

● MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

STATUTORY CITATION: 29 USC §§ 1801 – 1872

RELATED REGULATIONS: 29 CFR Part 500

GENERAL SUMMARY: The Migrant and Seasonal Agricultural Worker Protection Act provides for the registration of farm labor contractors, imposes restrictions on their activities, and prescribes requirements that farm labor contractors, agricultural employers, agricultural associations and others must follow for the protection of migrant and seasonal farmworkers.

SPECIFIC TERMS AND CONDITIONS

REGISTRATION — In general, no person may, for a fee or other compensation, recruit, solicit, hire, employ, furnish or transport any migrant or seasonal agricultural worker unless the person has a certificate of registration issued by the U.S. Department of Labor, specifying which farm labor contracting activities that individual is authorized to perform; farm operators, agricultural associations and their employees are not required to register, but are subject to other requirements and restrictions under the Act. Registered farm labor contractors and their registered assistants must carry their registration certificates at all times while engaging in farm labor contracting activities and must, when so requested, show the certificate to all persons with whom they intend to deal as a farm labor contractor.

CONFIRMATION OF REGISTRATION — No one may use the services of a farm labor contractor to supply any migrant or seasonal agricultural worker without first determining that the contractor has a valid registration certificate which authorizes the activity for which the contractor is utilized.

MIGRANT AGRICULTURAL WORKER PROTECTIONS — Every farm labor contractor, agricultural employer and agricultural association that employs any migrant agricultural worker (those who work seasonally or temporarily and who are required to be absent overnight from their permanent place of residence) must comply with specific duties and responsibilities, some of which are summarized as follows:

Disclosure of Information — Every contractor, employer or association that recruits any migrant worker for employment must, at the time of recruitment, provide the worker with a written statement specifying (1) the place of employment, (2) the wage rates to be paid, (3) the crops and crop activities in which the worker may be employed, (4) the period of employment, (5) the transportation, housing and any other benefits to be provided, as well as the cost to be charged for each of them, (6) the existence of any strike or similar labor unrest at the workplace, (7) the existence of any arrangement under which the contractor or the employer will receive a commission or other benefit from stores or other establishments as a result of sales to the workers, and (8) whether state workers' compensation is provided and, if so, related workers' comp insurance information.

Posting — Contractors, employers and associations that employ any migrant worker must post conspicuously at the place of employment a poster outlining the rights and protections afforded by the Migrant and Seasonal Agricultural Worker Protection Act, and, whenever housing is provided to the workers, the contractor, employer or association must post or furnish each worker a written statement of the terms and conditions of occupancy.

Payroll Records — Farm labor contractors, farm employers and farm associations that employ any migrant worker must keep detailed records of each worker's pay rate, piecework units earned (if paid on a piecework basis), hours worked, total pay period earnings, the purpose and amount of each deduction made from the worker's pay, and net pay. Payroll records must be preserved for at least 3 years.

Payment of Wages — Migrant farmworkers must receive their wages when due, but in no case less often than every 2 weeks or semi-monthly. At the time of payment, each migrant worker employed must receive an itemized written pay statement for the period covered, showing the same information required to be kept in the payroll record, as described above.

Compulsory Purchases — No farm labor contractor, agricultural employer, or agricultural association may require any migrant worker to purchase goods or services solely from the contractor, employer or association.

Safety and Health of Housing — The Act prescribes specific conditions for the provision of housing to migrant farmworkers, including requirements for pre-occupancy inspection and certification (*see entry, U.S. — Housing — Farm Labor Housing Standards*).

SEASONAL AGRICULTURAL WORKER PROTECTIONS — Farm labor contractors, agricultural employers and agricultural associations that employ seasonal farmworkers (those who work seasonally or temporarily, but are not required to be absent overnight from their permanent residence) must comply with essentially the same disclosure, posting, recordkeeping and wage payment requirements, and observe the ban on compulsory purchases, applicable to the employment of migrant farmworkers, as described above.

FALSE OR MISLEADING INFORMATION — In making the information disclosures referred to above, no contractor, employer or association subject to the Act may knowingly provide false or misleading information to any migrant or seasonal worker concerning the terms, conditions or availability of employment.

LANGUAGE REQUIREMENTS — The information required to be disclosed to migrant and seasonal workers under the Act must be furnished in writing, either in English or in the language most easily understood by the workers involved.

MOTOR VEHICLE SAFETY — The transportation of migrant and seasonal farmworkers by farm labor contractors,

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agricultural employers and agricultural associations is subject to safety and other standards prescribed in the Act, including requirements for insurance coverage (*see entry, U.S.— Transportation — Farmworker Transportation Safety*).

COVERAGE EXEMPTIONS — Among other, more narrow exceptions, the Migrant and Seasonal Agricultural Worker Protection Act does not apply to:

- (1) Any individual who engages in farm labor contracting activity on behalf of a farm or other agriculturally related establishment which is owned or operated by the individual or an immediate family member, and when the contracting activity is performed only for that establishment and exclusively by that individual or family member.
- (2) Any business or individual employer (other than a farm labor contractor) who did not use more than 500 worker-days of agricultural labor in any calendar quarter of the preceding calendar year (for example, 50 workers employed for 10 days, 20 workers employed for 25 days, or any other such combination).
- (3) Any person who engages in farm labor contracting activity solely within a 25-mile radius of the person's permanent place of residence, only in that one state, and for not more than 13 weeks a year.
- (4) Any labor organization or union.

SPECIAL NOTES OR ADVISORIES

JOINT RESPONSIBILITY — Generally, the workers in a farm labor contractor's crew are considered jointly employed by the farm labor contractor and the farmer who is using their labor, if the farmer has the power to direct, control or supervise their work or to determine pay rates and the method of payment. In the event that a farm labor contractor fails to comply with the disclosure, posting and wage payment requirements outlined above, the farmer is legally responsible for compliance.

RETALIATION — A person may not discharge, discipline or discriminate in any manner against an employee because the employee has filed a complaint, participated in a proceeding, or exercised any other right afforded by the Act. Any worker who has been subjected to retaliation may file a complaint with the Wage and Hour Division, at any time within 180 days after the violation occurs.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202-693-0072)*. Officers of the Wage and Hour Division have authority under the Act to conduct investigations, and consequently they may enter and inspect workplaces (including housing and vehicles), view and copy employment records, and question farm labor contractors, employers and other parties, either in response to a specific complaint or otherwise. The agency may impose civil penalties and refer violations for criminal prosecution.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — The Secretary of Labor may delegate enforcement responsibilities to a state agency upon federal approval of a state plan which describes the functions to be performed by the state agency and the methods to be followed and resources to be devoted to performing those functions. Using that authority, the labor secretary has delegated to these states the responsibility for receiving and processing applications for farm labor contractor certificates, and for issuing certificates to qualified applicants: *Florida, New Jersey, and Virginia*.

PRIVATE CIVIL ACTION — Independent of enforcement action by the Department of Labor, a worker aggrieved by a violation of the Migrant and Seasonal Agricultural Worker Protection Act may file suit in federal court against the offending contractor or employer to recover damages sustained as a result of the violation.