

U.S.

● IMMIGRATION AND NATIONALITY ACT (*TEMPORARY AGRICULTURAL WORKERS*)

STATUTORY CITATION: 8 USC § 1101(a)(15)(H)(ii)(a) and 8 USC § 1188

RELATED REGULATIONS: 20 CFR Part 655, Subpts. B and N

GENERAL SUMMARY: Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, as amended in 1986, authorizes the importation of non-immigrant foreign workers into the United States to perform temporary or seasonal agricultural labor, under conditions prescribed in Section 216 of the Act.

SPECIFIC TERMS AND CONDITIONS

INITIAL RECRUITMENT OF DOMESTIC WORKERS — No sooner than 75 days and no later than 60 calendar days before the first date on which a temporary or seasonal agricultural operation is expected to begin, a grower or growers' association that anticipates a shortage of U.S. workers and wishes to apply for temporary foreign labor under the so-called "H-2A" program must submit a formal job offer to the U.S. Department of Labor and the state employment service, and begin affirmative efforts to locate U.S. workers for the jobs described in the offer. Until such time as the need for foreign workers is certified and H-2A workers have departed for the place of employment, active recruitment of domestic labor must continue, including the placement of advertisements in general-circulation newspapers, and in a language other than English if deemed appropriate by the employment service.

EXTENDED RECRUITMENT OF DOMESTIC WORKERS — From the time H-2A workers depart for the place of employment until 50 percent of the specified employment period has elapsed, the employer must hire any qualified U.S. worker who applies for any of the positions for which the H-2A workers were approved. Moreover, no U.S. worker may be rejected for or terminated from such employment for other than a lawful job-related reason, and the employer must report every rejection and termination to the local employment office. The "50 percent rule" does not, however, apply to any farm operator or other H-2A employer who did not use more than 500 worker-days of agricultural labor in any calendar quarter of the preceding calendar year and who is not associated with other employers applying for or utilizing H-2A workers.

CONTENTS OF JOB OFFER — Among other elements, an H-2A job offer must contain certain minimum standards and guarantees, summarized in brief below, all of which must be incorporated into a written work contract and furnished to each worker no later than the first day of employment. Both the job offer and the contract must afford U.S. workers the same benefits, wages and working conditions as their H-2A counterparts.

Pay Rates — For every hour on the job in any pay period, each worker is entitled to receive no less than (1) the federal minimum wage, (2) the state minimum wage, (3) the federally prescribed "adverse effect wage rate" for H-2A employment in the state, or (4) the prevailing wage rate, whichever of the four figures is highest.

Guaranteed Paid Workdays — In general, each U.S. and H-2A worker employed in comparable jobs by an H-2A employer is guaranteed employment for at least 3/4 of the workdays in all periods during which the work contract is in effect. If work is not available for the minimum number of guaranteed days, and for the full number of hours of daily work time defined in the contract, the employer must pay the worker the amount that would have been earned had the individual actually worked the guaranteed number of defined workdays.

Wage Payments, Deductions, and Statements — Employers who utilize temporary foreign agricultural workers must pay both their foreign and U.S. workers at least twice a month, or more often if such is the prevailing practice in the area of employment. Employers are generally permitted to withhold from a worker's pay only those deductions that are required by law or are otherwise reasonable, provided the non-mandatory deductions are spelled out in the contract. On or before each payday, the employer must provide each worker with written documentation showing (1) the worker's total earnings for the pay period, (2) the hourly wage or piece rate, (3) the hours of employment offered to the worker and the hours actually worked, (4) each deduction from the worker's pay and its purpose, and (5) the worker's daily piecework production if paid on a piecework basis.

Workers' Compensation — At no cost to the worker, each H-2A employer is obligated to obtain workers' compensation or equivalent insurance to cover medical expenses and related benefits in the event of a worker's injury on the job or occupational disease.

Transportation — Each foreign or domestic worker who completes 50 percent of the work contract period is entitled to reimbursement for costs incurred by the worker for transportation and meals between the place from which the worker has come to work for the employer and the place of employment; transportation and meal costs must be advanced to the worker prior to the trip whenever it is common practice for non-users of foreign labor in the same occupation and the same area to do so. Likewise, if the worker completes the contract period, the employer is obligated to provide or pay for the worker's transportation and daily subsistence back to the place of origin or to the next place of employment. During the course of the contract, the employer must furnish transportation between the worker's living quarters and the worksite, without cost, if the worker is unable to return to his or her own home within the same day.

Housing — To those workers who are not reasonably able to return to their residence each day, the employer must provide housing without cost to the worker. Housing facilities owned or operated by the employer must meet applicable ETA or OSHA standards, while rental units or public housing must generally comply with applicable local, state or federal standards. When it is prevailing local practice to provide domestic farmworkers with family-type housing, family housing must be provided to those U.S. workers employed under an H-2A work contract who request it for themselves and their families.

Meals — An H-2A employer must either serve the workers three meals a day or furnish free and convenient cooking facilities to enable the workers to prepare their own meals. The cost of employer-provided meals may be assessed against the workers, but meal charges may generally not exceed the limit prescribed by regulation (currently \$10.64 per day).

Supplies and Equipment — Unless it is common practice in the particular locality and crop operation for workers to provide their own, the employer must furnish all supplies, tools and other equipment required to perform the assigned tasks, without any charge or deposit.

SPECIAL NOTES OR ADVISORIES

RETALIATION — A person may not discharge, discipline or discriminate in any manner against a worker because the worker has

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consulted with an attorney or legal services program personnel, filed a complaint, participated in a proceeding, or exercised any other right afforded by these provisions. Reports of unlawful retaliation should be filed with the Wage and Hour Division.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202-693-0072). The Wage and Hour Division is responsible for enforcing compliance with the required work contracts between certified H-2A employers and their foreign and domestic employees performing services under those agreements. When investigation discloses evidence of a violation, the Division may impose penalties, seek injunctive relief, and order specific performance of contractual obligations, including recovery of unpaid wages. Each violation of the work contract committed against a worker carries a maximum civil fine of \$1,500.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Washington, D.C. 20210 (202-693-3010). OFLC is responsible for processing applications by agricultural employers seeking temporary foreign workers, and for certifying the number of such workers needed, if any. It is OFLC's role to assure that prospective H-2A employers have fulfilled their obligation to recruit and hire eligible domestic farmworkers prior to certification and during the first half of the contract period, that the associated job offers comply with statutory and regulatory requirements, and that employers refrain from using the H-2A program to replace farmworkers who are on strike or otherwise involved in a labor dispute. Non-compliance with pre-certification recruitment requirements may result in delay or denial of the H-2A application, and an employer's failure to abide by the terms and conditions of certification may lead to denial of all subsequent petitions for foreign agricultural labor for a period of up to 3 years.

Colorado

● STATE LABOR RELATIONS LAWS

STATUTORY CITATION: Colo. Rev. Stat. §§ 8-2-104 and 8-2-107

GENERAL SUMMARY: The state laws governing labor relations make it illegal for anyone to bring workers into Colorado for the purpose of employment, or to induce or persuade workers to change from one place of employment to another within the state, by means of false or deceptive representations, false advertising or false pretenses concerning the kind of work to be done, the amount or nature of compensation to be paid, the sanitary or other conditions of employment, or the existence or non-existence of a strike or lockout. Any worker who has been subjected to or victimized by such treatment or actions is entitled to recover all damages sustained as a consequence, in addition to court costs and attorney's fees.

PROVISIONS APPLICABLE TO AGRICULTURE: These provisions apply without distinction between agricultural and non-agricultural workers or employment.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *None.*

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Through a private attorney or public legal service provider, a worker who has suffered damages as a result of a violation of these provisions may file suit in civil court against the party responsible.

Illinois

● PUBLIC EMPLOYMENT OFFICE ACT

STATUTORY CITATION: 20 Ill. Comp. Stat. §§ 1015/0.01 – 1015/15

GENERAL SUMMARY: The Public Employment Office Act establishes a system of free public employment offices in Illinois, and among other provisions prescribes practices for the fair, effective matching of job applicants with available job openings. The public employment office law includes explicit restrictions on Illinois employers recruiting migrant agricultural workers.

SPECIFIC TERMS AND CONDITIONS

STATEMENT OF EMPLOYMENT CONDITIONS — No employer in Illinois may utilize the state employment service to recruit migrant farmworkers unless the employer files a statement with the state agency disclosing the terms and conditions of the employment and the existence of any strike or other concerted labor action by the employer's workers at the proposed job site. A copy of the statement, in English and any other language in which the worker is fluent, must be given to each farmworker by the employer prior to recruitment, and must also be posted by the employer in a conspicuous location at the worker's job site or place of residence.

SUMMARY OF EMPLOYMENT LAWS — Each migrant farmworker recruited for employment must be furnished with a written summary of all state laws relevant to the worker's employment, including, at a minimum, the provisions regarding wage payments, wage assignments, wage deduction orders, and migrant labor camps. The summary must be in English and any other language in which the worker is fluent.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Illinois Department of Employment Security, Springfield, Illinois 62702 (773-412-8427)*. The Department operates the state's system of free public employment offices, and in that role must assure that job orders from employers seeking qualified workers comply with state and federal labor standards. After notice and opportunity for a hearing, an employer who fails or neglects to furnish the statements required under these provisions may be denied future use of the public employment service. In addition, the Department is obligated to notify the state attorney general of all violations of these provisions for possible criminal prosecution.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None*.

Michigan

● STATE LABOR LAWS (*WORK AWAY FROM HOME LOCALITY*)

STATUTORY CITATION: Mich. Comp. Laws §§ 480.581 – 480.583

GENERAL SUMMARY: Any person or firm that recruits a worker to perform services away from the worker's home location, through promise of wages or other valuable consideration, must provide the worker with a written statement specifying the terms and conditions of the job, the wage rates to be paid, and how, when and where such wages will be paid. In offering inducements to a worker for employment away from home, anyone who misrepresents any of these conditions is liable to the affected worker for the full amount of the damages suffered.

PROVISIONS APPLICABLE TO AGRICULTURE: These provisions apply to employment in any industry and any occupation in the state, implicitly including agriculture.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – These provisions are enforced by public prosecuting attorneys in criminal court.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Through private legal counsel or a public legal service provider, a worker may recover damages resulting from a violation of these provisions by filing a civil suit against the offending party.

Minnesota

● STATE LABOR LAWS (*MIGRANT LABOR RECRUITMENT*)

STATUTORY CITATION: Minn. Stat. §§ 181.85 – 181.91

GENERAL SUMMARY: The state labor statutes include provisions regulating the recruitment of out-of-state migrant workers for seasonal agricultural labor in Minnesota.

SPECIFIC TERMS AND CONDITIONS

Every processor of fruits and vegetables in Minnesota that employs, either directly or indirectly through a recruiter, more than 30 migrant workers per day, for more than 7 days in a calendar year, must comply with the disclosure provisions summarized in the next paragraph. A migrant worker is defined as an individual at least 17 years of age who travels more than 100 miles to Minnesota from some other state to perform seasonal agricultural labor in Minnesota.

At the time of recruitment, the employer is required to provide each such worker with a written employment statement plainly specifying, in English and Spanish, all of the following:

- (1) The date on which and the place at which the statement was provided to the worker.
- (2) The names and permanent addresses of the worker, employer and recruiter.
- (3) The expected date of the worker's arrival at the job site, the anticipated date the job will begin, the approximate hours of employment, and the minimum period of employment.
- (4) The crops and crop operations in which the worker will be employed.
- (5) The wage rates to be paid.
- (6) The terms of payment.
- (7) Any wage deductions to be made.
- (8) Whether or not housing will be provided.

The required employment statement is deemed an enforceable contract between the worker and the employer.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *None.*

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Using private legal counsel or a public legal service provider, a migrant worker aggrieved by a violation of these provisions may file a civil suit for damages against the employer involved. A judgment in the worker's favor may include an assessment against the employer for actual damages suffered by the worker, or penalties ranging from \$50 to \$500, plus court costs and attorney's fees.

● STATE LABOR LAWS (*FALSE STATEMENTS IN RECRUITMENT*)

STATUTORY CITATION: Minn. Stat. §§ 181.64 – 181.65

GENERAL SUMMARY: It is illegal for a person or firm doing business in Minnesota to recruit or induce a worker to relocate from some other place in order to work in any form of labor in Minnesota, (1) by means of knowingly false representations concerning the type of work, wages, or sanitary conditions, or (2) by failing to advise the worker of a strike or lockout at the place of proposed employment.

PROVISIONS APPLICABLE TO AGRICULTURE: The prohibition against misrepresentation in recruitment applies to agricultural employment the same as any other classification of labor.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *None.*

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — A worker who is recruited or induced to change his or her place of employment, as described above, has a right to sue for recovery of damages sustained as a consequence of any misrepresentation, false advertising or false pretenses. In addition to actual damages, the worker is entitled to reasonable attorney's fees.

Montana

● STATE LABOR LAWS (*DECEPTION IN RECRUITMENT*)

STATUTORY CITATION: Mont. Code § 39-2-303

GENERAL SUMMARY: Chapter 2, Part 3 of the state labor laws includes a provision limiting certain forms of recruitment activity, affecting both agricultural and non-agricultural employment.

SPECIFIC TERMS AND CONDITIONS: It is illegal for anyone doing business in Montana to induce or persuade workers to change from one place of employment to another within the state through deception, misrepresentation or false advertising concerning the kind of work available, the sanitary conditions on the job, other terms of employment, or the existence of a strike or similar labor dispute at the job site.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *None.*

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Any worker who has relocated within the state on the basis of false or deceptive job recruitment practices contrary to this provision is entitled to recovery of damages sustained as a consequence, in a private suit utilizing legal counsel of the worker's own choice. A judgment in the worker's favor may include payment of reasonable attorney's fees.

Nevada

● MISCELLANEOUS EMPLOYMENT LAWS (*MISREPRESENTATION IN RECRUITMENT*)

STATUTORY CITATION: Nev. Rev. Stat. § 613.010

GENERAL SUMMARY: Chapter 613 of the state statutes regulates employment practices in Nevada, and includes a provision restricting certain forms of job recruitment. This provision generally applies equally to all occupations and industries in the state.

SPECIFIC TERMS AND CONDITIONS: It is unlawful for anyone doing business in Nevada to induce or persuade workers to move from one place of employment to another, or to bring workers into the state for employment of any kind, by means of misrepresentation, false advertising or false pretenses concerning the type of work to be done, the amount or kind of compensation to be paid, the sanitary facilities or other job conditions, or the existence or non-existence of a strike or other labor dispute at the job site.

Violation of this provision is classed as a gross misdemeanor and may be prosecuted in criminal court. Likewise, any worker recruited in such a fashion is entitled to recover all damages sustained as a consequence, in a civil action against the party or parties responsible.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – This provision is enforced by public prosecuting attorneys in criminal court.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — A worker who has suffered damages as a result of an apparent violation of this provision should consult a private attorney or public legal service provider concerning possible civil action against the offending party.

Oklahoma

● MISCELLANEOUS LABOR LAWS (*MISREPRESENTATION IN RECRUITMENT*)

STATUTORY CITATION: Okla. Stat. Title 40, §§ 167 – 170

GENERAL SUMMARY: It is illegal for an employer doing business in Oklahoma to bring workers of any sort into Oklahoma for employment, or to induce or persuade workers to move from one place to another within the state, through false pretenses, false advertising, or deception regarding the character of the work to be performed, the amount of compensation to be paid, the sanitary conditions on the job, the existence or non-existence of a strike or other labor dispute pending at the job site, or other conditions of employment.

PROVISIONS APPLICABLE TO AGRICULTURE: This provision applies without regard to the nature of the offered employment or the occupation of the workers involved.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – Wage and Hour Unit, Oklahoma Department of Labor, Oklahoma City, Oklahoma 73105 (405-521-6598). The Department has authority to refer complaints charging violation of this provision to local district attorneys for criminal prosecution. Employers found guilty are subject to a fine ranging from \$500 to \$2,000, confinement for one month to one year in jail, or both a fine and imprisonment.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – None.

PRIVATE CIVIL ACTION — Any worker who is influenced to relocate on the basis of a misrepresentation concerning employment has a right to sue the responsible parties for recovery of any damages sustained as a consequence. In addition to actual damages, the worker is entitled to reasonable attorney's fees if the court rules in the worker's favor.

Oregon

● MISCELLANEOUS LABOR LAWS (*MISREPRESENTATION IN RECRUITMENT*)

STATUTORY CITATION: Or. Rev. Stat. §§ 659.815 – 659.820

GENERAL SUMMARY: No person, firm or other entity which employs labor may bring workers into Oregon for employment, or induce or persuade workers to change from one place of employment to another within the state, by misrepresentation or on any false pretense concerning the amount of compensation to be paid or the existence or non-existence of a strike, lockout or other pending labor dispute. Neglecting to state in an advertisement or proposal for employment that there is a strike, lockout or unsettled labor problem at the prospective workplace when such a condition actually exists is also illegal.

PROVISIONS APPLICABLE TO AGRICULTURE: These provisions apply to recruitment for employment of any kind, agricultural or non-agricultural.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *None.*

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Any worker who is influenced through deception or misrepresentation to change places of employment, or is otherwise recruited in violation of these provisions, may sue the responsible party for recovery of actual damages sustained as a consequence, or \$500, whichever is greater, plus reasonable attorney's fees and court costs.

Puerto Rico

● PUBLIC LAW 87

STATUTORY CITATION: 29 Laws P.R. Ann. §§ 526 – 534

GENERAL SUMMARY: Chapter 31 of the Puerto Rico labor statutes contains provisions regulating the recruitment of workers in Puerto Rico for employment of any sort outside the Commonwealth.

SPECIFIC TERMS AND CONDITIONS

AUTHORIZATION TO RECRUIT AND TRANSPORT — It is unlawful for any person, any organization, or the agent of a person or organization, to recruit or transport laborers for employment outside Puerto Rico without authorization by the labor secretary.

NOTIFICATION — Every person, organization or agent intending to recruit laborers in Puerto Rico for contract employment abroad must first provide the labor secretary with advance notification concerning the recruitment effort and the prospective employment, including the number of workers to be contracted for, the mode of transportation to be used to get the workers to the job site, the name and address of the employer, the kind of work to be performed, the wages and other compensation to be paid, the minimum guaranteed working hours, and other job conditions and benefits.

WRITTEN CONTRACTS — Anyone who undertakes to recruit workers as described above is required to execute a written contract with each such worker. The contract must contain certain minimum guarantees prescribed by the enforcement agency, and once the contract is approved, the agency is obligated to protect the worker's rights as spelled out in that document.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Employment Service Division, Bureau of Employment Security, Puerto Rico Department of Labor and Human Resources, Hato Rey, Puerto Rico 00918 (787-756-1180).* The Department is responsible for reviewing the terms of proposed labor recruitment and contracting activities, monitoring those activities as they take place, and enforcing the rights of the workers employed under the resulting contracts, wherever the labor is actually performed. The Department is authorized to institute necessary legal proceedings to enforce compliance. In addition to criminal penalties, persons who violate these provisions are civilly liable for double the amount of damages caused to any worker or job applicant for breach of contract.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

Tennessee

● GENERAL LABOR LAWS (*HIRING PRACTICES*)

STATUTORY CITATION: Tenn. Code § 50-1-102

GENERAL SUMMARY: Chapter 1, Part 1 of the state labor statutes contains a ban on certain recruitment practices relevant and implicitly applicable to agricultural employment.

SPECIFIC TERMS AND CONDITIONS: It is illegal for anyone to induce or persuade a worker to move from one place to another within the state, or to bring workers of any kind into Tennessee for any sort of employment, by means of misrepresentation, false pretenses, or false advertising concerning the nature of the work to be done, the amount of compensation to be paid, the sanitary conditions on the job, the existence or non-existence of a strike at the worksite, or other conditions of employment. For purposes of this provision, failure to state in any job advertisement, proposal or contract that there is a strike, lockout or similar labor dispute at the place of proposed employment, when in fact such a dispute actually exists there, is deemed misrepresentation and false advertising.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – This provision is enforced in the criminal courts by public prosecuting attorneys. A violation is punishable by a fine of not less than \$500, confinement for up to 6 months, or both such penalties.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Any worker who is influenced, induced or persuaded through misrepresentation or on false pretenses to relocate for purposes related to employment has a right to sue the offending party for all damages that the worker has sustained as a result. In addition to actual damages, the worker is entitled to recover reasonable attorney's fees.

Washington

● SEASONAL LABOR LAW

STATUTORY CITATION: Wash. Rev. Code §§ 49.40.010 – 49.40.080

GENERAL SUMMARY: Chapter 49.40 of the state statutes provides certain protections for workers recruited in Washington to perform out-of-state seasonal labor, defined as employment for more than one month where wages are not paid at regular intervals, but rather upon termination of the job and return to Washington. Such seasonal employment arrangements implicitly include seasonal agricultural work.

SPECIFIC TERMS AND CONDITIONS

WRITTEN CONTRACTS — Every contract for seasonal labor, as defined in brief above, must be in writing and must be signed by the employer and the employee.

ADVANCES — A contract for seasonal labor may provide for payment of cash advances or the furnishing of supplies to the worker before wages are earned, and for the payment of money or furnishing of supplies during the season.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Employment Standards, Apprenticeship and Crime Victims Division, Washington State Department of Labor and Industries, Olympia, Washington 98504 (toll-free 866-219-7321)*. At the request of a worker or employer, the Department is authorized to investigate any dispute concerning wages earned in seasonal labor. The Department may allow or reject deductions made from the worker's earnings for money advanced or supplies furnished before or during the season, or for money paid to third parties upon the worker's written authorization.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None*.

Wisconsin

● MIGRANT LABOR LAW (*MIGRANT WORK AGREEMENTS*)

STATUTORY CITATION: Wis. Stat. §§ 103.90 – 103.97

RELATED REGULATIONS: Wis. Admin. Code § DWD 301.06

GENERAL SUMMARY: Wisconsin's migrant labor law requires agricultural employers, labor contractors, and other entities that hire or recruit migrant agricultural workers for employment in the state, to provide the workers with certain pre-employment disclosures and with a written work agreement at the time of hiring.

SPECIFIC TERMS AND CONDITIONS

PRE-EMPLOYMENT DISCLOSURE — At the time of recruitment of any out-of-state migrant worker for temporary seasonal agricultural employment in Wisconsin, the employer or contractor involved must provide the worker with a written disclosure of the terms and conditions of employment, identical in content to the required work agreement described below. The disclosure must be in English, and in the worker's customary language if other than English.

WRITTEN WORK AGREEMENT — At the time of hiring, the employer or contractor must provide each migrant worker recruited or hired with a written work agreement, signed by the employer and by the worker (or the head of the family, if a family is employed). The work agreement must be in English, and in the worker's customary language if other than English.

Employment Conditions — The work agreement must specify the place of employment, the kind of work to be performed, the applicable wage rates to be paid, the length of the pay period, the approximate hours of employment and applicable overtime pay provisions, the approximate starting and ending dates of the job, the housing to be provided and its cost to the worker, the cost of any employer-provided meals, the arrangements for transportation, the names of all family members to be employed (if applicable), and the charges or deductions to be made against the worker's earnings beyond those required by law.

Guaranteed Hours — The work agreement must contain a guarantee of (1) at least 45 hours of work in each 2-week period for workers employed in agricultural field work only, or (2) at least 20 hours of work in each one-week period, or 64 hours in a 2-week period, if the worker is employed in both field and processing operations. The guarantee covers the entire interval from the date the worker is notified to report to work (or the date the worker actually reports for work, if later) to the date of termination of employment.

Exceptions to Guarantee — The hours guarantee generally applies only to workers 18 years of age and older. If a worker is not available for work on a particular day during the guarantee period, the employer may reduce the minimum guarantee by an amount equal to the wages the worker would have earned had the worker been available. Furthermore, the employer is not obligated to pay the minimum guarantee if the worker reports for work as notified but is never employed due to seriously adverse circumstances beyond the employer's control; within 24 hours after reporting for work in any such case, the worker is entitled to receive pay at the agreed-upon rate for the elapsed time between the worker's departure from the point of origin and return to the point of origin, but in no event less than 3 nor more than 6 days' pay at 8 hours per day.

SPECIAL NOTES OR ADVISORIES

RETALIATION — An employer or labor contractor may not discharge, discipline or discriminate in any manner against a migrant worker because the worker has filed a complaint, participated in a proceeding, or exercised any other right afforded by these provisions. A worker who has been subjected to unlawful retaliation may file suit against the employer or contractor involved, who, in addition to any other damages, may be liable to the worker for reinstatement and accumulated back wages.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Migrant Law Enforcement Section, Employment and Training Division, Wisconsin Department of Workforce Development, Madison, Wisconsin 53707 (608-266-0002)*. A migrant worker who has not received a recruiting disclosure statement, a written work agreement, or pay in accordance with guarantees shown in the work agreement, should contact the Department.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None*.

PRIVATE CIVIL ACTION — Without regard to any administrative action by the Department, a migrant worker aggrieved by a violation of the migrant labor law by an employer or migrant labor contractor has a right to bring suit against the violator in civil court, using a private attorney or public legal service provider.

● GENERAL LABOR LAWS (*FRAUDULENT ADVERTISING FOR LABOR*)

STATUTORY CITATION: Wis. Stat. § 103.43

GENERAL SUMMARY: It is unlawful to recruit or persuade workers to change from one place of employment to another in Wisconsin, or to bring workers of any sort into the state, (1) by means of misrepresentation, false advertising or false pretenses concerning the nature of the work to be done, the amount of compensation to be paid, or the sanitary or other conditions of the job, or (2) by failure to advise the workers of the existence of a strike or lockout at the place of proposed employment, when in fact such a labor dispute actually exists there.

PROVISIONS APPLICABLE TO AGRICULTURE: These provisions apply to all recruitment activities, without distinction as to occupational class.

SPECIAL NOTES OR ADVISORIES

APPLICATION OF LAW — According to the Department of Workforce Development, this law has been held to apply to manual laborers *only*, industrial labor in particular.

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ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Labor Standards Bureau, Equal Rights Division, Wisconsin Department of Workforce Development, Madison, Wisconsin 53703 (608-266-6860)*. The Department has general authority to investigate compliance with the state labor and employment laws, and to prosecute persons found in violation. Anyone convicted of labor recruitment practices contrary to these provisions is subject to a fine of up to \$2,000, imprisonment for up to one year, or both such penalties.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None*.

PRIVATE CIVIL ACTION — A worker who has been influenced or persuaded by misrepresentation, false advertising, or false pretenses to relocate for purposes of employment has a right to recover from the party responsible for the violation all damages sustained as a consequence, plus court costs and attorney's fees.