

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: Any farming establishment seeking certification to employ temporary foreign agricultural labor under the so-called "H-2A" program is required to circulate a formal job offer for U.S. workers, starting no sooner than 75 days and no later than 60 calendar days before the work is expected to begin. If the employer's H-2A application is later approved, the U.S. and foreign workers hired by the employer pursuant to the job offer must receive a written work contract specifying the benefits and conditions of employment. Both the job offer and the work contract must contain certain minimum standards and guarantees, including requirements related to worker transportation.

SPECIFIC TERMS AND CONDITIONS

TRANSPORTATION TO THE PLACE OF EMPLOYMENT — Each foreign or domestic worker who completes 50 percent of the work contract period is entitled to payment by the employer 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.

DAILY TRANSPORTATION TO THE WORKSITE — During the course of the contract, the employer must provide transportation between the worker's living quarters and the worksite, without cost, but only to the extent that the worker is unable to return to his or her own home within the same day.

TRANSPORTATION BACK TO THE POINT OF ORIGIN — Provided that the worker completes the contract period, the employer is obligated to furnish or pay for the worker's transportation and daily subsistence back to the place of origin or to the next place of employment, if such travel costs are not covered by the next employer.

TRANSPORTATION STANDARDS — Employer-provided transportation must comply with all applicable federal, state and local laws or regulations. At a minimum, the transportation provided to H-2A workers must meet the driver and vehicle safety and insurance standards required under the Migrant and Seasonal Agricultural Worker Protection Act, summarized in the previous entry.

SPECIAL NOTES OR ADVISORIES

RETALIATION — A person may not discharge, discipline or discriminate in any manner against a worker because the worker has 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)*. It is the duty of the Wage and Hour Division to enforce compliance with the required work contract between H-2A employers and their foreign and U.S. workers, including the obligation to provide employee transportation. Any person may report a suspected violation of H-2A contract provisions by contacting the nearest Wage and Hour office. Each violation of the work contract committed against a worker carries a maximum civil penalty 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)*. 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 certifying the need for foreign labor, and that the associated job offers comply with statutory requirements, including the provision of transportation to the workers.

Alaska

● STATE LABOR LAWS (*RETURN TRANSPORTATION*)

STATUTORY CITATION: Alaska Stat. §§ 23.10.375 – 23.10.400

RELATED REGULATIONS: Alaska Admin. Code Title 8, Ch. 20

GENERAL SUMMARY: State laws governing employment practices in Alaska include a provision requiring employers to furnish return transportation for certain employees (including agricultural workers) to their place of recruitment upon termination of employment.

SPECIFIC TERMS AND CONDITIONS: An employer who in any way provides or agrees to provide transportation to a person from the place of hire to a point inside or outside the state for purposes of employment must provide the worker with return transportation to the place of hire (or to a mutually agreeable destination) when the job ends or the employment is terminated for good cause. Request for return transportation must be made within 45 days after termination of employment, and return transportation must be provided or financed within 10 days after termination or whenever transportation is available, whichever occurs first.

If a worker voluntarily terminates for just cause, or is terminated for any cause during the term of the employee's contract of employment, and if immediate transportation is unavailable upon the termination, the employee is entitled to subsistence (currently \$100 per day). Subsistence pay may not continue longer than 10 days after termination, or until transportation becomes available, whichever occurs first.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – Wage and Hour Administration, Division of Labor Standards and Safety, Department of Labor and Workforce Development, Juneau, Alaska 99811 (907-465-4842). The Wage and Hour Administration may investigate complaints by employees claiming a right to return transportation and may take civil court action on an employee's behalf to secure such transportation. An employer found in violation of these provisions may also be subject to criminal prosecution.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – None.

Arizona

● STATE LABOR LAWS (AGRICULTURAL OPERATIONS)

STATUTORY CITATION: Ariz. Rev. Stat. § 23-286.01

GENERAL SUMMARY: Article 5 of Arizona's labor statutes includes a provision limiting the hours of drivers transporting agricultural commodities or farm supplies.

SPECIFIC TERMS AND CONDITIONS: In general, a person transporting agricultural commodities or farm supplies may not drive more than 16 hours straight, and must remain off-duty for at least 8 consecutive hours before starting another shift. Likewise, no such driver may drive more than 112 hours in any consecutive 7-day period.

Exception — During a period of not more than 28 consecutive days (or two periods totaling 28 days in a calendar year), a driver transporting "special situation" farm products from the field to cooling facilities may drive for not more than 12 hours during any 16-hour workday.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – State Labor Department, Industrial Commission of Arizona, Phoenix, Arizona 85007 (602-542-4515).

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – Arizona Department of Public Safety, Phoenix, Arizona 85009 (602-223-2522). The director of the Department of Public Safety has authority to waive the maximum on-duty time limits applicable to any 7-day period if an emergency exists due to inclement weather, natural disaster or an adverse economic condition that threatens to disrupt the orderly movement of farm products during harvest for the duration of the emergency. The term "emergency" does not include a strike or labor dispute.

Florida

● DRIVER LICENSE LAWS (*NON-RESIDENTS*)

STATUTORY CITATION: Fla. Stat. §§ 322.031 and 316.003(37)

GENERAL SUMMARY: Chapter 322 of the state statutes regulates the licensing of drivers in Florida. With few exceptions, non-residents who accept employment or engage in any trade, profession or occupation in the state, or who enroll their children in the public schools in Florida, must obtain a Florida driver's license within 30 days after the commencement of such employment or education.

PROVISIONS APPLICABLE TO AGRICULTURE: Migrant and seasonal farmworkers (defined as individuals employed in the planting, cultivation or harvest of agricultural crops) who are not legal residents of Florida and who have a valid driver's license issued by another state are not required to obtain a Florida license.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, Tallahassee, Florida 32399 (850-617-2300). The Highway Patrol has authority to enforce all state traffic laws on all streets and highways throughout the state.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – County sheriffs' offices and municipal police departments.

● MOTOR VEHICLE LICENSE LAWS (*NON-RESIDENTS*)

STATUTORY CITATION: Fla. Stat. §§ 320.38 and 316.003(37)

GENERAL SUMMARY: Chapter 320 of the state statutes prescribes the conditions under which motor vehicles operating on the streets and highways of Florida must be licensed or registered. In general, non-residents of the state who accept employment or engage in any trade, profession or occupation in Florida must, within 10 days after commencing such employment, register their motor vehicles in the state.

PROVISIONS APPLICABLE TO AGRICULTURE: Migrant and seasonal farmworkers (defined as individuals employed in the planting, cultivation or harvest of agricultural crops) who are not legal residents of Florida and whose vehicles are duly registered or licensed under the laws of some other state are not required to register their motor vehicles in Florida.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, Tallahassee, Florida 32399 (850-617-2300). The Highway Patrol has authority to enforce all state traffic laws on all streets and highways throughout the state.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – County sheriffs' offices and municipal police departments.

Indiana

● SCHOOL TRANSPORTATION LAWS (*USE OF SCHOOL BUSES*)

STATUTORY CITATION: Ind. Code § 20-27-9-10

GENERAL SUMMARY: Article 27, Chapter 9 of the state education laws includes an authorization for the use of public school buses for the transportation of agricultural workers under certain prescribed conditions.

SPECIFIC TERMS AND CONDITIONS: The governing body of a school corporation may permit the use of its school buses for the transportation of agricultural workers engaged in cultivating, producing or harvesting crops. Any bus used for that purpose may transport only school children, enrolled college and university students, a supervisor, and the bus driver. When used to transport farmworkers, a bus must display a sign in 4-inch letters or larger, reading "Agricultural Workers," at the front and rear of the vehicle.

Each school bus used to transport agricultural workers must meet specified insurance and safety requirements.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – These provisions are enforced by local school corporations, and by state and local law enforcement agencies.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

Minnesota

● STATE LABOR LAWS (*TRANSPORTATION FOR CORN DETASSELERS*)

STATUTORY CITATION: Minn. Stat. § 181.83

GENERAL SUMMARY: The state labor statutes include certain protections for workers employed to detassel corn in Minnesota, including a requirement for employer-paid transportation under some circumstances.

SPECIFIC TERMS AND CONDITIONS: Whenever an employer discharges a worker employed to detassel corn, or such a worker is injured or becomes ill on the job, the employer must provide the worker with transportation from the workplace to the location where the worker was picked up that day. Furthermore, the employer is required to compensate the worker, at the individual's regular rate of pay, for the elapsed time between termination, injury or onset of the illness, and arrival at the pick-up point.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *None.*

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

PRIVATE CIVIL ACTION — Because this section of the state labor laws does not include enforcement or penalty provisions, the only recourse for corn detassellers denied transportation and related pay under this provision is action against the employer in civil court, using a private attorney or public legal service provider. However, there appears to be no statutory right to sue under this law.

Nebraska

● **MOTOR VEHICLE OPERATOR'S LICENSE ACT (*TEMPORARY IMMUNITY FOR NON-RESIDENTS*)**

STATUTORY CITATION: Neb. Rev. Stat. § 60-488

GENERAL SUMMARY: The Motor Vehicle Operator's License Act prohibits the operation of any motor vehicle on the streets, alleys and public highways of Nebraska unless the driver has obtained a license for that purpose from the state. The Act, however, grants temporary immunity from this requirement for certain non-residents, including agricultural workers.

SPECIFIC TERMS AND CONDITIONS: An individual who is a non-resident of Nebraska is entitled to 30 days' immunity from the motor vehicle operator's licensing requirement, provided the individual is duly licensed to drive in his or her home state. Furthermore, a person who is certified by the state labor department as being engaged in temporary agricultural employment in Nebraska for a period of no more than 60 days may be granted an additional 30 days of immunity if the worker's home state extends similar immunity to residents of Nebraska while temporarily engaged in agricultural employment in that other state.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Office of Labor Standards, Nebraska Department of Labor, Lincoln, Nebraska 68508 (402-471-2239).* This agency is authorized to provide the certification of temporary agricultural employment necessary for extended immunity of non-resident farmworkers from the drivers' license requirement.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *Driver Licensing Services Division, Nebraska Department of Motor Vehicles, Lincoln, Nebraska 68509 (402-471-3861).* This agency is responsible for the testing and licensing of drivers in the state.

Nevada

● **MOTOR CARRIER REGULATION AND LICENSING LAWS (*PERMIT FOR EMPLOYEE TRANSPORTATION*)**

STATUTORY CITATION: Nev. Rev. Stat. § 706.749

GENERAL SUMMARY: The state motor carrier laws generally exempt employers transporting workers between their homes and the place of employment from the regulatory provisions applicable to common carriers, but impose certain permit requirements and fee limitations on such transportation providers in lieu thereof.

SPECIFIC TERMS AND CONDITIONS

PERMITS — Any employer (implicitly including a farm operator or farm labor contractor) who transports workers between their job site and their homes or central parking areas must obtain an annual permit to do so from the state. The permit application must indicate the employer's name, the places where workers will be picked up and discharged, the location of the workplace or job sites, identification of the vehicle or vehicles to be used, and the amount of any charges to be made for transportation service. The permit requires payment of an annual \$10 fee for each vehicle regularly used to transport workers.

CHARGES — Any fees or charges for use of the service by workers may not exceed an amount required to amortize the cost of the vehicle and defray the cost of operating it.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Van Pool Registrar, Nevada Transportation Authority, Reno, Nevada 89502 (775-688-2800).* The Authority is responsible, in large part, for administration and enforcement of the state motor carrier laws, including the issuance of permits to employers transporting workers to and from the workplace. Any violation of the permit requirement or the limitation on transportation charges may be reported to this agency.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None.*

New Jersey

● FARM LABOR CREW LEADER LAW (*WORKER TRANSPORTATION*)

STATUTORY CITATION: N.J. Rev. Stat. §§ 34:8A-7 – 34:8A-17

GENERAL SUMMARY: Chapter 8A of the state labor laws imposes certain restrictions on the activities of farm labor crew leaders in New Jersey, including the furnishing of worker transportation.

SPECIFIC TERMS AND CONDITIONS

AUTHORIZATION TO TRANSPORT — As a condition for issuance of a crew leader certificate of registration, any applicant who transports migrant or seasonal farmworkers must provide the state administering agency with satisfactory proof of compliance with state motor vehicle requirements applicable to such transportation. At the agency's discretion, a registration certificate inscribed with the words "Not Authorized To Transport" may be granted to an otherwise qualified crew leader who submits a signed application affirming that he or she will not be furnishing farmworkers with transportation.

DISCLOSURE — At the time of recruitment, the crew leader must disclose to each farmworker recruited the transportation services, if any, the crew leader intends to provide in connection with the worker's employment.

SPECIAL NOTES OR ADVISORIES

RETALIATION — A crew leader may not discharge, discipline or discriminate in any manner against a migrant or seasonal farmworker because the worker has filed a complaint, participated in a proceeding, or exercised any other right afforded under state or federal law. The anti-retaliation protection is enforceable through private civil action.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY – *Agricultural Compliance Section, Division of Wage and Hour Compliance, New Jersey Department of Labor and Workforce Development, Trenton, New Jersey 08625 (609-984-3004)*. The Department is charged with issuing farm labor crew leader registration certificates to eligible applicants and is authorized to investigate any complaint regarding a violation of the crew leader law. In addition to the revocation or suspension of the registration certificate, a crew leader who violates any provision of the law or its associated regulations is liable to both criminal prosecution and civil money penalties.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY – *None*.

PRIVATE CIVIL ACTION — Any seasonal farmworker aggrieved by an apparent violation of these provisions may take civil court action against the crew leader, using a private attorney or public legal service provider.