



# Great Lakes Fruit, Vegetable & Farm Market EXPO Michigan Greenhouse Growers EXPO

December 4-6, 2018

DeVos Place Convention Center, Grand Rapids, MI



## 44 Labor I

Where: Grand Gallery Overlook Room A & B

Moderator: Stan Moore, Michigan State University

- 9:00 AM      **H-2A Visa Reform: What it is. What it isn't. What it can be.**
- Michael Marsh, NCAE
- 9:30 AM      **Cost Considerations with H-2A**
- Adam Kantrovich, Clemson University
- 10:00 AM     **The H-2A Program – Can Your Operation Use It Effectively?**
- Joshua Viau, Fisher & Phillips LLP
- 10:30 AM     **H-2A Overview, Common Violations, and Best Practices**
- Ryan DeLuca, U.S. Department of Labor
- 11:00 AM     **Session Ends**

## Fact Sheet #12: Agricultural Employers Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to agricultural employment. The FLSA is the federal law which sets [minimum wage](#), [overtime](#), recordkeeping, and child labor standards.

Agriculture includes farming in all its branches when performed by a farmer or on a farm as an incident to or in conjunction with such farming operations.

### Coverage

Virtually all employees engaged in agriculture are covered by the Act in that they produce goods for interstate commerce. There are, however, some exemptions which exempt certain employees from the [minimum wage](#) provisions, the [overtime pay](#) provisions, or both.

Employees who are employed in agriculture as that term is defined in the Act are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours worked in excess of forty per week.

Agriculture does not include work performed on a farm which is not incidental to or in conjunction with such farmer's farming operation. It also does not include operations performed off a farm if performed by employees employed by someone other than the farmer whose agricultural products are being worked on.

Any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the [minimum wage](#) and [overtime pay](#) provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

Additional exemptions from the [minimum wage](#) and [overtime](#) provisions of the Act for agricultural employees apply to the following:

- Agricultural employees who are immediate family members of their employer
- Those principally engaged on the range in the production of livestock
- Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture less than thirteen weeks during the preceding calendar year
- Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16.

## Requirements

Although exempt from the overtime requirements of the FLSA, agricultural employees must be paid the federal [minimum wage](#) (unless exempt from [minimum wage](#) as noted above). There are numerous restrictions on the employment of minors less than 16 years of age, particularly in occupations declared hazardous by the Secretary of Labor. Substantial civil money penalties are prescribed for violations of the monetary and child labor provisions of the law. The FLSA also requires that specified records be kept.

[Youth Minimum Wage](#): The 1996 Amendments to the FLSA allow employers to pay a youth minimum wage of not less than \$4.25 an hour to employees who are under 20 years of age during the first 90 consecutive calendar days after initial employment by their employer. The law contains certain protections for employees that prohibit employers from displacing any employee in order to hire someone at the youth minimum wage.

## Typical Problems

Not keeping/maintaining records of the names and permanent addresses of temporary agricultural employees, dates of birth of minors under age 19, or hours worked by employees being paid on a piece rate basis.

Failing to pay overtime to employees whose jobs are related to agriculture but which do not meet the definition of agriculture contained in the Act.

Agricultural employers who utilize the services of a farm labor contractor are almost always in a situation of joint employment with the contractor in regard to the employees. Joint employment means that both the contractor and the farmer are responsible for complying with the [minimum wage](#), [overtime](#), [recordkeeping](#), and [youth employment provisions](#) of the law. If either party fails to comply with the law both parties may be held liable.

Finally, most agricultural employers, agricultural associations, and farm labor contractors are subject to another statute, also administered by the Wage and Hour Division -- [the Migrant and Seasonal Agricultural Worker Protection Act](#). Employers in agriculture or agriculture-related businesses should ascertain how this law applies to their operations.

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

**1-866-4-USWAGE**  
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[Contact Us](#)

## Fact Sheet #35: Joint Employment and Independent Contractors Under the Migrant and Seasonal Agricultural Worker Protection Act

[The Migrant and Seasonal Agricultural Worker Protection Act \(MSPA\)](#) provides employment-related protections to migrant and seasonal agricultural workers. Every non-exempt farm labor contractor, agricultural employer, and agricultural association who "employs" workers must:

- Provide written disclosure of the terms and conditions of employment;
- Post information about worker protections at the worksite;
- Pay workers the wages owed when due and provide an itemized statement of earnings and deductions;
- Comply with the terms of any working arrangement made with the workers; and
- Make and keep for three years payroll records for each employee.

The protections do not apply to individuals who are independent contractors rather than employees. Agricultural workers can have more than one employer at the same time. Each "joint employer" is responsible for all employer obligations under the MSPA, but MSPA does not require the unnecessary duplication of effort. Thus, employer responsibility(ies) may be carried out by only one of the joint employers. However, the failure to provide the required protections will result in joint liability for all joint employers.

Below are answers to frequently asked questions concerning independent contractors and joint employers under MSPA. Further guidance can be obtained by contacting your nearest Wage and Hour office.

### **How does the MSPA law define the terms "independent contractor" and "joint employment"?**

The law has borrowed these terms from the Fair Labor Standards Act (FLSA), where they were developed by the courts under the very broad definition of "employ" ("to suffer or permit to work"). The concept of joint employment is included within the "employment" relationship, but the status of independent contractor is not considered to be "employment."

### **What does the term "independent contractor" mean and how does it relate to MSPA?**

An independent contractor is an individual who performs services but is not an employee of the person utilizing the services. Independent contractors are not covered by MSPA protections that apply to employees.

### **How does one determine if an individual is an independent contractor in the agricultural context?**

This is done by examining whether the individual (who may be either a farm labor contractor or a worker) is economically dependent upon the person who utilizes his/her services. If the individual is economically dependent upon that person then that individual is an employee.

Simply being licensed as a farm labor contractor does not in itself make the FLC and independent contractor. He/She may be an employee of the person utilizing his/her services. If the farm labor contractor is an employee of the person utilizing his/her services, then the workers in the crew are also employees of that person. The determination of independent contractor status is based on all of the circumstances, including the following:

- The nature and degree of the alleged employer's control as to the manner in which the work is performed;

- The alleged employee's opportunity for profit or loss depending upon his/her managerial skill;
- The alleged employee's investment in equipment or materials required for the task, or the alleged employee's employment of other workers;
- Whether the services rendered by the alleged employee require special skill;
- The degree of permanency and duration of the working relationship;
- The extent to which the services rendered by the alleged employee are in integral part of the alleged employer's business.

### **What does the term "joint employment" mean and how does it relate to MSPA?**

Joint employment means that an individual is employed by two or more persons at the same time. Where a joint employment relationship exists, each of the employers must ensure that the employee receives all employment-related rights granted by MSPA, such as accurate and timely disclosure of the terms and conditions of employment, written payroll records, and payment of wages when due.

### **How can one determine if *joint employment* exists?**

This is done by examining all the facts in a particular case and examining the realities of the economic relationships between the workers and the alleged employers. The ultimate question is whether the agricultural work is economically dependent upon more than one person. Depending on the facts in each case, the joint employers could be any combination of the grower, the processor, the association, and the FLC (provided he/she is an independent contractor). Joint employment is not presumed to exist in agriculture, and no one fact or set of facts will necessarily result in a joint employment determination. In making the determination, the following facts must be considered:

- Whether the agricultural employer/association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker(s) or the work performed (such control may be either direct or indirect, taking into account the nature of the work performed and a reasonable degree of contract performance oversight and coordination with third parties);
- Whether the agricultural employer/association has the power, either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the worker(s);
- The degree of permanency and duration of the relationship of the parties, in the context of the agricultural activity at issue;
- The extent to which the services rendered by the worker(s) are repetitive, rote tasks requiring skills which are acquired with relatively little training;
- Whether the activities performed by the worker(s) are an integral part of the overall business operation of the agricultural employer/association;
- Whether the agricultural employer/association's premises, rather than on premises owned or controlled by another business entity, and
- Whether the agricultural employer/association undertakes responsibilities in relation to the worker(s) which are commonly performed by employer, such as preparing and/or making payroll records, preparing and/or issuing pay checks, paying FICA taxes, providing workers' compensation insurance, providing field sanitation facilities, housing or transportation, or providing tools and equipment or materials required for the job (taking into account the amount of the investment.)

### **How is the test for joint employment in the revised regulation (effective April 12, 1997) different from the test in the original MSPA regulation?**

The revised regulation does not change the substance of the joint employment test, but states the test more clearly and completely than the previous regulation. The revised regulation concisely states the required analysis ("economic dependence") and sets out the various analytical factors established by the courts-- including the factors in the previous regulation, restated for clarity.

Without imposing any new legal standards, the regulation enables the Department of Labor, the courts, and the parties (workers, farm labor contractors, agricultural employers, and agricultural associations) to apply the MSPA joint employment concept more easily, accurately and consistently.

**Does joint employment affect MSPA housing or transportation responsibility?**

No. The MSPA does not impose responsibility for housing and transportation standards on an employer. A person is responsible for MSPA-covered housing only if that person "owns or controls" the housing occupied by a migrant agricultural worker. A person is responsible for transportation requirements only if the person is "using or causing to be used" any vehicle for providing transportation. The fact that a person may be an agricultural employer or a joint employer does not necessarily mean the employer is also responsible for complying with MSPA housing an/or transportation requirements.

**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 #40: Overview of Youth Employment (Child Labor) Provisions of the Fair Labor Standards Act (FLSA) for Agricultural Occupations**

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;

- 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, and what are the penalties for violations?**

#### **Enforcement and Penalties**

Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA. As the Secretary of Labor's representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices in order to assess compliance with all the provisions of the FLSA.

An employer that violates the youth employment provisions may be subject to civil money penalties (CMPs). The amount of the CMP assessment, which may not exceed a cap set by statute, depends upon the application of statutory and regulatory factors to the specific circumstances of the case.

- As a general matter, child labor CMP assessments will be higher if the violation contributed to the injury or death of the youth involved in the violation. The severity of any such injury will be taken into account in determining the amount of a CMP.
- CMP assessments may be decreased based on the size of the business.
- CMP assessments will reflect the gravity of the violation and may be doubled if the violation is determined to be willful or repeated.



A CMP assessment for a violation that causes the death or serious injury of a minor is subject to a higher statutory cap.

- An injury qualifies as a “serious injury” for this purpose if it involves permanent or substantial harm. Both the significance of the injury and the duration of recovery are relevant in determining whether an injury is serious.
- If more than one violation caused a single death or serious injury, more than one CMP may be assessed.
- CMP assessments based on the death or serious injury of a minor may be doubled up to a higher statutory cap if the violation is determined to be willful or repeated.

For current maximum CMP amounts, please visit <https://www.dol.gov/WHDFLSA/index.htm>.

The FLSA prohibits the shipment in interstate commerce of goods that were produced in violation of the Act’s minimum wage, overtime, or youth employment provisions. The FLSA authorizes the Department of Labor to seek a court order enjoining the movement of such “hot goods.” The FLSA also authorizes the Department to obtain injunctions against violators of the youth employment provisions to compel their compliance with the law. Further violations could result in sanctions against such persons for contempt of court. Willful youth employment violators may face criminal prosecution and be fined up to \$10,000. Under current law, a second conviction may result in imprisonment.

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

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## **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 for each violation and, in the case of farm labor contractors, revocation or suspension of existing certificates and denial of future certificates of registration. For current maximum penalty amount, see <https://www.dol.gov/whd/mspa/index.htm#cmp>. 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 may be brought. In addition, courts may assess fines 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](#).

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## 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](#)



5. Post the required Migrant and Seasonal Agricultural Worker Protection Act (MSPA) poster (download at [www.dol.gov/whd/regs/compliance/posters/mspaensp.pdf](http://www.dol.gov/whd/regs/compliance/posters/mspaensp.pdf)) where employees can see it.
6. Refer to WHD fact sheet #40 for information on child labor in farm jobs (download at [www.dol.gov/whd/regs/compliance/whdfs40.pdf](http://www.dol.gov/whd/regs/compliance/whdfs40.pdf)).

You may also be responsible for meeting **field sanitation standards** for workers who are performing hand labor in the fields. Refer to WHD fact sheet #51 (download at [www.dol.gov/whd/regs/compliance/whdfs51.pdf](http://www.dol.gov/whd/regs/compliance/whdfs51.pdf)) to see who is subject to these standards and get more information on your responsibilities. Requirements include:

1. Supply a sufficient amount of cool, potable drinking water at no charge to each worker for the entire workday.
  - Water must be readily accessible and provided with single-use cups.
2. Provide clean, sanitary toilet facilities at no charge in a ratio of at least one toilet for every 20 workers.
  - Toilet facilities must be readily accessible, ventilated and screened, and have a self-closing door that locks from the inside.
  - You must provide an adequate amount of toilet paper.
3. Provide clean, sanitary hand washing facilities at no charge in a ratio of at least one hand-washing facility for every 20 workers.
  - These facilities must be located near the toilet facilities and have potable water and soap.
  - You must provide single use towels and a means to dispose of the used towels.
4. Tell workers where the drinking water, toilet facilities, and hand-washing facilities are located, and notify them of the importance of good hygiene practices.
5. Give employees reasonable opportunities throughout the workday to use the facilities.
6. Toilet facilities and hand-washing facilities are required only when the workers perform field work for more than three hours, including time spent traveling to and from the field.

For an overview of DOL agriculture regulations, download our Cultivating Compliance Guide at [www.dol.gov/whd/FLSAEmployeeCard/AgGuideEnglish.pdf](http://www.dol.gov/whd/FLSAEmployeeCard/AgGuideEnglish.pdf)

*Now that you have received your Farm Labor Certificate of Registration, please review it immediately to make sure all the information is correct. If any of the information is incorrect or you have a question about your certificate, please call 404-893-6030 for the Atlanta Processing Center or 415-241-3505 for the San Francisco Processing Center.*

*If you have questions that do not involve the information on the form you may call your local Wage and Hour District Office: [www.dol.gov/whd/america2.htm](http://www.dol.gov/whd/america2.htm)*



1-886-487-9243



[www.dol.gov/whd/ag](http://www.dol.gov/whd/ag)

*The Department of Labor offers this information as a public service. This publication does not carry the force of law or legal opinion. The United States Code, the Federal Register, and the Code of Federal Regulations remain the official sources for statutory and regulatory information. Many states enforce state laws that are stricter than federal laws; employers must comply with all federal and state laws that apply to them.*

# CULTIVATING COMPLIANCE

Your Next Steps as a Registered  
Farm Labor Contractor (FLC)



UNITED STATES DEPARTMENT OF LABOR



# WHAT'S NEXT?

## GENERAL OBLIGATIONS

1. Carry your certificate of registration at all times and show it to anyone who asks to see it.
2. Perform **ONLY** activities you are authorized for (transporting, driving, or housing).
3. Notify the Department of Labor within 30 days of any permanent address change.
4. Make sure that you only use registered farm labor contractor employees to recruit or solicit other workers, AND that any driver you use is driving authorized on the certificate, and has a current driver's license for the class of vehicle driven.
5. Note that you may also be subject to state requirements for FLC registration. Nothing in this publication exempts a FLC from complying with state requirements if state laws and/or regulations require compliance with stricter standards.

## TRANSPORTATION

**If you transport** migrant or seasonal workers **or direct others to transport** them, your responsibilities as a farm labor contractor are:

1. Make sure that your certificate states that you are **transportation authorized**.
2. Make sure that each vehicle you use is listed on your FLC certificate.
3. If you plan to use a vehicle that is NOT listed on your FLC certificate, you must take the following steps **BEFORE** you use that vehicle:
  - Vehicle Inspection: Provide proof of inspection by submitting completed form WH514 or WH514a (download at [www.dol.gov/whd/forms/wh514.pdf](http://www.dol.gov/whd/forms/wh514.pdf) or [www.dol.gov/whd/forms/wh514a.pdf](http://www.dol.gov/whd/forms/wh514a.pdf)) to the appropriate WHD processing center (see [www.dol.gov/whd/forms/fts\\_wh530.htm](http://www.dol.gov/whd/forms/fts_wh530.htm)).
  - Insurance\*: Provide proof of automobile liability insurance policy or liability bond coverage:
    - A. Insurance coverage must be at least \$100,000 for each seat in the vehicle, up to \$5 million.
      - > The policy must cover personal injury to employees who are not covered by workers' compensation, as well as non-employee passengers and non-work related travel.
      - > The policy must cover property damage.

- B. Workers' compensation coverage may be substituted in some cases; if substitution is appropriate, you must also have at least \$50,000 (per accident) additional property damage or general liability insurance coverage for non-work related travel.
- C. An issued liability bond of at least \$500,000 in guaranteed coverage may substitute for liability insurance.

**\* This insurance must be in effect for the entire period the vehicle will be used.**

4. Maintain current state-required registration for each vehicle.
5. Maintain at least the minimum required amount of insurance for the entire time you use the vehicle.
6. Make sure that all applicable federal, state, and local safety standards are met for each vehicle. Do not exceed the maximum occupancy in each vehicle.
7. Refer to WHD fact sheet #50 for more information on your responsibilities when transporting migrant and seasonal workers (download at [www.dol.gov/whd/regs/compliance/whdfs50.pdf](http://www.dol.gov/whd/regs/compliance/whdfs50.pdf)).

**If you drive** migrant or seasonal workers, your responsibilities as a farm labor contractor / farm labor contractor employee are:

1. Make sure that your certificate states that you are **driving authorized**.
2. Maintain a current driver's license for the class of vehicle you drive.
3. Keep a copy of your doctor's certificate with you (download at [www.dol.gov/whd/forms/wh515.pdf](http://www.dol.gov/whd/forms/wh515.pdf)).
4. Carry your certificate of registration at all times and show it to anyone who asks to see it.

## HOUSING

**If you own or control housing** used for migrant workers, your responsibilities as a farm labor contractor are:

1. Make sure that your certificate states that you are **housing authorized**.
2. Make sure that each housing facility you use is listed on your FLC certificate.
3. If you plan to use a housing facility that is NOT listed on your FLC certificate, you must provide proof of pre-occupancy housing inspection by the state or local authority to the appropriate processing center (see [www.dol.gov/whd/forms/fts\\_wh530.htm](http://www.dol.gov/whd/forms/fts_wh530.htm) for the address) **BEFORE** you use that housing facility.

4. Post a copy of the pre-occupancy housing inspection certificate at each housing facility.
5. Provide a document with any housing terms and conditions to each housing occupant, OR post that document in a visible location at the housing facility. You may use WHD form WH521 for this purpose (download at [www.dol.gov/whd/forms/wh521.pdf](http://www.dol.gov/whd/forms/wh521.pdf)).
6. Maintain each housing facility so that it meets the minimum safety and health standards throughout the period of occupancy.
7. Do not exceed the maximum occupancy in each housing facility.

## OTHER OBLIGATIONS

**If you employ** migrant or seasonal workers, your responsibilities as a farm labor contractor are:

1. Provide terms and conditions of the job to each employee (this must be in writing for a migrant or day-haul worker):
  - Make sure that the terms are accurate and that you have not misrepresented any information about the job or pay.
  - You may use WHD form WH516 for this purpose (download at [www.dol.gov/whd/forms/wh516.pdf](http://www.dol.gov/whd/forms/wh516.pdf)). This form is also available in Spanish (download at [www.dol.gov/whd/forms/WH-516\\_Spanish.pdf](http://www.dol.gov/whd/forms/WH-516_Spanish.pdf)).
2. Keep accurate time and payroll records for each employee:
  - You must keep accurate time records (hours worked) for employees paid by piece rate as well as employees paid by the hour.
  - You must list all workers on the timesheets and payroll records.
  - You must keep the records for three years.
  - If you furnish workers to a farmer, you must provide a copy of these records to the farmer by the end of the season.
3. Pay all wages when due:
  - This cannot be less than the federal or state minimum wage AND may also not be less than the wage you promised.
  - Wages must be paid no less often than every other week.
4. Provide a pay statement to each employee each pay period.

# Contact information

- Ryan DeLuca, Investigator
- U.S. DOL – Wage & Hour Division
  - Phone: 616-710-5031
  - Email: [deluca.ryan@dol.gov](mailto:deluca.ryan@dol.gov)

