesto federal
Horas trabajadas									Impuesto estatal
<b>Cosecha/faena</b> Unidades terminadas									Alquiler
Tasa de pago (por hora o pago a destajo)								<b>Total de Pago Bruto</b>	Comida
Salario diario									Transporte
Empresario									Otra deducción
Dirección									Otra deducción
Número de identidad del empresario:									<b>Total de deducciones</b>
									<b>Pago neto (Cantidad debida al obrero)</b>
									<b>Fecha de pago</b>

**INSTRUCCIONES**

Correctamente rellena, este formulario opcional satisficará las exigencias de las secciones 201 (d), (e), (g) y de las secciones 301 (c), (d), y (f) de la Ley para la Protección de los Obreros Agrícolas Migratorios y Temporeros (MSPA-siglas en inglés), 29 U.S.C. §§ 1821 (d)-(e), (g), 1831 (c)-(d), (f); 29 C.F.R. § 500.80. Este formulario también satisficé las exigencias estatutarias bajo la sección 11 (c) de la Ley de Normas Justas de Trabajo (FLSA-siglas en inglés), 29 U.S.C. § 211 (c).

**INFORMACIÓN SOBRE LA NÓMINA DE PAGOS:** Rellene el mes, día y año en los cuales la semana laboral de la nómina de pago bajo MSPA del empleado termina. Rellene la fecha civil del día trabajado. Rellene a qué hora el trabajo comenzó y a qué hora terminó cada día. Rellene el total del tiempo trabajado cada día. Reste los períodos de comidas de buena fe. Cosecha/faena -Unidades terminadas -Rellene el tipo de trabajo desempeñado (como recoger naranjas por recipiente) y rellene el número de las unidades producidas si el obrero se le paga por hora o por pieza. Rellene el pago por hora o por pieza. Rellene la cantidad del pago diario bruto computado por el pago por hora y/o por pieza.

**DEDUCCIONES ENUMERADAS:** Además de FICA (Seguro Social), impuesto federal, impuesto estatal, el alquiler, la comida, y las deducciones por el transporte (si exist en), rellene cualquier otra deducción **especificada** en la columna a la derecha y luego pásela a la columna izquierda. Reste el total de las deducciones del total del pago bruto. Rellene el resultado como pago neto (cantidad debida al obrero). Rellene la fecha cuando se le paga al obrero.

**DECLARACIÓN DE RESPONSABILIDAD**

Se le avisa al que rellene este formulario que no tiene que responder a esta compilación a menos que se encuentre y se exhiba un número actualmente válido de control de OMB. Las secciones 201 (d) y 301 (c) bajo MSPA autorizan esta compilación de información. 29 U.S.C. §§ 1821 (d), 1831 (c), 1851-1853; 29 C.F.R. § 500.80. Aunque el uso de este formulario es opcional, se le exige a toda entidad bajo el alcance de MSPA que mantenga la información y que la proporcione por escrito. 29 U.S.C. §§ 1821 (d), (e), (g), 1851, 1853, 1854; 29 C.F.R. § 500.80. El Departamento de Trabajo utiliza este formulario para determinar el cumplimiento del empresario con la ley MSPA. Se calcula que tardará un promedio de un (1) minuto para completar esta compilación de información, incluyendo el tiempo que se necesita para reparar las instrucciones, buscar las fuentes de datos existentes, recolectar y mantener los datos necesarios, y para rellenar y repasar la compilación de información. Si Ud. tiene algún comentario sobre estos cálculos de la responsabilidad o sobre cualquier otro aspecto de la compilación de esta información, inclusive sugerencias para reducir esta carga, envíelos al U.S. Department of Labor, Wage and Hour Division, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **No Envíe El Formulario Después de Rellenarlo A Esta Oficina.**



OMB No. 1235-0002  
Expires/Se caduca: 08/31/2020

**HOUSING TERMS AND CONDITIONS**

Important Notice to Migrant Agricultural Worker: The Migrant and Seasonal Agricultural Worker Protection Act requires the furnishing of the following information.

1. The housing is provided by

Name \_\_\_\_\_

Address \_\_\_\_\_  
City & state / Zip code

2. Individual(s) in charge

Name \_\_\_\_\_

Address \_\_\_\_\_  
City & state / Zip code

Phone \_\_\_\_\_

3. Mailing address of housing facility

Address \_\_\_\_\_  
City & state / Zip code

Phone \_\_\_\_\_

4. Conditions of occupancy

Who may live in housing facility
Charges made for housing (if none, so state)
Meals provided (if none, so state)
Charges for utilities (if none, so state)
Other charges, if any
Other conditions of occupancy

**TÉRMINOS Y CONDICIONES DE LA VIVIENDA**

Aviso Importante Para Obreros Agrícolas Migratorios: La Ley Para la Protección de Obreros Migratorios y Temporeros exige que se provea la información siguiente.

1. La vivienda la provee

Nombre \_\_\_\_\_

Dirección \_\_\_\_\_  
Ciudad y estado / Código Postal

2. Persona(s) encargada(s)

Nombre \_\_\_\_\_

Dirección \_\_\_\_\_  
Ciudad y estado / Código Postal

Teléfono \_\_\_\_\_

3. Dirección de correo de la vivienda

Dirección \_\_\_\_\_  
Ciudad y estado / Código Postal

Teléfono \_\_\_\_\_

4. Condiciones de ocupación

Quién puede habitar la vivienda
Cargos hechos por proporcionar la vivienda (Si no los hay, declárelo)
Comidas proporcionadas (si no las hay, declárelo)
Cargos por servicios( luz, agua, gas) (si no los hay, declárelo)
Otros cargos, si los hay
Otras condiciones de ocupación

**Important Notice to Farm Labor Contractor,  
Agricultural Employer, or Agricultural Association:**

This form may be used for the disclosure required by section 201(c) of the act. It must be posted in a conspicuous place or presented to each worker in English, Spanish, or another language, as appropriate.

**Public Burden Statement**

We estimate that it will take an average of 30 minutes to complete this information collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reviewing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.**

**Aviso Importante Para Contratistas de Trabajo  
Agrícola, Empleadores Agrícolas o Asociaciones  
Agrícolas:**

Se puede utilizar este formulario para la declaración exigida por la sección 201 (c) de la ley. Se tiene que exhibir en un lugar conspicuo o se le tiene que dar una copia a cada obrero en inglés, español u otro idioma, según la necesidad.

**Declaración Pública de Responsabilidad**

Se calcula que tomará un promedio de 30 minutos para rellenar la compilación de esta información, incluyendo el tiempo para repasar las instrucciones, para buscar las fuentes informativas existentes, para recolectar y mantener la información necesaria, y para rellenar y repasar la compilación de la información. Si tiene algún comentario sobre estos cálculos o sobre cualquier otro aspecto de esta encuesta, incluyendo sugerencias para repasar esta responsabilidad, envíelos al Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Se le avisa al que rellene este formulario que no responda a la compilación de esta información a menos que se encuentre y se exhiba un número actualmente válido de control de OMB.**

WH-521  
Rev. 06/2011

## Housing Safety and Health Checklist

OSHA 1910.142 Temporary Labor Camps

### Site including refuse disposal: (29 CFR 1910.142 (a) (h))

- Drainage must be adequate (29 CFR 1910.142 (a)(1)) (not subject to periodic flooding, danger to domestic water supply, or inactive water)
- Site must be 500 ft. from livestock (29 CFR 192.142 (a)(2))
- Site must be free from rubbish, debris, waste paper, garbage or other refuse (29 CFR 1910.142(a)(3))
- Insect and rodent proof refuse containers provided (one container per family unit)
- Containers should be kept clean and at least 100 ft. of shelters (29 CFR 1910.142 (h)(1))
- Containers should be kept on a wooden, metal or concrete stand (29 CFR 1910.142 (h)(1))
- Containers should be emptied no less than twice a week or when full (29 CFR 1910.142 (h)(3))
- Garbage containers that are leak proof with tight lids should be provided in the kitchen area (29 CFR 1910.142 (i))

### Shelter including lighting: (29 CFR 1910.142 (b) (g))

#### SLEEPING QUARTERS

- Must have at least 50 sq. ft. per person in sleeping rooms (29 CFR 1910.142 (b)(2)) (Ceilings at least 7 ft .high)
- Sleeping rooms must contain wall lockers for clothing as well as beds, cots or bunks (no triple bunks) provided for each farmworker (29 CFR 1910.142 (b)(3))

#### COMMON AREAS

- Housing must be protected from the elements (29 CFR 1910.142 (b)(1))
- Floors must be made of wood, asphalt or concrete and must be in good repair (29 CFR 1910.142 (b)(4))
- No broken windows and should be able to open at least halfway for ventilation purposes (29 CFR 1910.142 (b)(7))
- All openings screened, screen doors should be equipped with self-closing devices (29 CFR 1910.142 (b)(8))
- Should be at least 100 sq. ft. per person in a room where farmworkers cook, live and sleep (29 CFR 1910.142 (b)(9))

#### COOKING AREAS

- Sanitary facilities provided for cooking and storing food (29 CFR 1910.142 (b)(9))
- At least one stove, in an enclosed and screened shelter, for every 10 people or 2 families (29 CFR 1910.142 (b)(10))
- Poisonous or toxic materials should not be stored with food or in areas of food preparation (29 CFR 1910.142 (i))
- Central eating facilities should be separate from sleep quarters (29 CFR 1910.142 (i)(2))
- Kitchen along with all equipment and utensils should be kept clean (29 CFR 1910.142(i))

#### HEATING

- Heating, cooking and water heating equipment installed in accordance with applicable codes and regulations and adequate heating provided in every shelter during cold weather (29 CFR 1910.142 (b)(11))

#### LIGHTING

- Each room should be supplied with at least one ceiling-type light fixture and electrical outlets (29 CFR 1910.142 (g))

### Water Supply (29 CFR 1910.142 (c))

- Water must be adequate for drinking, cooking, bathing and laundry and approved by appropriate health authorities (29 CFR 1910.142 (c))
- At least 35 gallons of water must be provided per day, per person at a peak rate of 2 ½ times the average hourly demand (29 CFR 1910.142 (c)(2))
- If indoor water facilities are not provided, shelters must be within 100 ft. of a yard hydrant. (29 CFR 1910.142 (c)(3))
- When water under pressure is available, 1 water fountain for each 100 farmworkers must be provided. Common drinking cups are prohibited. (29 CFR 1910.142 (c)(4))
- Hot and cold running water must be provided (29 CFR 1910.142 (i))

**Toilet Facilities /Sewage (29 CFR 1910.142 (d) (e))**

- Toilet rooms should be accessible without crossing through a sleeping room (29 CFR 1910.142(d)(2))
- Each toilet room must have at least a 6 sq. ft. opening to the outside for adequate ventilation (29 CFR 1910.142 (d)(2))
- Bathrooms must be cleaned daily, if privies are used they must be 100 ft. away from any sleeping, dining, lunch area or kitchen (29 CFR 1910.142 (d)(3) and (10))
- Separate toilet facilities must be provided for each sex and separated by walls or partitions extended from the floor to the ceiling (29 CFR 1910.142 (d)(4))
- Required ratio of one toilet facility for each 15 persons, with a minimum of two units, and urinals of at least 2 feet trough for every 25 men (29 CFR 1910.142(d)(5) and (6))
- Toilets kept in sanitary condition with toilet paper provided in adequate supply (29 CFR 1910.142 (d) (9) and (10))
- If public sewers are available, sewer lines and drains should be connected (29 CFR 1910.142 (e))

**Laundry, Hand washing, and Bathing Facilities (29 CFR 1910.142 (f))**

- Laundry, Hand washing, and Bathing facilities should be provided with floors, walls and partitions waterproof, smooth or and/or non-slip (29 CFR 1910.142 (f)(1) and (2))
- At least 1 shower for every 10 persons (29 CFR 1910.142 (f)(1))
- 1 hand wash basin per family shelter or 1 basin for every 6 persons in shared facilities (29 CFR 1910.142 (f)(1))
- 1 laundry tray/tub for every 30 persons (29 CFR 1910.142 (f)(1))
- Slop sinks should be provided in buildings used for laundry, hand washing and bathing (29 CFR 1910.142 (f)(1) and (6))
- Adequate supply of hot and/or cold running water for bathing and laundry purposes (29 CFR 1910.142 (f)(3))
- Facilities for drying clothes should be provided (29 CFR 1910.142 (f)(5))

**Insect and rodent control/First Aid/Communicable Disease (29 CFR 1910.142 (j) (k) (l))**

- Effective measures shall be taken to prevent infestation by and harborage of insects, animals and/or pests (29 CFR 1910.142 (j))
- Food should be free from vermin, rodents, flies, and spoilage. (29 CFR 1910.142 (i))
- First aid supplies and equipment should be available to all workers in the camp (29 CFR 1910.142 (k)(1))
- A person in the camp should be trained to administer first aid (29 CFR 1910.142 (k)(2))
- Must report to local health authorities the identity of anyone in the camp suspected of having a communicable disease (29 CFR 1910.142 (l)(1))
- Must report to local health authorities immediately a case of food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is prominent. (29 CFR 1910.142 (l)(2))
- Persons with a communicable disease should not be working in preparation, cooking or handling of food (29 CFR 1910.142(i))

**Note:** This checklist reflects portions of the Housing Safety & Health regulation under OSHA 29 CFR 1910.

You may view OSHA 29 CFR 1910.142 (subpart J) at the following link:

[https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=9791](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9791)

# Grower Checklist for Labor Postings

## Program or Requirements & Web References

## Sample

### Fair Labor Standards Act (FLSA)

<http://www.dol.gov/whd/regs/compliance/posters/wh1386Agrcltr.pdf> (ENG)

<https://www.dol.gov/whd/regs/compliance/posters/AgricultureSPA.pdf> (SPAN)



### Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

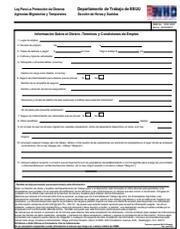
<http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm> (ENG/SPAN)



### MSPA Worker Disclosure

<http://www.dol.gov/whd/forms/wh516.pdf> (ENG)

[https://www.dol.gov/whd/forms/WH-516\\_Spanish.PDF](https://www.dol.gov/whd/forms/WH-516_Spanish.PDF) (SPAN)



### MSPA Housing Terms and Conditions

<http://www.dol.gov/whd/forms/wh521.pdf> (ENG/SPAN)



### H-2A (if applicable)

[https://www.dol.gov/whd/posters/pdf/WHD1491Eng\\_H2A.pdf](https://www.dol.gov/whd/posters/pdf/WHD1491Eng_H2A.pdf) (ENG)

[https://www.dol.gov/whd/posters/pdf/WHD1491Span\\_H2A.pdf](https://www.dol.gov/whd/posters/pdf/WHD1491Span_H2A.pdf) (SPAN)



### OSHA Job Safety and Health

<https://www.osha.gov/Publications/osha3165-8514.pdf> (ENG)

<https://www.osha.gov/Publications/osha3167-8514.pdf> (SPAN)



For more information on workplace postings specifically required by your state, please visit:

<http://www.dol.gov/oasam/programs/osdbu/statemap.htm>



# Guidelines for Transportation

## Possible Destinations

- Housing to field
- "To town" (errands, entertainment, meals, etc.)

## Requirements

All drivers must:

- Have a valid driver's license (appropriate to vehicle)
- Current doctor certification (where required)
- Be authorized to drive
  - ▶ **FLC** - Must have current USDOL certificate and be authorized to transport and drive
  - ▶ **FLCE** - Must have current USDOL certificate and be authorized to drive

All vehicles must:

- Have current:
  - ▶ State inspection sticker and valid tags
  - ▶ Insurance
- Pass all federal & state safety inspections, including but not limited to:
  - ▶ Windshield and wipers
  - ▶ Brakes
  - ▶ Lights (brake, front, hazard, high-beam and turning signals)
  - ▶ Identical tire size/adequate tread
  - ▶ Horn
  - ▶ Fire extinguisher
  - ▶ First aid kit
  - ▶ Mirrors (side and rear view)
  - ▶ Seats for each occupant
  - ▶ Seat belts for each occupant
  - ▶ Emergency exit door
  - ▶ Properly functioning exhaust system
  - ▶ Door handles/latches

<https://www.dol.gov/whd/forms/wh515.pdf>

## Best Practice - Suggestions for Consideration

Designate an individual to do a daily visual inspection of all vehicles using a checklist (see example on page 29) and complete written checklist weekly. Keep a copy of this checklist for your records.

For larger operations, consider providing authorized drivers with a visually prominent wearable ID (e.g. clip-on, lanyard, vest) when driving vehicles as a visual reminder of those authorized to drive.

## Keep in Mind

If an individual is transporting workers at the benefit of the grower, the grower should ensure that all the above conditions are met.



## Vehicle Information

Vehicle	Make/Model	Year	Annual Checklist
			<input type="checkbox"/> Valid Tags <input type="checkbox"/> Insurance If required: <input type="checkbox"/> State Safety Inspection, Date: _____ <input type="checkbox"/> Federal Safety Inspection, Date: _____
			<input type="checkbox"/> Valid Tags <input type="checkbox"/> Insurance If required: <input type="checkbox"/> State Safety Inspection, Date: _____ <input type="checkbox"/> Federal Safety Inspection, Date: _____
			<input type="checkbox"/> Valid Tags <input type="checkbox"/> Insurance If required: <input type="checkbox"/> State Safety Inspection, Date: _____ <input type="checkbox"/> Federal Safety Inspection, Date: _____
			<input type="checkbox"/> Valid Tags <input type="checkbox"/> Insurance If required: <input type="checkbox"/> State Safety Inspection, Date: _____ <input type="checkbox"/> Federal Safety Inspection, Date: _____
			<input type="checkbox"/> Valid Tags <input type="checkbox"/> Insurance If required: <input type="checkbox"/> State Safety Inspection, Date: _____ <input type="checkbox"/> Federal Safety Inspection, Date: _____

## Driver Information

Driver's Name	Driver's License Number	Driver's License Expiration Date	Date on Doctor Certificate	If FLC or FLCE
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive
				<input type="checkbox"/> Certificate <input type="checkbox"/> Authorized to transport <input type="checkbox"/> Authorized to drive

## Vehicle Inspection Log

	Vehicle _____				
	Date _____ “ ✓ ”				
Head Lights					
Brake Lights					
Tail Lights					
Reverse Lights					
Hazard Warning Lights					
Turn Signals					
Brakes (free of leaks and parking brake functional)					
Windshield (free of cracks)					
Windshield Wipers (operational)					
Floors/Sides (passenger compartment free of openings or defects)					
Seats (securely fastened)					
Exiting Capability (properly functioning door handles and latches)					
Fire Extinguishers					
Flares/Reflectors/Lanterns					
Tires (tread and equal size)					
Steering (safe and accurate)					
Horn					
Ventilation (windows operational)					
Mirrors (full vision of sides and rear)					
Fuel System (free of leaks, cap secure)					
Exhaust System (free of leaks, discharge away from passenger compartment)					
Comments:					
Maintenance:					

## Fact Sheet #50: Transportation under the Migrant and Seasonal Agricultural Worker Protection Act

[The Migrant and Seasonal Agricultural Worker Protection Act \(MSPA\)](#), administered by the Wage and Hour Division of the U.S. Department of Labor (DOL), protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, recordkeeping, and farm labor contractor registration requirements. This Fact Sheet provides information concerning the transportation requirements of MSPA. Additional information about the other MSPA requirements can be found in the Wage and Hour Division [Fact Sheet # 49](#).

### MSPA Transportation Safety Standards

Under Section 401 of the MSPA, any non-exempt person who uses, or causes to be used, a vehicle to transport migrant or seasonal agricultural workers must comply with the applicable vehicle safety standards contained in the regulations and with all other applicable Federal and State safety standards. This language encompasses the use of seat belts where already required under Federal or State law. Under MSPA, vehicles must comply with either the DOL standards at 29 CFR § 500.104 or the Department of Transportation (DOT) standards incorporated at 29 CFR § 500.105. Which standard applies depends on the type of vehicle and how the vehicle is to be used, as summarized in the chart below. The chart is an aid and is not a substitute for the regulatory language. Definitions of the terms follow the chart.

TYPE OF VEHICLE	TYPE OF USE & SAFETY STANDARD	
	75 miles or less*	More than 75 miles or Day Haul
<b>Passenger automobile</b>	500.104	500.104
<b>Station Wagon</b>	500.104	500.104
<b>Van</b>		
10 or fewer passengers	500.104	500.104
More than 10 passengers	500.104	500.105
“Windowless” cargo van	500.104	500.105**
<b>Bus</b>	500.104	500.105
<b>Truck/Truck Tractor/Semi-trailer</b>	500.104	500.105
<b>Pick-up Truck</b>		
Workers riding in cab	500.104	500.104

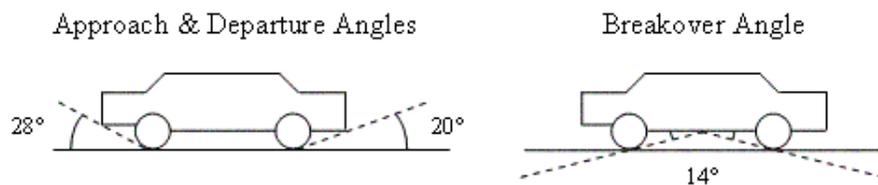
Workers riding in truck bed	500.104	500.105
<b>Multipurpose Passenger Vehicle</b>		
Not meeting truck features	500.104	500.104
Meeting truck features	500.104	500.105
<b>Low Speed Vehicle</b>	500.104	500.105
<p>*The mile limitation applies to the entire trip. One trip may have numerous intermediate stops and normally ends when the vehicle returns to its starting point.  **Vans without windows or means to assure ventilation are not permitted.</p>		

WHD will use the following descriptions of vehicle types when enforcing the motor vehicle safety standards in the MSPA regulations. This information is largely based on DOT regulations and guidance.

- **Passenger automobile**  
a motor vehicle with motive power designed for carrying 10 persons or less (except a low-speed vehicle, a multipurpose passenger vehicle, a truck, a motorcycle, or a trailer). This includes a vehicle designated by the manufacturer as a station wagon.
- **Bus**  
a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons.
- **Multipurpose passenger vehicle**  
a motor vehicle with motive power, except a low-speed vehicle or trailer, designed to carry 10 persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation (e.g. SUV). For MSPA enforcement purposes, a multipurpose passenger vehicle will be treated as a *passenger automobile* with the exception of those that meet the criteria of a *truck* (see below).
- **Pickup truck**  
a *truck* (see below) whether extended cab, crew cab, etc. When transporting passengers *only* within the cab they will be treated as a *station wagon* as allowed in [29 CFR § 500.102\(f\)](#).
- **Truck**  
a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment. This includes a *light truck*, which is an automobile (other than a passenger automobile) that meets the characteristics in either a) or b) below:
  - a) Designed to perform at least one of the following functions:
    - Transport more than 10 persons;
    - Provide temporary living quarters;
    - Transport property on an open bed;
    - Provide greater cargo-carrying than passenger-carrying volume; or
    - Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level surface extending from the forward most point of installation of those seats to the rear of the automobile's interior.

b) Designed for off-highway operation:

- (i) That has 4-wheel drive; or
- (ii) Is rated at more than 6,000 pounds gross vehicle weight; and
- That has at least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure:
  - (i) Approach angle of not less than 28 degrees (see diagram below);
  - (ii) Breakover angle of not less than 14 degrees (see diagram below);
  - (iii) Departure angle of not less than 20 degrees (see diagram below);
  - (iv) Running clearance of not less than 20 centimeters;
  - (v) Front and rear axle clearances of not less than 18 centimeters each. (See 49 CFR §523.2 for further details.)



A *light truck* designed to transport more than 10 passengers that meets all the passenger compartment requirements in [29 CFR § 500.105\(b\)\(3\)\(vi\)](#) and none of the other characteristics above as a “truck” will be treated as a “bus.”

- **Van**  
a *light truck* (see (a)(5) under *truck* above). A van with windows along both sides of the passenger-carrying area which is designed to carry 10 persons or less will be treated as a passenger automobile or when designed to carry more than 10 persons will be treated as a “bus” as long it meets all of the passenger compartment requirements in [29 CFR § 500.105\(b\)\(3\)\(vi\)](#) and no other “truck” characteristics other than passenger capacity. A van designed for carrying cargo, typically without windows along both sides of the passenger-carrying area, is a *truck*. This regulation specifically prohibits the use of closed vans without windows or means to assure ventilation.
- **Trailer**  
a motor vehicle with or without motive power, designed for carrying persons or property and for being drawn by another motor vehicle.
- **Semi-trailer**  
a trailer so constructed that a substantial part of its weight rests upon or is carried by another motor vehicle.
- **Truck tractor**  
a truck designed primarily for drawing other motor vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and the load so drawn.
- **Low-speed vehicle**  
a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.

“Designed” as used in this fact sheet is restricted to actions taken by the original manufacturer of the vehicle. Where further guidance is needed beyond the above definitions, the manufacturer’s designation of the vehicle type can be determined by researching the specific vehicle identification number (VIN). Aftermarket

modifications or alterations are not a part of the vehicle design and do not change the designation of the vehicle type from the type originally manufactured. The driver is included in the term “person” or “passenger” when determining seating capacity.

### **Compliance with Other Applicable Federal and State Safety Standards**

MSPA and DOL regulations impose an affirmative obligation on vehicles covered under MSPA to follow all other applicable Federal and State safety regulations, in addition to those specifically required under MSPA itself. See Title IV, Section 401(b)(1)(A) of the Act and 29 CFR § 500.100(a) respectively. It is imperative that a person subject to MSPA who is not otherwise exempt from the Act and who is transporting migrant or seasonal agricultural workers in a manner subject to MSPA comply with all safety obligations imposed by the State in which it operates, including, but not limited to, any seat belt requirements under State law. Therefore a violation of the State’s operating requirement, particularly regarding seat belt law requirements, is a violation under MSPA for failure to comply with other safety regulations.

### **MSPA Drivers’ License Requirements**

Under MSPA, any non-exempt person who uses or causes to be used a vehicle to transport any migrant or seasonal agricultural worker is required to ensure that each driver has a currently valid motor vehicle operator’s permit or license to operate the vehicle (as provided by applicable State law). If, for example, State law requires the driver to have a commercial drivers’ license (CDL) to operate a given vehicle, then the driver must have a valid CDL before driving the vehicle. In addition, each FLC and Farm Labor Contactor Employee (FLCE) who drives must have and carry a Doctor’s Certificate. ([WH-515](#)).

### **MSPA Insurance Requirements**

Any person subject to the Act who uses, or causes to be used, a vehicle to transport covered workers must ensure that the vehicle is properly insured against liability for damage to persons or property. The specific insurance requirements are found in the MSPA regulations under 29 CFR §§ 500.120-.128. Generally, the owner or lessor of the vehicle will be responsible for providing the required insurance. There are three ways to meet the insurance requirement:

- **Option A**  
Obtain vehicle liability insurance coverage in the amount of not less than \$100,000 for each seat in the vehicle (up to a maximum of \$5,000,000 for any one vehicle). The policy must be maintained in full force and effect at all times for transportation subject to the Act’s requirements.
- **Option B**  
Obtain a liability bond from a U.S. Department of Treasury approved “surety,” assuring payment for any liability up to \$500,000 for damages to persons or property arising out of transportation of workers in connection with the business, activities or operations of the person doing the transporting. Any liability bond obtained pursuant to the requirements of the Act must be maintained in full force and effect for the entire period during which workers may be transported.
- **Option C**  
Obtain State workers’ compensation insurance coverage. The policy must be maintained in full force and effect at all times when transportation subject to the Act’s requirements occurs. However, the person responsible for the transportation must also have:
  - a minimum of \$50,000 in property damage insurance coverage for loss or damage in any one accident to the property of others (excluding cargo) to protect the workers against property loss; or evidence of vehicle liability insurance coverage or a general liability insurance policy that provides the same protection.

It is important to note that for Option C, workers' compensation insurance provides specific coverage which varies from state to state and may not cover all circumstances in which the workers are transported. If the transportation being provided is not covered under the applicable State law, then certain adjustments in the insurance requirements apply.

For instance, transportation for a non-work-related purpose, such as a visit to the grocery store or laundromat, may not be covered under the State policy. Additionally, State workers' compensation coverage may not apply to travel outside the state, or in some states it may not apply to travel to and from work. If using a State workers' compensation policy to meet the insurance requirements for transportation authorization under MSPA, it is important to be aware of precisely what type of travel is covered by the State policy, and if necessary, to procure additional coverage through a liability insurance policy or liability bond for transportation not covered by the State law.

Also note that if transportation authorization (TA) is issued to an FLC based on a workers' compensation insurance policy provided by a specific employer, the insurance coverage is limited to transportation provided to the employees of that specific employer within the scope of that employers' workers' compensation policy.

### **Are “Raiteros” Subject to MSPA?**

Generally, the term “raitero” refers to a person (usually a fieldworker) who, for a fee, provides transportation for farm workers both to and from the work site. Generally, workers are charged a daily roundtrip fee with the specific amount usually contingent upon the distance traveled. If the amount charged each worker transported exceeds the actual cost of providing the transportation, the raitero will most likely meet the MSPA definition of a FLC (i.e., transporting MSPA covered workers for a fee). In such a case, the raitero should be registered with DOL as a FLC, and is responsible for complying with the registration, transportation safety, drivers' licensing, and insurance requirements of the Act.

### **FLC Employees Who Operate Vehicles to Transport Workers**

Employees of FLCs who recruit, solicit, hire, employ, furnish, or transport migrant or seasonal agricultural workers on behalf of their employer (the FLC), must be registered with DOL as a Farm Labor Contractor Employee (FLCE) prior to engaging in any of those named activities. To lawfully drive a vehicle used to transport workers, the FLCE must obtain specific authorization to do so from the DOL. In order to obtain the authorization, the FLC must submit documentation showing that the vehicle is safe and properly insured, and documentation must be submitted by the FLCE to establish that he or she holds a valid drivers' license to operate the vehicle in question. In addition, a valid and unexpired Doctor's Certificate must be submitted with the application.

### **MSPA Trailer Towing Requirements**

Towing a trailer behind any vehicle (other than a truck subject to DOT standards) transporting MSPA workers is permitted only if it meets the applicable DOL or DOT safety standards. A truck subject to DOT standards while transporting MSPA workers may not tow a trailer.

A vehicle transporting MSPA workers and towing a trailer will be examined to ensure that both the vehicle and towed trailer meet the applicable safety standards. Safety standards applicable to towed trailers include the following:

When subject to DOL standards:

- external lights [29 CFR § 500.104\(a\)](#)
- brakes [29 CFR § 500.104\(b\)](#)
- tires [29 CFR § 500.104\(c\)](#)
- safe loading [29 CFR § 500.104\(k\)](#)

When subject to DOT standards:

- equipment and emergency devices (including trailer brake connections and coupling devices) [29 CFR § 500.105\(b\)\(2\)\(vi\)](#)
- safe loading [29 CFR § 500.105\(b\)\(2\)\(vii\)](#)
- lighting devices and reflectors [29 CFR § 500.105\(b\)\(2\)\(xi\)](#)
- parts and accessories (including lighting devices, brakes, and tires) [29 CFR § 500.105\(b\)\(3\)](#)

Additional safety factors to consider include, but are not limited to, whether workers were transported in the trailer and the overall safe operation of the vehicle and trailer..

Factors to consider in determining that the vehicle and trailer have been safely loaded include, but are not limited to, whether the load has been balanced from side to side and cargo weight distributed evenly along the length of the trailer; whether items have been secured and braced to prevent them from moving during travel; and for most situations, whether the trailer and tow vehicle are level (parallel to the ground) during travel (information from the trailer manufacturer may be needed to make sure this is correct for this combination of vehicles). This guidance is based on materials provided by DOT's Federal Motor Carrier Safety Administration (FMCSA).

Some states and municipalities may have special requirements and DOT may have requirements applicable to vehicles under its jurisdiction that are towing trailers (e.g. some states require brakes on loaded trailers weighing in excess of a set amount; special permits based on the size and weight of a trailer; or additional equipment such as side view mirrors). Vehicles subject to MSPA transportation safety requirements must meet other applicable Federal and State safety standards, including seat belt provisions.

Vehicles towing trailers must also carry proper insurance coverage.

## Exclusions from MSPA Transportation Requirements

The following types of transportation are not subject to the requirements of MSPA:

- Transportation on tractors, combines, harvesters, pickers, or other similar machinery and equipment if the worker is actually engaged in the planting, cultivating, or harvesting of any agricultural commodity or in the care of livestock or poultry.
- Bona fide carpooling arrangements in which the FLC does not participate; the workers make all of the arrangements themselves; the workers use one of the workers' own vehicles; and the workers are not specifically directed or requested by the employer to participate.
- Transportation if the only other occupants of the person's vehicle are members of his or her immediate family.

## Penalties and Sanctions

Violators may be subject to the payment of back wages; assessment of civil money penalties; and/or revocation of FLC registration. Violators may also be subject to enforcement through civil action and/or criminal prosecution in federal court.

## Where to Obtain Additional Information

For more complete information regarding MSPA and related topics such as [joint employment](#) or the [Fair Labor Standards Act's](#) minimum wage, overtime, and youth employment provisions, visit our [Wage and Hour Division Website: <http://www.wagehour.dol.gov>](#) and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

To register as a farm labor contractor, contact either the nearest office of State Employment Services, listed in most telephone directories under State government, or the [nearest office of the Wage and Hour Division](#), listed under U.S. Government, Labor Department.

The MSPA statute appears at [29 U.S.C. §1801 et seq.](#) The federal regulations implementing MSPA appear in [29 CFR Part 500](#).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

U.S. Department of Labor Wage and Hour Division Amended: 06/27/2018

**Farm Labor Contractor Certificate of Registration**  
 No. C-09-33333-H-18-1  
 Expires 08/16/2018

Name John Doe DBA: Doe John

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

Approved Adriana V. Iglesias Date: 06/17/2017  
 (Program Manager) WH-511 (6/96) 223314

Driving Authorization is valid only on the condition that the person issued this certificate of registration maintains a current valid driver's license for the type of vehicle being driven.

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
1996	MARY SUE LLC	123456	30	08/16/2018
2005	MARY SUE LLC	456321	15	08/16/2018
2012	MARY SUE LLC	564987	25	08/16/2018

Worker's Compensation Insurance Holder (if applicable):  
 Doe WC  
 C-09-33333-H-18-1 Date 06/27/2018  
 Name John Doe

Social Security Account No. \_\_\_\_\_  
 Social Security Employer ID No. 12-3333333  
 Perm. Home Address 90 7th Street  
 San Francisco CA 94103  
 (City or Town) (State) (Zip Code)  
 Date of Birth 01/08/1986 Height 5' 9" Weight 150  
 (Month) (Day) (Year)  
 This Certificate is based on the Migrant and Seasonal Agricultural Worker Protection Act and regulation issued thereunder, and on my application for registration. It may be revoked or suspended, its renewal denied, for noncompliance with the Act or regulation, including applicable requirements for transporting and housing migrant workers. Such noncompliance may constitute a criminal offense.

(Signature of Holder) \_\_\_\_\_ (Title) \_\_\_\_\_

Location of Facility or Real Properties:  
 XXXXXXXXXXXXXXXXXXXXXXXX  
 Type of Construction XXXXXXXXXXXXXXXXXXXXXXXX No. of Units XXXX  
 Owner's Name XXXXXXXXXXXXXXXXXXXXXXXX  
 Mailing Address XXXXXXXXXXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXXXXXXXXXXX  
 Type of Construction XXXXXXXXXXXXXXXXXXXXXXXX No. of Units XXXX  
 Owner's Name XXXXXXXXXXXXXXXXXXXXXXXX  
 Mailing Address XXXXXXXXXXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXXXXXXXXXXX  
 Based on the contractor's submission, housing is authorized at the above locations unless such authorization is otherwise terminated:  
 C-09-33333-H-18-1 Date \_\_\_\_\_  
 Name John Doe

U.S. Department of Labor Wage and Hour Division Amended: 06/27/2018 4:46:52 PM

**FLCE Certificate of Registration**  
 No. E-09-226569-H-18-1  
 Expires 08/16/2018

Name Cesar Javier Chavez

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.

Employer's Name Doe Contracting LLC

Registration Number C-09-44444-H-18-1

Driving	<input checked="" type="checkbox"/>	Authorized	<input type="checkbox"/>	Not Authorized
---------	-------------------------------------	------------	--------------------------	----------------

Approved Adriana V. Iglesias Date: 06/27/2018  
 (Program Manager) Form WH-513 (6/84)

Driving Authorization is valid only on the condition that the person issued this certificate of registration maintains a current valid driver's license for the type of vehicle being driven.

Social Security Account No. 111-22-6569  
 Permanent Home Address 123 Civil Rights Ave  
 Lindsay CA 93247  
 (City or Town) (State) (Zip Code)  
 Date of Birth 10/01/1997 Height 5' 5"  
 (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. Such noncompliance may constitute a criminal offense.

(Signature of Holder) \_\_\_\_\_ (Title) \_\_\_\_\_



# Guidelines When Using Farm Labor Contractors (FLCs) and Farm Labor Contractor Employees (FLCEs)

## FLCs

Must:

- Be registered (current and not on debarred list)
  - ▶ <http://www.dol.gov/whd/regs/statutes/FLCList.htm>
  - ▶ <https://www.dol.gov/agencies/whd/agriculture/mspa/farm-labor-contractors>
- ▶ Keep their FLC card with them at all times
- Be authorized for ALL services being provided
  - ▶ Housing
    - Current Pre-Occupancy Housing Inspection Certificate for each facility.
  - ▶ Transportation
    - All vehicles used are included on FLC registration card
    - All vehicles used have current tags and inspections
    - Insurance (auto & workers' comp) for each vehicle
  - ▶ Driving (see also the "Guidelines for Transportation" section of this guide on pages 25-37)
    - Have doctor's certification - <http://www.dol.gov/whd/forms/wh515.pdf>
    - Have a valid driver's license



## FLCEs

Must:

- Be registered (current)
- If driving, be authorized, have doctor's certificate and valid driver's license
- Keep their FLCE card with them at all times



## Best Practices - Suggestions for Consideration

Growers should:

- Understand they may be joint employers when using FLCs
- Paying workers directly is always preferred
- Inspect & copy ALL FLC/FLCE documentation
  - ▶ Registration cards
  - ▶ Worker disclosures (including fees and deductions from pay)
    - <http://www.dol.gov/whd/forms/wh516.pdf>
  - ▶ Insurance (auto and workers' comp)
- Check the DOL/WHD FLC list to ensure that FLC status is current
  - ▶ <http://www.dol.gov/whd/regs/statutes/FLCList.htm>



## Records To Obtain When Using a FLC

- Registration card (page 41-47)
- Insurance (auto and workers' comp)
- Driver's license for all drivers
- Doctor's certificate for all drivers (page 25)
- Housing inspections for all labor camps utilized (page 21-22)
- Terms and conditions of employment (page 12-13)

# Farm Labor Contractors (FLCs) and Farm Labor Contractor Employees (FLCEs) Checklist<sup>3</sup>

## Registrations and Compliance

- Ensure that any FLC you use has a valid federal certificate of registration with proper driving and transportation endorsement. If the contractor is housing workers, the certificate must have endorsements for those activities as well. For federal certificate of registration verification, check website - <https://www.dol.gov/whd/regs/statutes/FLCList.htm>
- Verify that the FLC has all required state licenses in states that require such licenses (e.g. business license)
- Require the FLC to carry his/her federal certificate of registration and any state license at all times. Keep copies of both the federal and state certificate/license and endorsements
- Require the FLC to only use registered FLCEs to furnish, recruit, employ, solicit, hire or transport employees for the contracted services
- Require the FLC to provide proof of notification to the Department of Labor of any address or other changes, and registration of employees performing labor contracting solely on the contractor's behalf
- Require the FLC to provide proof of posting of all required posters and announcements
- Require the FLC to complete an I-9 form for all workers

## Eligibility

- Require the FLC to provide copies of all personnel documentation on each employee (FLCE) who is soliciting, hiring or driving
- Verify that the FLC is not employing underage minors

## Transportation

- Require drivers to have transportation and driving endorsements on Certificate of Registration as well as:
  - Doctor's certificate (where required) (see page 25)
  - Appropriate valid driver's license
- Verify that the FLC has appropriate liability coverage for all vehicles used to transport workers, with your company listed as an additional insured. Obtain and keep copies of the insurance certificate
- Require the FLC to provide proof that each vehicle is registered and that all registration fees have been paid
- Require the FLC to provide proof that all vehicles undergo periodic safety checks and preventive maintenance
- H-2ALCs must provide all transportation to include inbound and outbound as well as daily transportation at no cost to the worker

See also the "Guidelines for Transportation" section of this guide on pages 25-37 for additional information.

## Pay and Wages

- Require the FLC to pay workers all wages in a verifiable manner when due and to provide proof of itemized wage statements given to employees (note: it is recommended growers pay workers directly and in forms other than cash)
  - Consider requiring workers' signatures on wage statement to verify the pay amount as well as amount and reason for any fee deducted
- Require the FLC to provide copies of all payroll records each pay period and to maintain them for at least three years. Also have the FLC provide copies of all season-end W-2s
- Require the FLC to provide proof of payment of all employment taxes

## Contracts

- Have an agreement with the FLC that requires the FLC to pay the costs of defending the employer in any lawsuit. The agreement should also indemnify the employer for expenses he or she has already paid out. (Such an agreement does not mean that regulatory agencies will not cite or fine the grower)
- Always have a written contract with your FLC

<sup>3</sup>For additional information, see "Working with Farm Labor Contractors - Labor Management Guidebook. <https://www.gapconnections.com/resources/farm-labor-contractor-guide>



OMB NO: 1235-0016  
Expires: 03/31/2020

**Part I – To Be Completed by ALL Applicants**

Please read instructions before completing this application. No Farm Labor Contractor (FLC) or Farm Labor Contractor Employee (FLCE) Certificate of Registration may be issued unless a completed form has been received (29 U.S.C. 1801 et. seq.).

1. Application for certificate of registration for:  
(Check *only one*)

FLC  Initial  Renewal  Amended  
 FLCE  Initial  Renewal  Amended

If renewal, Prior Certificate Number: \_\_\_\_\_

Is form FD-258 fingerprint card attached? Yes  No   
(See Instructions)

2. Name to appear on certificate (Please Type or Print)

\_\_\_\_\_ (Last) \_\_\_\_\_ (First) \_\_\_\_\_ (Middle)

Permanent place of residence (Address May Not Be a P.O.Box):

Street: \_\_\_\_\_ City: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Country: \_\_\_\_\_

If mailing address is different, please complete the following  
(Address May Be a P.O. Box):

Street: \_\_\_\_\_ City: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Country: \_\_\_\_\_

Primary Telephone Number: \_\_\_\_\_  
 Alternate telephone: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_

3. Sex: Male  Female

Height: \_\_\_\_\_ ft. \_\_\_\_\_ in Weight: \_\_\_\_\_ lbs.  
 Eye color: \_\_\_\_\_ Hair color: \_\_\_\_\_

4. Date of birth (mo., day, year) : \_\_\_\_\_

United States citizen:  Yes  No

If naturalized citizen, provide date: \_\_\_\_\_

If visa holder, provide visa no. or temporary worker visa no.:  
 \_\_\_\_\_

Visa expiration date (if applicable) : \_\_\_\_\_

5. Driving authorization: (To be completed by an "individual" applicant)

Will you drive a vehicle to transport workers?  
 Yes  No

If "yes", read instructions and complete the following:

Driver's license no.: \_\_\_\_\_  
(Attach copy of license to application)

State: \_\_\_\_\_ Date issued: \_\_\_\_\_

Expiration date: \_\_\_\_\_ Class: \_\_\_\_\_

Endorsements: \_\_\_\_\_

Restrictions: \_\_\_\_\_

**A valid doctor's certificate must be submitted every three years.**

Doctor's certificate expiration date: \_\_\_\_\_

Is doctor's certificate attached?  Yes  No

Will drive workers for:  Self  Other

If "Other," specify the name and FLC registration number:  
 \_\_\_\_\_

6. Have you been convicted within the past 5 years, under State or Federal law, of any of the following crimes?

A. Any crime relating to gambling, or to the sale, distribution, or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities.  
 Yes  No

B. Any felony involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally.  
 Yes  No

(If "Yes," to a **CONVICTION** of any of the above, **attach a copy of the final judgment** in the case to your application. If you do not possess a copy of the final judgement, attach an additional sheet listing the crime, date, place of conviction, and the court of jurisdiction.)

A false answer or misrepresentation to any question may be punishable by fine or imprisonment.  
 18 U.S.C. § 1001, 29 U.S.C. §§ 1851-1853; 29 C.F.R. § 500.6.



## CERTIFICATION

I certify that compensation is to be received for the intended farm labor contractor services and that all representations made by me in this application are true to the best of my knowledge and belief.

\_\_\_\_\_  
Applicant's Signature and Title (if other than individual) and Date

## Statement of Intention to Comply with Housing Requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

Section 102(3) of the MSPA requires that an applicant for a certificate of registration with authorization to house migrant agricultural workers shall file a statement identifying each facility or real property to be used by the applicant to house any migrant agricultural worker during the period for which registration is sought. 29 U.S.C. § 1812(3); 29 C.F.R. § 500.45(c). If the facility or real property is or will be owned or controlled by the applicant, such statement shall provide documentation showing that the applicant is in compliance with all substantive Federal and State safety and health standards with respect to each such facility or real property. I hereby declare that I will not house migrant agricultural workers in any facility or real property I own or control until I have submitted all necessary written evidence and have been issued a Certificate of Registration with housing authorized. I understand that I may then house migrant agricultural workers only in facilities or real property which has been authorized by the Secretary of Labor.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

## Authorization of the Secretary of Labor to Accept Legal Process

The following authorization is executed pursuant to section 102(5) of the MSPA. 29 U.S.C. § 1812(5); 29 C.F.R. § 500.45(e).

"I do hereby designate and appoint the Secretary of Labor, United States Department of Labor, as my lawful agent to accept service of summons in any action against me at any and all times during which I have departed from the jurisdiction in which such action is commenced or otherwise have become unavailable to accept service, and under such terms and conditions as are set by the court in which such action has been commenced."

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

## PART III – To Be Completed by Any Applicant for a Farm Labor Contractor Employee (FLCE) Certificate of Registration

<p>12. Employer Identification (<i>Name, Farm Labor Contractor Registration No.</i>):</p> <p>Name: _____</p> <p>Number: C- / / / / / / / / / / / / / / / / _____</p>	<p>13. Approximate Date the Planned Farm Labor Activity Will Begin:</p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>(Month, Day, Year)</i></p>
--	---

### CERTIFICATION

I certify that I am an employee of the farm labor contractor identified above and will perform farm labor contracting activities only for that farm labor contractor and for no other farm labor contractor. I certify that all representations made by me in this application are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Applicant Date

### Authorization of the Secretary of Labor to Accept Legal Process

The following authorization is executed pursuant to section 102(5) of the MSPA. 29 U.S.C. § 1812(5); 29 C.F.R. § 500.45(e).

“I do hereby designate and appoint the Secretary of Labor, United States Department of Labor, as my lawful agent to accept service of summons in any action against me at any and all times during which I have departed from the jurisdiction in which such action is commenced or otherwise have become unavailable to accept service, and under such terms and conditions as are set by the court in which such action has been commenced.”

\_\_\_\_\_  
Signature of Applicant Date

## Instructional and Informational Guide for Applying for a Certificate of Registration

For Further Details, Refer to the Regulations (29 C.F.R. Part 500) and to the U.S. Department of Labor Publication, "Migrant and Seasonal Agricultural Worker Protection Act (MSPA)."

**NOTE:** Submission of this application form does not authorize the applicant to engage in farm labor contracting activities. If the application is approved, the applicant will be issued either a **Farm Labor Contractor (FLC) or a Farm Labor Contractor Employee (FLCE) Certificate of Registration.**

**This application is divided into three parts: Part I is to be completed by all applicants and contains general identifying information. Part II is to be completed *only* by applicants applying for a FLC Certificate of Registration. Part III is to be completed *only* by applicants applying for a FLCE Certificate of Registration.**

**Item 1** – Application for certificate. (Please check only one block.)

If no FLC or FLCE (whichever is applicable) Certificate of Registration (Form WH-511 or WH-513) has ever been issued to you by the U.S. Department of Labor (even though you previously applied for one), check "initial." If your certificate has expired, check "initial." If a certificate has been issued to you by the U.S. Department of Labor and that certificate has not yet expired, check "renewal" and enter the number of the last certificate issued to you. If a certificate has been previously issued to you, but circumstances have changed that necessitate an amendment to your original certificate (e.g., change of permanent address, or to add or remove an authorization to transport, house, or drive covered workers), check "amended." If you are applying for an initial certificate, attach a completed Form FD-258, *Fingerprint Card*, to this application. If applying for a renewal certificate and your last Fingerprint Card is more than three years old, submit another completed Form FD-258. A Fingerprint Card is **not** required for applications to "amend" a Certificate of Registration.

**Type of Certificate** – Check **one** block to indicate whether applying as a FLC or as a FLCE.

**Items 2-4** – Person making application. This item is to identify the person submitting the application regardless of whether they are applying for a certificate in their own name or on behalf of an organization.

**Item 5** – If you drive a motor vehicle to transport migrant or seasonal agricultural workers and you are applying for an initial certificate, submit a completed Form WH-515, *Doctor's Certificate*, with this application. If applying for a renewal certificate and your last Doctor's Certificate is more than three years old, submit another completed Form WH-515. We also allow the submission of unexpired, properly completed Department of Transportation doctor certification forms such as the DOT Medical Examiner's Certificate or the DOT Form 649-F *Medical Examination Report for Commercial Driver Fitness Determination*.

**Item 7** – Operating as an individual or organization. If application is for a corporation, partnership, or other organization, each officer, director, partner, or employee who will engage in any of the covered farm labor contracting activities on behalf of the organization must obtain **either a FLC Certificate of Registration or a FLCE Certificate of Registration** prior to so engaging in farm labor contracting activities.

**Item 8** – For a definition of "employ," see 29 C.F.R. § 500.20(h)(4). All other terms have their common meaning.

**Item 10** – A certificate of registration **Authorizing the Applicant to Transport Migrant Workers** in connection with the applicant’s business, activities, or operations as a farm labor contractor shall be issued only after the following have been submitted:

- a. **Evidence of compliance** with applicable Federal and State rules and regulations as follows:

All vehicles which the applicant is to provide or arrange to furnish to transport migrant or seasonal agricultural workers must first be inspected and approved each year by a Federal or State inspector or by a responsible garage or mechanic. A completed Form WH-514 or WH-514a, *Vehicle Identification and Mechanical Inspection Report*, must be submitted to the U.S. Department of Labor each year for each vehicle to be used to transport workers.

- b. **Evidence of compliance** with the insurance or financial responsibility requirements of the Migrant and Seasonal Agricultural Worker Protection Act and the Regulations issued thereunder. 29 C.F.R. §500.120-.128.

If worker’s compensation coverage is provided in lieu of vehicle insurance, submit proof of a worker’s compensation coverage policy of insurance plus a \$50,000 property damage policy or a **Farm Labor Contractor Motor Vehicle Liability Certificate of Insurance** showing that workers are covered by liability insurance while being transported.

**Item 11** – A farm contractor is considered an “owner” of migrant agricultural worker facilities or real property if the farm labor contractor has a legal or equitable interest in such facilities or real property. A farm labor contractor is in “control” of facilities or real property when the contractor is in charge of or has the power or authority to oversee, manage, superintend, or administer facilities or real property either personally or through an authorized agent or employee acting in any of the aforesaid capacities.

Proof that facilities or real property owned or controlled by a farm labor contractor complies with applicable Federal and State safety and health standards can be satisfied by one of the following:

1. A certification issued by a State or local health authority or other appropriate agency, or
2. A dated and signed written request for the inspection of a facility or real property made to the appropriate State or local agency at least forty-five (45) days prior to the date on which it is to be occupied by migrant agricultural workers.

**Item 12** – Section 101(b) of the MSPA requires that a person issued a Farm Labor Contractor Employee Certificate of Registration be an employee of a person holding a valid Farm Labor Contractor Certificate of Registration. 29 U.S.C. § 1811(b). The employer identification should be in the name in which your employer’s Farm Labor Contractor Certificate was issued. If no certificate has been issued but your employer has applied, enter “applied” and the date in the space provided for the registration number.

## Submission of Application

Send first class mail, certified mail, and USPS Express Mail to:

U.S. Department of Labor  
Wage and Hour Division  
Farm Labor Certificate Processing  
90 Seventh Street, Suite 11-100  
San Francisco, CA 94103

**Applies ONLY to Part II Applicants:**

**Statement of Intention to Comply with Housing Requirements.** Any applicant for a Farm Labor Contractor Certificate or Registration who answers “yes” in item 11 must attest that they will not house migrant agricultural workers in any facility or real property under their ownership or control until all necessary written evidence has been submitted and a certificate of registration **Authorizing the Applicant to House Migrant Workers** has been issued.

**Applies to BOTH Part II and Part III Applicants:**

**Certification.** This application must be signed by you before a Certificate of Registration will be issued. The completed application and related forms and documents should be submitted to any local employment service office or other designated office in the State.

**Authorization to Accept Legal Process.** Each applicant for a Certificate of Registration, in addition to all other requirements, must sign the statement authorizing the Secretary of Labor to accept legal service of summons in any action against the applicant when such applicant is unavailable to accept summons, or has departed from the jurisdiction of the court in which such action is commenced.

**Important–Privacy Act and Paperwork Reduction Act Public Burden Statement**

1. The purpose of this form is to provide the Department of Labor with sufficient information to identify and determine the qualifications of the applicant for the requested certificate to serve as a FLC or FLCE.
2. In addition to the Department of Labor using this collection of information in the FLC/FLCE registration process, information from this form may be used in the course of presenting evidence to a court of administrative tribunal or in the course of settlement negotiations.
3. Failure to provide the information precludes the issuance of necessary documents required under the law. Your social security number is used for identification purposes; its submission is authorized by 29 C.F.R. Part 500.
4. Information collected in response to this request may be disclosed in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. § 552; the Privacy Act, 5 U.S.C. § 552(a); and related regulations, 29 C.F.R. Parts 70, 71. The Department of Labor makes no express assurances of confidentiality regarding this collection of information.
5. Submission of this information is required under the MSPA in order to obtain the benefit of a FLC or FLCE Certificate of Registration. 29 U.S.C. §§ 1811-1812; 29 C.F.R. § 500.44-.47. Unlawfully engaging in FLC activities without a valid FLC/FLCE Certificate of Registration may subject you to civil or criminal penalties. See 29 U.S.C. §§ 1851-1853; 29 C.F.R. 500 Subpart E.
6. Persons are not required to respond to this collection of information unless it displays a currently valid OMB Control Number.
7. The Department of Labor estimates that it will take an average of 30 minutes to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. If you have any suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, DC 20210.

**DO NOT SEND THE COMPLETED FORM TO THIS OFFICE, SEND TO THE ADDRESS APPEARING ON PAGE 6 OF THIS FORM.**



## Guidelines Regarding Health & Safety/Field Sanitation/Hygiene<sup>3</sup>

### Potable Drinking Water

Must:

- Be of sufficient amounts, suitably cool and readily accessible to all workers
- Be dispensed in single-use drinking cups. Common drinking cups or dippers are prohibited
- Be provided in water containers which are kept covered, cleaned, and refilled when necessary
- Be provided to all workers. Employers must provide reasonable opportunity to drink and inform workers of the importance of drinking water frequently

See also Fact Sheet #51: Field Sanitation Standards under the Occupational Safety and Health Act

► <http://www.dol.gov/whd/regs/compliance/whdfs51.pdf>



### Field Toilets/Hand Washing

Must:

- Be provided at a rate of one toilet and hand washing facility per twenty (20) workers or fraction thereof
- Be located within ¼ mile of each laborer's place of work in the field
- Be provided with an adequate supply of potable water, soap, single use towels for hand washing, and toilet paper
- Be adequately ventilated, screened and have a self-closing door with lock
- Be maintained and provided to all workers. Employers must provide reasonable opportunity for use and inform workers of the importance of use

### Equipment and Exposure Safety Training

Must:

- Be provided to every employee and include the safe operation and servicing of all equipment with which he is or will be involved
- Be provided at time of initial assignment and at least annually thereafter
- Include additional site-specific training on any known hazards to which workers may be exposed on the farm
- Include planning and developing procedures for emergencies, as well as training for workers on these procedures



Examples of site-specific training topics include but are not limited to: Green Tobacco Sickness, Field Sanitation, Heat Stress, The Label Is the Law, Tobacco Baler Safety, Tobacco Harvester Safety, Burley Safety, Fork Lift Safety. See page 57 for some safety training resources.

### Best Practices - Suggestions for Consideration

- Ensure appropriate breaks, especially in moderate or higher heat index conditions as indicated in the OSHA tables on page 50. Breaks up to 20 minutes are paid (The local weather service can also be a resource in knowing when these conditions are present)
- Educate workers where cultural differences impact health & safety including:
  - Food storage
  - Restrooms and sanitation
  - Worker expectations
    - Protect Yourself from Pesticides - Guide for Agricultural Workers (Spanish)  
[https://www.epa.gov/sites/production/files/2015-06/documents/protectyourselffrompesticidesspanish\\_735\\_b\\_06\\_001.pdf](https://www.epa.gov/sites/production/files/2015-06/documents/protectyourselffrompesticidesspanish_735_b_06_001.pdf)
- Provide on-the-ground training opportunities, for example:
  - Tailgate Training Kits <https://shop.gapconnections.com/home/category/7/tailgate-training-kits>
  - Supervisor and Worker card sets <https://shop.gapconnections.com/home/category/13/supervisor-and-worker-card-sets>
- Establish a system to empower workers to identify and report workplace hazards and housing issues including:
  - Mechanical
  - Electrical
  - Plumbing
- Utilize a concise labor camp checklist to maintain compliance

<sup>3</sup>29 CFR 1928 – OSHA Standards for Agriculture. NC General Statute 95-129 of OSHA of North Carolina.

# Guidelines Regarding Health & Safety/Field Sanitation/Hygiene

## Green Tobacco Sickness

- Avoid working with wet tobacco
- If workers must work with wet tobacco, provide them with personal protective equipment (PPE) that is breathable and water-resistant
- If workers' clothes get wet from tobacco leaves, they should change into dry clothes
- Workers should wash hands often
- Recognize symptoms of GTS, including:
  - ▶ Headache
  - ▶ Dizziness
  - ▶ Nausea
  - ▶ Vomiting
  - ▶ Weakness
  - ▶ Insomnia
  - ▶ Loss of appetite
- Seek medical attention if symptoms appear
- Learning about Green Tobacco Sickness:
  - ▶ <http://www.osha.gov/Publications/OSHA3765.pdf>



## Heat-related Illness

- Workers who are exposed to hot and humid conditions are at risk of heat-related illness
- The risk of heat-related illness becomes greater as the weather gets hotter and more humid
- The heat index can be used to help determine the risk of heat-related illness for outdoor workers, what actions are needed to protect workers, and when those actions are triggered
- The steps employers should take in response to an elevated heat index are the same type of steps that they would follow to address other hazards in the workplace:
  - ▶ Develop an illness prevention plan for work based on the heat index
  - ▶ Train your workers how to recognize and prevent heat-related illness
  - ▶ Track the worksite heat index daily; communicate it and the required precautions to workers
  - ▶ Implement your plan; review and revise it throughout the summer
- OSHA Heat Safety Tool App:
  - ▶ [https://www.osha.gov/SLTC/heatillness/heat\\_index/heat\\_app.html](https://www.osha.gov/SLTC/heatillness/heat_index/heat_app.html)
- Learn more about Heat Stress
  - ▶ <http://www.osha.gov/SLTC/heatstress/>

Heat Index	Risk Level	Protective Measures
Less than 91°F	Lower (Caution)	Basic heat safety and planning
91° to 103°F	Moderate	Implement precautions and heighten awareness
103° to 115°F	High	Additional precautions to protect workers
Greater than 115°F	Very High to Extreme	Triggers even more aggressive protective measures

### NOAA's National Weather Service Heat Index

		Temperature (°F)															
		80	82	84	86	88	90	92	94	96	98	100	102	104	106	108	110
Relative Humidity (%)	40	80	81	83	85	88	91	94	97	101	105	109	114	119	124	130	136
	45	80	82	84	87	89	93	96	100	104	109	114	119	124	130	137	
	50	81	83	85	88	91	95	99	103	108	113	118	124	131	137		
	55	81	84	86	89	93	97	101	106	112	117	124	130	137			
	60	82	84	88	91	95	100	105	110	116	123	129	137				
	65	82	85	89	93	98	103	108	114	121	128	136					
	70	83	86	90	95	100	105	112	119	126	134						
	75	84	88	92	97	103	109	116	124	132							
	80	84	89	94	100	106	113	121	129								
	85	85	90	96	102	110	117	126	135								
	90	86	91	98	105	113	122	131									
95	86	93	100	108	117	127											
100	87	95	103	112	121	132											

Likelihood of Heat Disorders with Prolonged Exposure of Strenuous Activity

Yellow = Caution | Gold = Extreme Caution | Orange = Danger | Red = Extreme Danger



# Recommended Practices

## Green Tobacco Sickness

Workers who plant, cultivate and harvest tobacco are at risk of suffering from a form of nicotine poisoning known as “Green Tobacco Sickness”. This illness causes nausea and vomiting that can lead to hospitalization and lost work time. Tobacco workers suffering from Green Tobacco Sickness are at greater risk for heat illness—a potentially deadly condition.

### What is Green Tobacco Sickness?

Nicotine exposure from handling tobacco leaves may cause nicotine poisoning, also called Green Tobacco Sickness (GTS), with symptoms including nausea and vomiting. Risk of nicotine poisoning increases when the nicotine contained in the tobacco leaves mixes with rain, dew, or sweat, allowing nicotine to get onto the skin and pass into the bloodstream more easily. Workers may experience GTS symptoms while at work or several hours after the workday ends. About one quarter of workers harvesting tobacco in fields located in North Carolina suffered from GTS in a single season, according to a National Institute for Occupational Safety and Health (NIOSH)-funded study.<sup>1</sup> Although GTS symptoms normally do not last more than 24 hours after workers stop handling tobacco leaves, there are currently no comprehensive studies evaluating long-term effects.

### Some Workers are More Susceptible to Green Tobacco Sickness

Workers new to handling and harvesting tobacco are at increased risk for GTS. New workers may have a lower tolerance to nicotine exposure than previously exposed workers. New workers are also less likely to know about GTS and protection methods, emphasizing the need for their employer to provide adequate training. Additionally, children and adolescents may be more sensitive to chemical exposures, more likely to suffer from GTS, and may suffer more serious health effects than adults.<sup>2,3,4,5</sup>



Tobacco Plants

### Health Hazards

Employers who employ tobacco workers must provide a workplace free from recognized hazards that are likely to cause death or serious harm to their workers. Nicotine and dehydration are recognized hazards in tobacco fields.

**Nicotine** is a hazard present in workplaces that require workers to handle tobacco leaves.

- Nicotine is a chemical that is able to pass through the skin and enter the bloodstream causing GTS, a form of nicotine poisoning.
- Nicotine absorption is more likely when it dissolves into rainwater, dew and sweat.
- GTS symptoms include nausea and vomiting. Additional symptoms include dizziness, headaches and cramps.
- Symptoms might not occur for several hours after nicotine overexposure.

**Dehydration and Heat:** Vomiting, a common GTS symptom, leads to dehydration, making tobacco workers more susceptible to heat illnesses. See the section on “[Heat Illness](#)” at the end of this guidance document for important information about preventing heat illnesses.

- Continuing to work while vomiting may lead to significant water loss that can cause body temperature to rise to dangerous levels, especially when working in a hot and humid environment.
- If precautions such as drinking water frequently and resting in the shade are not taken, the risk for heat illness increases and symptoms can range from heat rash and heat cramps to heat exhaustion and heat stroke.
- Heat stroke requires immediate medical attention and can result in death.

## How to Reduce Nicotine Exposure

Employers should provide workers with information and training about nicotine hazards, GTS prevention, and appropriate personal protective equipment (PPE) before letting the workers handle tobacco leaves. Employers should provide workers with effective training in a language and vocabulary that workers can understand.

Employers should:

- Provide training to each worker on how to use PPE. Training should include information about how clothing can be used as PPE and how some clothing may no longer provide adequate protection if it becomes wet.
- Train workers to recognize GTS signs and symptoms and to alert supervisors if they develop symptoms or notice any other workers exhibiting symptoms.
- Train supervisors to ensure that any worker with GTS symptoms immediately drinks water and rests in the shade, in addition to receiving medical attention if necessary.

Employers should also provide these recommended practices and other applicable information to workers and encourage them to share it with healthcare providers to avoid

misdiagnosis if symptoms occur. Nicotine poisoning, heat-related illnesses and pesticide poisoning share similar symptoms. When seeking medical care, it is important to give doctors and other medical staff complete information about the patients’ job activities and the crops they work with, so that patients receive the correct treatment.

**Gloves, long sleeve shirts, long pants and water-resistant clothing** are recommended to prevent exposure to nicotine from tobacco leaves. Employers should train workers on how to care for and clean their clothing to ensure that it protects them from nicotine exposures. Employers are required to provide laundry facilities if workers are housed at a temporary labor camp ([29 CFR 1910.142](#)).

- *Gloves* will protect workers handling tobacco leaves from nicotine absorption through their hands. If gloves are wet, they become less protective.
- *Long Sleeve Shirts and Pants* protect workers from nicotine absorption if tobacco leaves come into contact with their arms or legs. However, once the clothing becomes wet with rainwater, dew, or sweat, it no longer provides adequate protection and may increase absorption risk. Employers should ensure that worker-owned clothing, used to protect against nicotine exposure through tobacco leaves, is dry. For example, employers should allow workers to change out of wet clothing and into dry clothing, as needed, throughout the workday.
- *Water-Resistant Clothing* (e.g., rain suits) keeps dew or rain, which had contact with tobacco leaves, from contact with skin and clothing to protect workers from exposure to nicotine contained in the water. Water-resistant clothing is considered defective or damaged when dew or rain containing nicotine is able to reach the skin through tears or openings and should not be used. If working in the heat with water-resistant clothing, employers must provide additional opportunities for water, rest and shade due to increased heat illness risk. Additional guidance on working in the heat can be found at: [www.osha.gov/heat](http://www.osha.gov/heat).

**Washing with soap and water** immediately after working is recommended to reduce exposure to nicotine. Washing can reduce the amount of nicotine that is on skin by 96%.<sup>6</sup>

Employers must provide handwashing facilities to workers (29 CFR 1928.110(c)) and, if housed in a temporary labor camp, showering facilities in that camp (29 CFR 1910.142(f)).

## Heat Illness

Vomiting, a common GTS symptom, can cause significant water loss and adds to the risk of heat illness. Thousands of workers are affected by heat illness each year. Environmental heat is a recognized hazard. Workers have the right to receive information and training about heat hazards and prevention, and it is the employer's responsibility to provide this training.

Employers should establish a complete heat illness prevention program to prevent heat illness. This includes: provide workers with water, rest and shade; gradually increase workloads and allow more frequent breaks for new workers or workers who have been away for a week or more to build a tolerance for working in the heat (acclimatization); modify work schedules as necessary; plan for emergencies and train workers about the symptoms of heat-related illnesses and their prevention; and monitor workers for signs of illness. Workers new to the heat or those that have been away from work and are returning can be most vulnerable to heat stress and they must be acclimatized.

A heat illness prevention program includes:

- Opportunity for workers to drink water (provided by the employer) every 15 minutes, even if they are not thirsty.
- Shaded areas for workers to rest and cool down.
- Recommendations to workers to wear hats and light colored clothing.
- Training workers to recognize the signs of heat illness and what to do in an emergency.
- Taking steps to help workers acclimatize to the heat if they are new to working in the heat or are returning after time away from work.

**Remember these three simple words: Water, Rest, Shade.** Taking these precautions can mean the difference between life and death.

### Symptoms of Heat Exhaustion

- Headache, dizziness, or fainting
- Weakness and wet skin
- Irritability or confusion
- Thirst, nausea, or vomiting

### Symptoms of Heat Stroke

- May be confused, unable to think clearly, pass out, collapse, or have seizures (fits)
- Increased sweating or may stop sweating

### What to Do When a Worker is Ill from the Heat

- Call a supervisor for help; if the supervisor is not available, call 911.
- Have someone stay with the worker until help arrives.
- Move the worker to a cooler/shaded area.
- Remove outer clothing.
- Fan and mist the worker with water; apply ice (ice bags or ice towels).
- Provide cool drinking water, if able to drink.

*For more information on heat illness, please visit the Occupational Safety and Health Administration's (OSHA's) Campaign to Prevent Heat Illness in Outdoor Workers at [www.osha.gov/heat](http://www.osha.gov/heat).*

**IF THE WORKER IS NOT ALERT or seems confused, this may be a heat stroke. CALL 911 IMMEDIATELY and apply ice as soon as possible.**

## Federal OSHA Standards

Section 5(a)(1) of the *Occupational Safety and Health Act* requires employers to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

29 CFR 1928 Agriculture Standards  
29 CFR 1910.142 Temporary Labor Camps

## State Plans

Twenty-five states, Puerto Rico and the Virgin Islands have OSHA-approved state plans, which are required to be at least as effective as Federal OSHA, but may adopt their own standards and enforcement policies.

## Additional Resources for Green Tobacco Sickness

Brochure on Green Tobacco Sickness – North Carolina Department of Labor  
[www.nclabor.com/ash/publications/green\\_tobacco\\_sickness.pdf](http://www.nclabor.com/ash/publications/green_tobacco_sickness.pdf)

OSHA Overview of Green Tobacco Sickness – United States Department of Labor  
[https://www.osha.gov/SLTC/green\\_tob\\_sickness/index.html](https://www.osha.gov/SLTC/green_tob_sickness/index.html)

NIOSH website on Green Tobacco Sickness which includes links to materials for supervisors and workers  
[www.cdc.gov/niosh/topics/GreenTobaccoSickness](http://www.cdc.gov/niosh/topics/GreenTobaccoSickness)

## Help for Employers

**OSHA** provides a free On-site Consultation for small businesses with fewer than 250 workers at a site (and no more than 500 employees nationwide). On-site consultation services are separate from enforcement and do not result in penalties or citations. To locate the OSHA Consultation Office nearest you, visit OSHA’s website at [www.osha.gov](http://www.osha.gov), or call 1-800-321-OSHA (6742).

OSHA also has Compliance Assistance Specialists throughout the nation who can provide general information about OSHA standards and compliance assistance resources. Contact your local OSHA office for more information.

**NIOSH** is the federal agency that conducts research and makes recommendations to prevent worker injury and illness.

The NIOSH Health Hazard Evaluation (HHE) Program provides advice and assistance regarding work-related health hazards. NIOSH may provide assistance and information by phone, in writing, or may visit the workplace. The HHE program can be reached at [www.cdc.gov/NIOSH/HHE](http://www.cdc.gov/NIOSH/HHE) or 513-841-4382.

Recommendations specific to agricultural work are available through a NIOSH website focused on the Agriculture, Forestry and Fishing Sectors ([www.cdc.gov/niosh/agforfish](http://www.cdc.gov/niosh/agforfish)).

## Workers’ Rights

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
- Receive information and training (in a language and vocabulary the worker understands) about workplace hazards, methods to prevent them, and the OSHA standards that apply to their workplace.
- Review records of work-related injuries and illnesses.
- File a complaint asking OSHA to inspect their workplace if they believe there is a serious hazard or that their employer is not following OSHA’s rules. OSHA will keep all identities confidential.
- Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA. If a worker has been retaliated against for using their rights, they must file a complaint with OSHA as soon as possible, but no later than 30 days.

For additional information on Workers’ Rights, Employer Responsibilities, and other services OSHA offers, visit [www.osha.gov](http://www.osha.gov).

## Contact OSHA

For questions or to get information or advice, to report an emergency, report a fatality or catastrophe, order products, or to file a complaint, contact your nearest OSHA office, visit OSHA's website at [www.osha.gov](http://www.osha.gov), or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627. We will keep your information confidential. We are here to help you.

Many states operate their own OSHA-approved safety and health program. For further information, please visit OSHA's State

Occupational Safety and Health Plans page at [www.osha.gov/dcsp/osp](http://www.osha.gov/dcsp/osp), or call 1-800-321-OSHA (6742).

## Contact NIOSH

To receive documents or more information about occupational safety and health topics, please contact NIOSH at 1-800 CDC-INFO (1-800-232-4636), TTY 1-888-232-6348, email: [cdcinfo@cdc.gov](mailto:cdcinfo@cdc.gov) or visit the NIOSH website, [www.cdc.gov/niosh](http://www.cdc.gov/niosh).

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## References

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- <sup>3</sup> Weaver V.M., T.J. Buckley, J.D. Groopman. 1998. Approaches to environmental exposure assessment in children. *Environmental Health Perspectives* 106(3) 827-832.
- <sup>4</sup> Ginsberg G., W. Slikker Jr., J. Bruckner, B. Sonawane. 2003. Incorporating children's toxicokinetics into a risk framework. *Environmental Health Perspectives* 112(2) 272-283.
- <sup>5</sup> Landrigan P.J., C.A. Kimmel, A. Correa, B. Eskenazi. 2004. Children's health and the environment: public health issues and challenges for risk assessment. *Environmental Health Perspectives* 112(2) 257-265.
- <sup>6</sup> Curwin B.D., M.J. Hein, W.T. Sanderson, M.G. Nishioka, W. Buhler. 2005. Nicotine exposure and decontamination on tobacco harvesters' hands. *Annual of Occupational Hygiene* 49(5) 407-413.

**Disclaimer:** This document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.





## Safety Training Resources

Below are examples of websites that provide farm safety training resources. You may use these training resources with your workers as part of your farm safety plan, as well as to help build your knowledge of federal laws and regulations.

TITLE	WEB ADDRESS
<b>National Ag Safety Database</b>	<a href="http://nasdonline.org/">http://nasdonline.org/</a>

The National Ag Safety Database was developed with funding from the National Institute of Occupational Safety and Health (NIOSH).

<b>OSHA: Agricultural Operations-General Resources</b>	<a href="https://www.osha.gov/dsg/topics/agriculturaloperations/generalresources.html">https://www.osha.gov/dsg/topics/agriculturaloperations/generalresources.html</a>
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OSHA webpage that provides links to farm-related training resources and materials. The webpage also provides links to other national and state organizations that provide resources for safety training.

<b>OSHA: Susan Harwood Training Grant Program</b>	<a href="https://www.osha.gov/dte/sharwood/index.html">https://www.osha.gov/dte/sharwood/index.html</a>
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Provides training and education resources for workers and employees on the recognition, avoidance, and prevention of safety and health hazards in their workplaces. Features training materials such as PowerPoints, instructor and student manuals, and test questions.

<b>National Education Center for Agricultural Safety (NECAS)</b>	<a href="http://www.necasag.org">http://www.necasag.org</a>
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The National Education Center for Agricultural Safety (NECAS) is dedicated to preventing illnesses and injuries among farmers and their employees. This website provides brochures, fact sheets, videos, and webinars on farm-related safety topics as well as other safety and health resources.

<b>CareerSafe</b>	<a href="http://www.careersafeonline.com/index.php/">http://www.careersafeonline.com/index.php/</a>
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CareerSafe is a website that provides interactive online training courses. Their focus is to teach entry-level workers, particularly high school and college students, how to reduce the risks associated with the agricultural industry. CareerSafe provides the OSHA 10-Hour General Industry (Agriculture) safety training.

### Additional Resources to Assist with Training

FLPG Tobacco Farm Worker Safety videos are available in English and Spanish for free viewing on YouTube here: [https://www.youtube.com/channel/UCrIrFd-nB18hTsynFya\\_yA](https://www.youtube.com/channel/UCrIrFd-nB18hTsynFya_yA). DVDs are available for purchase on the GAP Connections website. Specific topics include:

- ▶ Green Tobacco Sickness ([English/Spanish](#))
- ▶ Field Sanitation ([English/Spanish](#))
- ▶ Heat Stress ([English/Spanish](#))
- ▶ The Label Is the Law ([English/Spanish](#))
- ▶ Tobacco Baler Safety ([English/Spanish](#))
- ▶ Tobacco Harvester Safety ([English/Spanish](#))
- ▶ Tractor Safety ([English/Spanish](#))
- ▶ Burley Safety ([English/Spanish](#))
- ▶ Fork Lift Safety ([English/Spanish](#))

These are only a sample of what may be available to you as learning resources. Other resources may be available from your state's department of labor, occupational safety and health office, and cooperative extension office.



## Fact Sheet #40: Federal Youth Employment Laws in Farm Jobs

The Fair Labor Standards Act of 1938 (FLSA) as amended, sets standards for [youth employment in agriculture](#). These standards differ from those for [nonfarm jobs](#).

### To Which Agricultural Workers does the FLSA Apply?

The FLSA covers employees whose work involves production of agricultural goods which will leave the state directly or indirectly and become a part of interstate commerce.

### What are the Minimum Age Standards for Agricultural Employment?

Youths ages 16 and above may work in any farm job at any time.

Youths aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor.

Youths 12 and 13 years of age may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent.

Youths under 12 years of age may work outside of school hours in non-hazardous jobs with parental consent, but **only** on farms where none of the employees are subject to the [minimum wage](#) requirements of the FLSA.

Local youths 10 and 11 may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 if their employers have obtained special waivers from the Secretary of Labor.

Youths of any age may work at any time in any job on a farm owned or operated by their parents.

### What are the Hazardous Occupations in Agriculture?

Minors under 16 may not work in the following occupations declared hazardous by the Secretary of Labor:

- operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor;
- operating or working with a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a nongravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or nonwalking-type rotary tiller;
- operating or working with a trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band or chain saw;
- working in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with a newborn calf (with umbilical cord present);
- felling, buckling, skidding, loading, or unloading timber with a butt diameter or more than 6 inches;
- working from a ladder or scaffold at a height of over 20 feet;
- driving a bus, truck or automobile to transport passengers, or riding on a tractor as a passenger or helper;

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- working inside: a fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes;
- handling or applying toxic agricultural chemical identified by the words "danger," "poison," or "warning" or a skull and crossbones on the label;
- handling or using explosives; and
- transporting, transferring, or applying anhydrous ammonia.

The prohibition of employment in hazardous occupations does not apply to youths employed on farms **owned or operated** by their parents. In addition, there are some exemptions from the prohibitions:

- 14 and 15-year old student learners enrolled in vocational agricultural programs are exempt from certain hazardous occupations when certain requirements are met; and
- minors aged 14 and 15 who hold certificates of completion of training under a 4-H or vocational agriculture training program may work outside school hours on certain equipment for which they have been trained.

### **What if state youth employment standards differ from federal standards?**

Many states have laws setting standards for youth employment in agriculture. When both state and federal youth employment laws apply, the law setting the most stringent standard must be observed.

### **Who enforces the federal youth employment laws?**

The Wage and Hour Division of the U.S. Labor Department's Employment Standards Administration enforces the laws. Employers may be fined up to \$11,000 for each youth employment violation.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
 Frances Perkins Building  
 200 Constitution Avenue, NW  
 Washington, DC 20210

**1-866-4-USWAGE**  
 TTY: 1-866-487-9243  
[Contact Us](#)

# Farmworkers' Rights

## Migrant and Seasonal Farmworkers Have These Rights

The Migrant and Seasonal Agricultural Worker Protection Act requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply:

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate, at the time of recruitment (for migrant workers)
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment
- To be paid wages when due
- To receive itemized, written statements of earnings for each pay period
- To purchase goods from the source of their choice
- To be transported in vehicles which are properly insured and operated by licensed drivers, and which meet federal and state safety standards
- For migrant farmworkers who are provided housing:
  - ▶ To be housed in property which meets federal and state safety and health standards
  - ▶ To have the housing information presented to them in writing at the time of recruitment
  - ▶ To have posted in a conspicuous place at the housing site or presented to them a statement of the terms and conditions of occupancy, if any
- To file a complaint with DOL or file suit directly in federal district court

## H-2A Farmworkers Also Have These Rights

The Immigration and Nationality Act (INA) allows for the employment of temporary, non-immigrant workers in agriculture (H-2A workers) H-2A Farmworkers also have these rights:

### In route to and from the US:

- To receive reimbursement for visa-related and other recruitment expenses
- To receive payment for transportation, food and (when required) lodging

### While in the US:

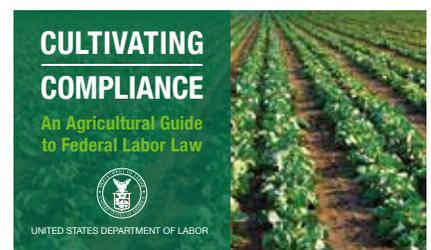
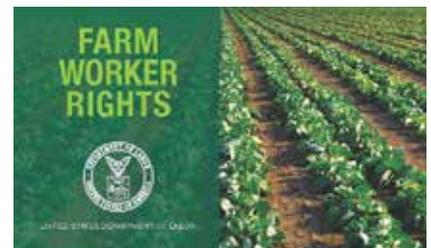
- Safe employer-provided transportation, safe housing and adequate cooking facilities or three meals a day at regulated cost
- Any worker employed by an H-2A employer working in a job covered by the labor certification or doing the same agricultural work as the H-2A workers may also be entitled to these rights

### USDOL - Wage and Hour Division Workers Rights Card:

- ▶ <http://www.dol.gov/whd/FLSAEmployeeCard/FarmWorkerEnglish.pdf> (ENG)
- ▶ <http://www.dol.gov/whd/FLSAEmployeeCard/FarmWorkerSpanish.pdf> (SPAN)

For a complete list of these requirements, see the Cultivating Compliance Employers Guide and Video

- ▶ Guide: <http://www.dol.gov/whd/FLSAEmployeeCard/AgGuideEnglish.pdf>
- ▶ Video: <https://www.youtube.com/watch?v=tjYEFvsUeq0>





## Best Practices Regarding Farmworkers' Rights

### Union Dues

- H-2A & MSPA – If requested or agreed to by the worker, and unless prohibited by law, union dues deducted from pay if worker is union member

### Freedom of Association

- Allow workers the right to “freedom of association,” meaning the right to voluntarily organize and form or join workers’ unions or other organizations dedicated to the well-being of workers or their families. In order to exercise that right, workers should be given reasonable access to representatives of those unions and organizations during non-work hours, and workers should be protected against retaliation if they choose to organize or join a union.



## Fact Sheet #77C: Prohibiting Retaliation Under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

This fact sheet provides general information concerning MSPA's prohibition of discrimination against a migrant or seasonal agricultural worker who has filed a complaint or participated in any proceeding under or related to MSPA.

The Wage and Hour Division of the Department of Labor administers and enforces MSPA, the federal law that protects migrant and seasonal agricultural workers. **MSPA establishes employment standards related to wages, housing, transportation, disclosures, and recordkeeping. It also requires farm labor contractors to register with the U.S. Department of Labor.** The Wage and Hour Division investigates MSPA violations through its complaint-based and directed investigation programs.

### Coverage

Under MSPA, **agricultural employers, agricultural associations, and farm labor contractors** who engage in at least one **named activity** as it relates to **a migrant or seasonal agricultural worker** are required to provide basic protections to those workers unless otherwise exempt.

Named activities are:

The furnishing, employing, soliciting, recruiting, hiring, and transporting one or more migrant or seasonal agricultural workers.

- An **agricultural employer** is any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery, or who produces or conditions seed.
- An **agricultural association** is any non-profit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable state law.
- A **farm labor contractor** is any person (other than an agricultural employer, agricultural association, or an employee of either an agricultural employer or association) who is paid or promised money or other valuable consideration in exchange for engaging in at least one of the named activities.

**Additionally, each person who owns or controls a facility or real property that is used for housing migrant agricultural workers must comply with federal and state safety and health standards, unless specific exclusion criteria for providing housing on a commercial basis are met.**

- A **migrant agricultural worker** is employed in agricultural employment of a seasonal or other temporary nature, and is required to be absent overnight from his permanent place of residence.
- A **seasonal agricultural worker** is an individual who is employed in agricultural employment of a seasonal or other temporary nature, and is *not* required to be absent overnight from his permanent place of residence when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations or when employed in canning, packing, ginning, seed conditioning or related

research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

- **Agricultural employment** is defined by MSPA as employment in any service or activity included within section 3(f) of the Fair Labor Standards Act; or section 3121(g) of the Internal Revenue Code; or the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. **The definition of agricultural employment has been expanded by the courts to also include many forestry activities performed by migrant or seasonal workers.**

### Prohibitions

Section 505(a) of MSPA states that it is a violation for *any person* to “**intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this Act, or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.**”

### Enforcement

If a migrant or seasonal agricultural worker believes, with just cause, that he has been discriminated against, the worker may file a complaint with the Secretary of Labor within **180 days of the alleged discriminatory action.**

If upon investigation, the Secretary of Labor determines that section 505(a) has been violated, the Secretary may bring a civil action, which may seek to restrain violation of section 505(a) and order the reinstatement of the worker, with back pay or damages.

### Where to Obtain Additional Information

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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## Fact Sheet #77D: Retaliation Prohibited under the H-2A Temporary Visa Program

*This fact sheet provides general information concerning the prohibition against retaliating against an individual for exercising his or her rights or participating in matters protected under the H-2A nonimmigrant temporary visa program.*

The Immigration and Nationality Act (INA) authorizes the admission into the United States of temporary, non-immigrant alien workers to perform agricultural labor or services that are temporary or seasonal in nature (H-2A workers). Employers of such workers and of U.S. workers in corresponding employment (workers who perform work included in the job order or agricultural work performed by the H-2A workers) are obligated to comply with the terms and conditions specified in the job order/contract, and all applicable statutory and regulatory requirements, including the prohibition against retaliation.

### Prohibitions

29 CFR § 501.4 prohibits discrimination and states that *a person* may not “**intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who has**” engaged in any of the following actions in relation to protections under the H-2A program or the INA:

- Filed, instituted, or caused to be instituted any complaint or proceeding;
- Testified or is about to testify in any such proceedings;
- Consulted with an attorney or legal assistance program;
- Exercised or asserted, on behalf of himself or others, any right or protection.

### Coverage

“Persons” who are precluded from engaging in prohibited discrimination includes, but is not limited to, agricultural associations, agricultural employers, agents, recruiters, and H-2A labor contractors.

The prohibited actions may not be taken against “any person,” which includes, but is not limited to, H-2A visa workers and workers in corresponding employment. An employment relationship is not required.

For additional general information on the obligations of H-2A program, please visit Fact Sheet #26 at <http://www.dol.gov/whd/regs/compliance/whdfs26.htm>.

### Enforcement

If an individual believes that he or she has been discriminated against, the worker may file a complaint with any local Wage and Hour Division (WHD) office. All complaints are confidential and investigations are conducted in such a manner so as to protect confidentiality.

If, upon investigation, the WHD determines such violations occurred, appropriate remedies may be sought, including: civil money penalties, injunctive relief, and/or any additional remedies necessary to make the employee whole as a result of the discrimination. 29 CFR § 501.16. Further, under section 218 of the INA, the Secretary is authorized to take such actions, including imposing appropriate penalties and seeking appropriate

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injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section. 8 U.S.C. § 1188(g)(2). WHD may also initiate debarment proceedings and recommend revocation of labor certification to the Office of Foreign Labor Certification (OFLC).

Allegations of discrimination related to immigration status or based on citizenship should be directed to the U.S. Department of Justice Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices. For more information on how to file a charge, visit their website at <http://www.justice.gov/crt/about/osc/htm/charge.php>.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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[Contact Us](#)

The National Human Trafficking Resource Center can help determine if you have encountered victims of human trafficking, identify local resources available to help victims, and coordinate with local social service organizations to assist victims so they can begin the process of restoring their lives. 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 or intimidated
- Deceived about terms and conditions of work
- Lack of control over personal schedule, money, ID or 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
- Bruises, depression, fear; overly submissive or isolated
- Excessive hours worked against their will

### 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?

### Where to Get Help

If you think someone is a victim of human trafficking, call the National Human Trafficking Resource Center, 1-888-373-7888 or text 233733.

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.

911

For urgent situations, notify local law enforcement immediately by calling 911.

Consulado General de México  
431 Raleigh View Road  
Raleigh, N.C. 27610  
Tel. 919-615-3653 /919-615-3694  
Tel Emergencias 24/7  
(520) 623 78 74 y/o 919-796-3637

El Consulado es una Oficina del Gobierno de México en el extranjero cuya principal misión es proteger tus derechos e intereses.

For more information, please see Interfaith Center on Corporate Responsibility's Best Practice Guidance on Ethical Recruitment of Migrant Workers: <https://www.iccr.org/best-practice-guidance-ethical-recruitment-migrant-workers-0>







# I am an employer

# E3

## How do I complete Form I-9, Employment Eligibility Verification?



U.S. Citizenship and Immigration Services

**U.S. employers are required by law to verify the** identity and employment authorization of each individual they hire after November 6, 1986, for employment in the United States by completing, **Form I-9, Employment Eligibility Verification**. In the Commonwealth of the Northern Mariana Islands (CNMI), employers must complete Form I-9 to verify the identity and employment authorization of each new employee (both citizen and noncitizen) hired on or after November 28, 2011.

Employers who hire or continue to employ individuals knowing that they are not authorized to be employed in the United States, or who fail to comply with employment authorization verification requirements, may face civil and, in some cases, criminal penalties. Form I-9 must be completed for each newly hired employee, including U.S. citizens, permanent residents, and aliens authorized to work in the United States, to demonstrate the employer's compliance with the law and the employee's work authorization. Through the Form I-9 process, employers verify, in a nondiscriminatory manner, whether their employees possess proper authorization to work in the United States.

### Who is responsible for completing the different sections of Form I-9?

The employee must complete Section 1, Employee Information and Verification, of Form I-9. The employee must attest that he or she is a U.S. citizen or national, a lawful permanent resident, or an alien authorized to work in the United States. The employee must present documentation to the employer establishing identity and employment authorization by choosing from the documents listed on the most current "Lists of Acceptable Documents." The employer is obligated, after physically examining the documents presented by the employee, to complete Section 2, Employer Review and Verification, or Section 3, Reverification and Rehires (if applicable), of Form I-9.

### When should Section 1 of Form I-9 be completed?

Each newly hired employee should complete and sign Section 1 no later than the first day of employment, regardless of his or her immigration status. "First day of employment" refers to the first day of work in exchange for pay or other remuneration.

### When should Section 2 of Form I-9 be completed?

Employers or their authorized representative must complete Section 2 by physically examining evidence of identity and employment authorization within 3 business days of the employee's first day of employment. For example, if an employee begins employment on Monday, the employer must complete Section 2 by Thursday of that week. However, if an employer hires an individual for less than 3 business days, Section 2 must be completed no later than the first day of employment.

### What documents must the employee present?

The employee may present documents of their choosing from those listed on the most recent Lists of Acceptable Documents, which can be found on the last page of the Form I-9. The employee must present either one document from List A, or two documents—one from List B and one from List C:

- List A (documentation establishing both identity and authorization to work);
- List B (documentation establishing only identity);
- List C (documentation establishing only authorization to work).

The employer must physically examine the documentation establishing identity and employment authorization that the employee presents. Originals (not copies) must be examined. The one exception is the birth certificate, which can be a certified copy.

In certain instances, the employee may present acceptable "receipts" in lieu of original documents in the Form I-9 process. For example, if an individual's document has been lost, stolen, or damaged, then he or she can present a receipt for the application for a replacement document. The replacement document must be presented to the employer within 90 days of hire. For more information on the receipt rule, see **Form M-274, Handbook for Employers: Guidance for Completing Form I-9**, on [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central).

**Note:** A receipt for an application for an initial or renewal USCIS Employment Authorization Document (EAD) filed on a **Form I-765, Application for Employment Authorization**, is not acceptable for Form I-9 verification purposes.

### When should Section 3 of Form I-9 be completed?

Employers should complete Section 3 of Form I-9 when re-verifying expired employment authorization or in certain rehire situations. Reverification applies to those employees whose employment authorization (or evidence thereof) expires and is a way to verify that such employees are still authorized to work. When rehiring an employee within 3 years of the date Form I-9 was originally completed, employers have the option to complete a new Form I-9 or complete Section 3 of the most current version of Form I-9. When completing Section 3 in either a reverification or rehire situation, if the employee's name has changed, you may record the name change in Block A of Section 3.

### Reverification

For employees who attest in Section 1 that their employment authorization expires, employers must reverify employment authorization on or before that date.

Employers must also reverify employment authorization if an employee's List A or List C employment authorization document presented in Section 2 (or a previously completed Section 3) expires. However, employers should not reverify U.S. citizens and nationals or lawful permanent residents who presented a Permanent Resident Card (**Form I-551**) for Section 2. Reverification does not apply to List B documents.

For more information on reverification, see **Form M-274**, Handbook for Employers: Guidance for Completing Form I-9, on [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central).

### Rehire

If you rehire your employee within 3 years of the date that a previous Form I-9 was completed, you may complete a new Form I-9 for your employee or complete Section 3 of the previously completed Form I-9.

### Can I tell an employee what identity and employment authorization documents to present for Form I-9?

No, an employer cannot tell an employee which documents to present for Form I-9 purposes. Employers should direct the employee to the Lists of Acceptable Documents on the Form I-9. However, an employer can reject a document that an employee has chosen to present if, following the employer's examination of the original document, the employer determines that the document does not reasonably appear to be genuine or to relate to the employee.

### How do I know if a document is genuine or false?

The law requires that an employer examine the original document (not a photocopy) and make a determination that the document reasonably appears to:

- relate to the employee and
- be genuine.

It is important to note that improperly rejecting a document could result in a violation of the anti-discrimination provisions of immigration law, so employers should carefully examine documents before deciding to reject them.

### Can employers examine photocopies of identity and employment authorization documents?

No, employers must review original documents. The only exception is the birth certificate, which can be a certified copy and must bear an official seal.

### How long should Form I-9 be retained?

Employers must retain an employee's Form I-9 for as long as the individual works for the employer. Once the individual's employment has terminated, the employer must determine how long after termination the Form I-9 must be retained. The length of retention after the individual's employment has terminated is either 3 years after the date of hire (i.e., the date that employment began), or 1 year after the date employment is terminated, whichever is later. While employers are not required to make copies of the original documents examined for Form I-9, employers who do so must store the copies for the retention period.

### How can I get more information about Form I-9?

Visit I-9 Central at [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central) for more information about Form I-9 and to download **Form M-274**, Handbook for Employers: Guidance for Completing Form I-9.

## Key Information

Key USCIS forms referenced in this guide	Form #
Employment Eligibility Verification	I-9
Permanent Resident Card	I-551
Application for Employment Authorization	I-765
Handbook for Employers	M-274

### Other U.S. Government Services—Click or Call

General Information	<a href="http://www.usa.gov">www.usa.gov</a>	1-800-333-4636
U.S. Dept. of State	<a href="http://www.state.gov">www.state.gov</a>	1-202-647-6575
U.S. Department of Justice OSC	<a href="http://www.justice.gov/crt/osc/">www.justice.gov/crt/osc/</a>	1-800-255-8155

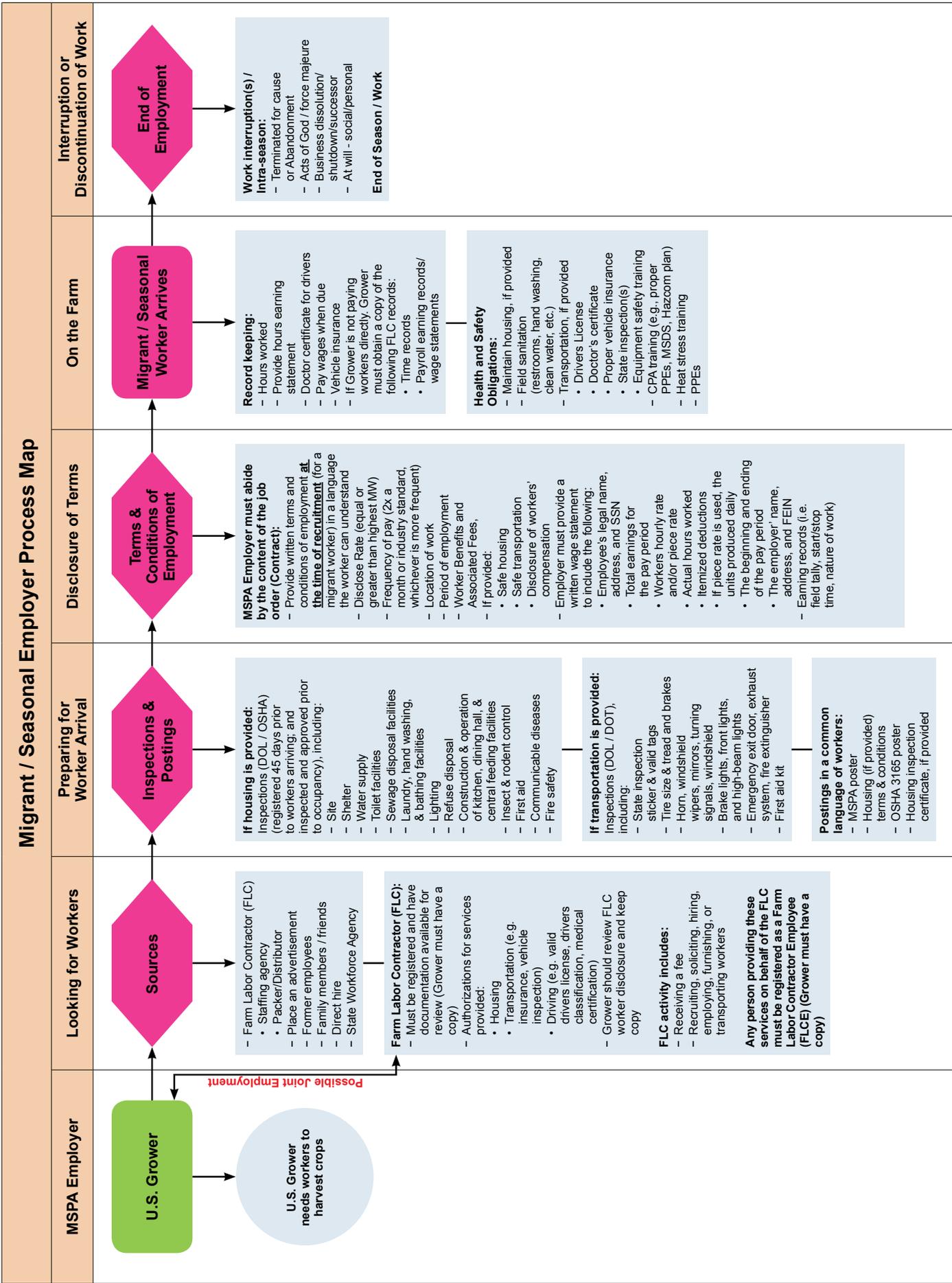
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If you don't have Internet access at home or work, try your local library.

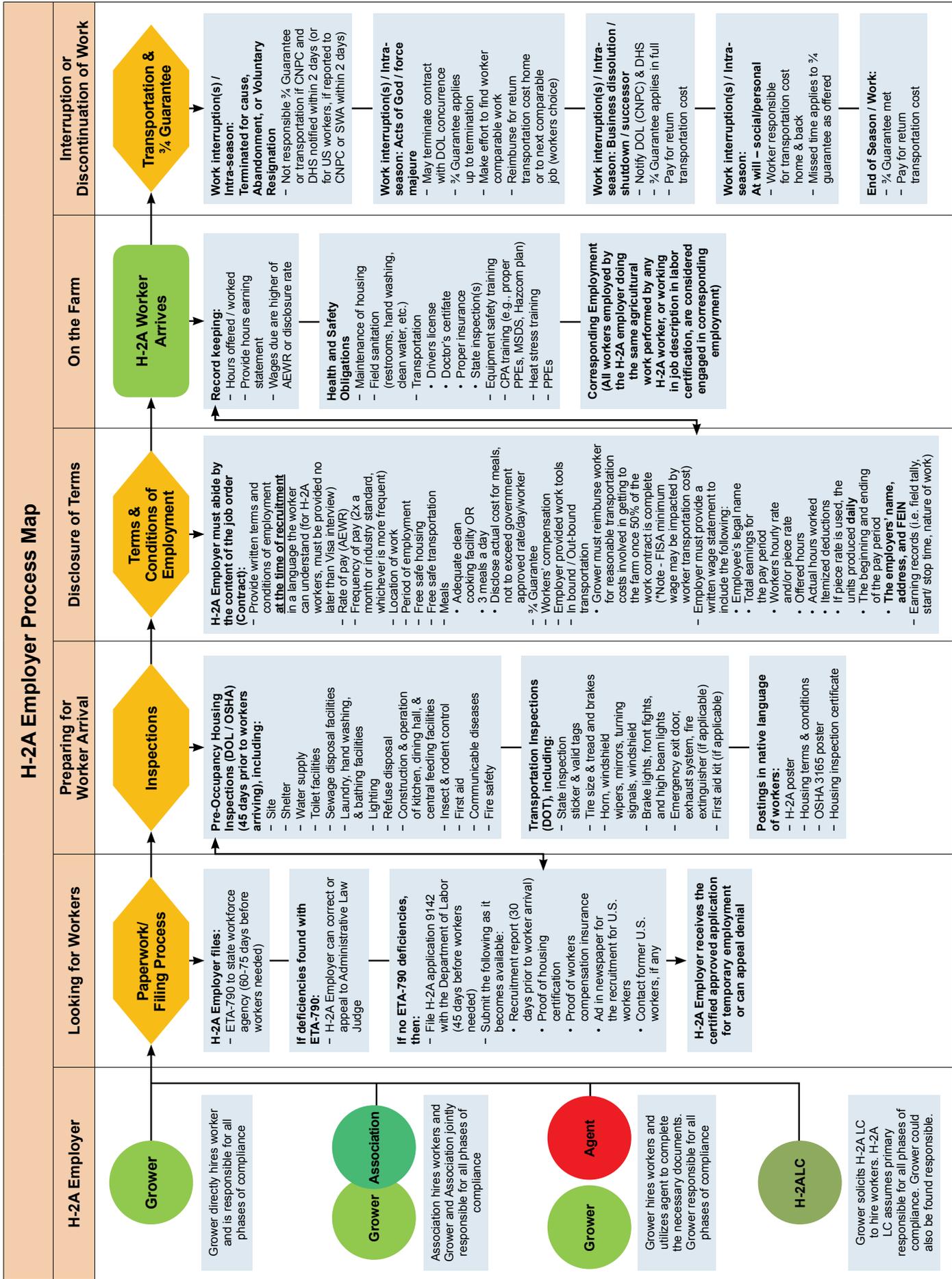
If you cannot find what you need, please call **Customer Service at: 1-800-375-5283**  
*Hearing Impaired TDD Customer Service:*  
*1-800-767-1833*

**Disclaimer:** *This guide provides basic information to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, please visit our Web site. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency accredited by the Board of Immigration Appeals.*



\*This document is a summary of certain issues related to labor recruitment. It is not designed to contain information about each and every possible legal and regulatory obligation/requirement and it should not be relied upon as such.

# H-2A Employer Process Map



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