



UNIVERSITY OF  
**FLORIDA**

**EXTENSION**

Institute of Food and Agricultural Sciences

## **2003 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers--Part 1 <sup>1</sup>**

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### List of Acronyms (In Alphabetical Order)

**ADA** -- Americans With Disabilities Act

**ADEA** --Age Discrimination in Employment  
Act

**CDL** --Commercial Driver's License

**CMV**-- Commercial Motor Vehicle

**DEP** --Department of Environmental Protection

**DOL** --Department of Labor

**DOT** --Department of Transportation

**EAO** --Employees Assistance and Ombudsman

**EEOC** --Equal Employment Opportunity  
Commission

**EHS** --Extremely Hazardous Substances

**EPA** --Environmental Protection Agency

**ETA** --Employment and Training  
Administration

**FDACS** --Florida Department of Agriculture and  
Consumer Services

**FFVA** --Florida Fruit and Vegetable Association

**FIFRA** --Federal Insecticide, Fungicide and  
Rodenticide Act

**FLC** --Farm Labor Contractor

**FLSA** --Fair Labor Standards Act

**FMLA** --Family and Medical Leave Act

**GED** --General Education Diploma

**ID** --Identification

**INS** --Immigration and Naturalization Service

**IRCA** --Immigration Control and Reform Act

**IRS** --Internal Revenue Service

**MRO** --Medical Review Officer

**MSDS** --Material Safety Data Sheet

**MSPA** --Migrant Seasonal Agricultural Worker  
Protection Act

**OSHA** --Occupational Safety and Health Act

**PTO** --Power Take-Off

**REI** --Restricted Entry Interval

**RQ** --Reportable Quantity

**TJTC** --Targeted Jobs Tax Credit

**TPQ** --Threshold Planning Quantity

**UC** --Unemployment Compensation

**USDL** --United States Department of Labor

**WARN** --Workers Adjustment and Retraining Notification

**WC** --Workers' Compensation

**WOTC** --Work Opportunity Tax Credit

**WPS** --Worker Protection Standard

## Introduction

This handbook is intended to provide a convenient reference to the major provisions of the several state and federal regulations that affect farm employers and employees. It reflects state and federal laws as of July 1, 2002, only as they apply to farm workers and not to workers considered non-agricultural. Its purpose is simply to focus employers and employees on the fundamental provisions of the laws which govern their relationships.

For the purposes of this handbook, the definition of "farmworker" is taken from the United States Department of Labor's Occupational Outlook Handbook for 2002-03. A farm or agricultural worker is one who is paid for work performed on crop and/or livestock operations. Those individuals who perform veterinary and landscaping services are not considered farmworkers according to the United States Department of Labor occupational definition. Farmworkers may work for piece rates or be paid an hourly wage. Farmworkers may work part-time, seasonally, or full-time. They may perform manual labor, operate equipment, or supervise other farm personnel.

Thus, this handbook does not and should not substitute for specific technical advice from responsible state and federal agencies, knowledgeable grower associations, legal agencies, or other experts in the agricultural labor law field. There is also no attempt to cover all aspects of specialized agricultural labor and safety law (e.g., logging and/or forestry operations).

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice and the information contained in this handbook should not be regarded or relied upon as a substitute for professional advice. This handbook is not all-inclusive in providing information to achieve compliance with laws and regulations governing the practice of agriculture. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, contributors to the handbook, the Institute of Food and Agricultural Sciences, and the University of Florida for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

## Child Labor [Federal]

### *Purpose*

Provides federal standards for the employment of children (minors) in agriculture.

### *Coverage*

Minors age sixteen and over in agriculture are not included under the child labor provisions of the Fair Labor Standards Act (FLSA). Farm employers who are not covered under other provisions of FLSA (minimum wages, overtime) must, for the most part, comply with the law if they employ minors under sixteen years old.

Sixteen is the minimum age for working in agricultural jobs:

- Declared hazardous by the Secretary of Labor.
- During school hours.

Fourteen is the minimum age for working in agricultural jobs:

- Outside of school hours.
- In any agricultural occupations not declared hazardous by the Secretary of Labor.

**Except**

- Minors ages twelve and thirteen may be employed in nonhazardous occupations with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed.
- Minors under age twelve may be employed with written parental consent on farms whose employees are exempt from federal minimum wage provisions under the 500 man-day provision.

*Note:* All minors may be employed by their parents at any time, in any occupation, on a farm owned or operated by their parent(s) or guardian(s).

**Minors Ages Ten And Eleven**

Upon application, waivers may be issued by the Department of Labor permitting minors ages ten and eleven to work in hand harvested, short season crops provided the employer does not use certain restricted pesticides and complies with the minimum re-entry times for specified chemicals (29 C.F.R., Part 570).

**Hazardous Occupations In Agriculture**

The Secretary of Labor has found and declared certain agricultural occupations are hazardous. Aside from certain exemptions, no minor under sixteen years of age may be employed at any time in these occupations. Briefly, these hazardous occupations are:

- Operating, driving, or riding on a tractor with more than 20-PTO horsepower.
- Operating or assisting to operate a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, pea viner, feed grinder, crop dryer, forage blower, auger conveyor, self-unloading wagon or trailer, power post-hole digger, power post driver, or nonwalking-type rotary tiller.
- Operating or assisting to operate a trencher or earth moving equipment; forklift; potato combine or power-driven circular, band, or chain saw.

- Working in a pen, yard, or stall with a bull, boar, stud horse, sow with suckling pigs, or cow with newborn calf.
- Working around timber with a butt diameter of more than six inches.
- Working from a ladder or scaffold more than 20 feet high.
- Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
- Working inside a fruit, forage, or grain bin or silo under specified conditions.
- Handling or applying agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as Toxicity Category I (Danger or Danger-Poison) or Category II (Warning). These words will appear on the labels.
- Handling or using explosives.

*Note:* Post-harvest operations such as drying and curing are considered processing and have a different list of hazardous occupations, including using a knife.

**Exemptions From Hazardous Occupations In Agriculture**

- As previously stated, minors under the age of sixteen who work for their parents on their parents' farm are exempt.
- *Student-Learners.* Student learners in a bona fide vocational agricultural program may work in occupations listed in the hazardous occupations order under a written agreement which provides that the student-learner's work is incidental to training, intermittent for short periods of time, and under close supervision of a qualified person; that safety instructions are given by the school and correlated with on-the-job training; and that a schedule of organized and progressive work processes has been prepared. The written agreement must contain the name of the student-learner and be signed by the employer

and a school authority, each of whom must keep copies of the agreement.

- *4-H Federal Extension Serving Training Program.* Minors ages fourteen and fifteen who hold certificates of completion of either the tractor operation or machine operation program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificates of completion on file with the minor's records. Enrollment in this program is open to minors who are members or non-members of 4-H. Information on this program is available from an Extension Agent of the Cooperative Extension Service.
- *Vocational Agricultural Training Programs.* Minors, ages fourteen and fifteen, who hold certificates of completion of either the tractor operation or machine operation program of the U.S. Office of Education Vocational Agriculture Training Program, may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records. Information on the Vocational Agriculture Training Program is available from vocational agriculture teachers.

### ***Employers Must***

- Every employer (except a parent employing his or her own child on his or her own farm) who employs any minor under the age of sixteen must preserve and maintain records containing the following data on each minor employee:
  - Full, legal name of minor.
  - Place where minor lives and his or her permanent address.
  - Date of birth.

- Written evidence of any required parental consent.

- Every employer must keep a minor employee's age or employment certificate on file.
- Every employer must prohibit minors under sixteen from performing hazardous jobs.

### ***Age Certificates***

Proof of age is not required. However, the U.S. Department of Labor recommends that employers obtain a Florida age certificate issued by the school board of each district where minors are employed.

### ***Minimum Wage***

Unless an employer is otherwise exempt from the Minimum Wage Law, minor employees must be paid at least the current federal minimum wage rate. (See *Minimum Wage Law*.)

### ***Enforcement***

Civil money penalties of up to \$10,000 per violation, per employee, or six month's imprisonment can result from employer actions contrary to federal child labor provisions.

### ***Responsible Agency***

#### **Regional Office**

U.S. Department of Labor

ESA Wage and Hour Regional Office

61 Forsyth Street, Room 6M12

Atlanta, GA 30303

(404) 562-2092

<http://www.doleta.gov/regions/reg03>

#### **District Offices**

<http://www.dol.gov/esa/contacts/whd/america2.htm#Florida>

District Director

3728 Phillips Highway, Suite 219

Jacksonville, FL 32207

(904) 232-2489

District Director

10300 Sunset Drive, Room 255

Miami, FL 33173-3038

(305) 598-6607 [English]

(305) 598-7471 [Spanish/Creole]

District Director

4905 West Laurel Avenue, Suite 300

Tampa, FL 33607-3838

(813) 288-1242

## Child Labor [State]

### *Purpose*

Provides state standards for employment of children in agriculture.

### *Coverage*

The Florida law is not applicable to minors working for their own parents during hours when public schools are not in session.

### **Minors ages sixteen and seventeen may not work during school hours unless**

- A high school graduate.
- Holds a GED.
- Enrolled in vocational school.

- Outside the hours of 6:30 a.m. to 11:00 p.m. when school is scheduled the next day (does not apply during summer vacations and holidays).
- More than six consecutive days in a week.
- More than four consecutive hours without a 30-minute break.

### **Minors ages fourteen and fifteen may not work during school hours unless**

- All of the above rules are followed for minors ages sixteen and seventeen.
- Work no more than three hours a day when school is scheduled for the following day, fifteen hours a week during school sessions (during holidays and summer vacations, the daily maximum is eight hours and the weekly maximum is forty hours).
- Outside the hours of 7:00 a.m. to 7:00 p.m. when school is scheduled the following day (during holidays and summer vacations, these minors may work until 9:00 p.m.).

### ***Hazardous Occupations***

### **No minor under the age of eighteen may work**

- In or around toxic substances or corrosives, including pesticides or herbicides, unless proper field entry time allowances have been followed.
- Operating or assisting in operating tractors over 20-PTO horsepower, forklifts, or any harvesting, planting, plowing, or other moving machinery.

### **Minors ages fourteen and fifteen may not work in the following occupations or use these equipment items**

- Power-driven machinery.
- A motor vehicle (operator).
- Oiling or cleaning machines.
- In freezers or meat coolers.

- Meat or vegetable slicers.
- Farm tractors (except on family-operated farms under close supervision of farm operator if they have completed a training course).

### **Age Certificates**

Florida requires proof of age on record for children under the age of eighteen which may be satisfied by:

- Photocopy of child's birth certificate.
- Photocopy of child's driver's license.
- An age certificate issued by the school board of the district in which the child is employed.
- Photocopy of passport or visa listing child's date of birth.

### **Posting Of Notices**

Any person who hires or employs minors shall post, at a conspicuous place on the property or place of employment where it can be easily read, a poster notifying minors of the Florida Child Labor Law. The poster can be obtained from the Florida Department of Business and Professional Regulation, Division of Professions, Farm and Child Labor Program, upon request.

Employers of minors are also reminded of the necessity to comply with the Child Labor provisions of the federal Fair Labor Standards Act. (See *Child Labor [Federal]*.)

### **Workers' Compensation**

If an injured minor is employed contrary to the Florida Child Labor Law, double the compensation is payable by the employer, not the insurance carrier.

This double compensation penalty is inapplicable to minors working for their own parents during hours when public schools are not in session.

### **Enforcement**

Penalties for violation of the Florida Child Labor Law can involve fines of up to \$2,500 and/or a finding of guilty of a second-degree misdemeanor.

### **Responsible Agency**

#### **Area Office**

Florida Department of Business and Professional Regulation

Division of Professions

Farm and Child Labor Program

Post Office Box 1698

Tallahassee, FL 3302-1698

(850) 488-3131 or

dial toll-free 1(800) 226-2536

<http://www.state.fl.us/dbpr/pro/farm/index.shtml>

### **Civil Rights and Antidiscrimination [Federal]**

#### **Purpose**

Protect employees from workplace discrimination. That is, the various federal programs discussed below require that employers hire all workers who are otherwise qualified without regard to race, color, religion, gender, citizenship, national origin, age, or disability.

#### **Federal Civil Rights/Antidiscrimination Programs**

- 1964 Civil Rights Act (Title VII).
- Equal Pay Act of 1963.
- Americans With Disabilities Act (ADA) of 1990.
- Age Discrimination in Employment Act of 1967.
- National Origin Discrimination in IRCA.

#### **1964 Civil Rights Act**

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees based on race, color, religion, sex, or national origin.

Employers may never discriminate on the basis of race or color. Employers may discriminate on the basis of religion, sex, or national origin if it is a bona fide occupational qualification. Use of this aspect of the law by employers is fraught with risks and should be used carefully. The employer has the burden of proof to show that this kind of job requirement is essential for the normal operation of the business.

For example, a job requiring heavy lifting may be difficult for many women. But, if a woman can do it, it is not essential to make it a job for men only. Rather the job description should describe in detail what must be lifted and all applicants or promotion candidates should be questioned about their ability to do the lifting.

### **Coverage**

The Civil Rights Act of 1964 applies only to employers with fifteen or more employees in at least twenty calendar weeks of the current or preceding year.

### **Hiring and Interviewing**

During the hiring process, care should be taken in the questions asked on an employment application form and in the interview. Questions having a disparate impact on minorities or women may not be asked. For example, certain pre-employment questions are illegal, regardless of whether they are verbal or on a written application form. As a general rule, what is not job related is likely to be illegal.

### **Sexual Harassment/Discrimination**

The consequences of sexual harassment or discrimination should be of increasing concern to employers. Employers should establish and widely circulate rigid company policies against such behavior. Procedures to quickly and effectively deal with sexual harassment should be established as soon as possible and should be the basis for across-the-board employee training.

The Equal Employment Opportunity Commission (EEOC) guidelines define two types of sexual harassment, both of which are illegal:

### ***Quid Pro Quo (something given or received for something else):***

Occurs when an employee is subjected to unwelcome sexual advances and submission is made the basis for hiring, firing, or advancement.

### ***Environmental:***

Occurs when any type of unwelcomed sexual behavior creates a hostile work environment.

#### Examples of Sexual Harassment:

- Unsolicited and unwelcome flirtations, advances, or propositions.
- Display of sexually suggestive objects or pictures.
- Graphic or degrading comments about an employee's appearance, dress, or anatomy.
- Ill-received dirty jokes and offensive gestures.
- Sexual or intrusive questions about an employee's personal life.
- Explicit descriptions of the harasser's own sexual experiences.
- Abuse of familiarities or diminutives such as honey, baby, dear, etc.
- Unnecessary, unwanted, physical contact such as touching, hugging, pinching, patting, kissing.
- Whistling, catcalls, leering.
- Exposing genitalia.
- Physical or sexual assault.
- Rape.

### **Enforcement**

Courts may impose broad judicial relief when discrimination is established. Discrimination need not be intentional. Intent to discriminate is often inferred from the existing employment situation where an employer's careless personnel practices and lack of understanding of the law may have resulted in a discriminatory employment environment.



*Reminder:* Ignorance of civil rights laws is not an acceptable defense against discrimination charges.

Employers in violation of the Civil Rights Act may be ordered to cease the discriminatory practice. They may also be required to reinstate a fired employee, hire an applicant who was turned down, and provide back pay and benefits plus any other relief the court deems appropriate. The act authorizes courts to award attorney's fees and court costs to plaintiffs.

### **Equal Pay Act of 1963**

The Equal Pay Act of 1963, which amended the Fair Labor Standards Act of 1938, prohibits wage discrimination based on an employee's sex. That is, the law requires employers to pay the same wages to male and female employees performing equal work in jobs requiring substantially equal skill, effort, and responsibility and requires equal wages for jobs with similar working conditions.

#### **Coverage**

This law applies to the same agricultural employers covered under the Minimum Wage Law (those who employ at least 500 man-days of labor in any calendar quarter).

#### **Multiple Establishments**

Where employers have multiple establishments, coverage is ordinarily determined by circumstances at each establishment.

#### **Exceptions**

An employer may use different pay scales in situations where wage payments are made according to the following systems:

- A seniority system.
- A merit system.
- A system that measures earnings by quantity or quality of production.
- A system based on any factor other than sex.

These exceptions may be particularly important in agricultural employment where many pay systems are based on production incentives, such as piece-rate pay methods.

#### **Enforcement**

Employers found in violation of the Equal Pay Act may be ordered to halt the discriminatory practice to hire, reinstate, or promote a worker, and/or to pay lost wages.

Liquidated damages (an amount equal to the lost wages) may be ordered in cases of willful violations. Attorneys' fees and court costs also may be ordered.

### **Americans with Disabilities Act (ADA) of 1990**

The Americans With Disabilities Act prohibits discrimination against persons with disabilities. The law prohibits discrimination in recruitment, pay, hiring, firing, promotions, job assignments, training, leave, layoffs, benefits, and all other employment-related activities.

#### **Coverage**

All employers with fifteen or more employees are subject to the ADA's antidiscrimination provisions.

#### **Disability Defined**

The ADA defines a disability as a physical or mental impairment that substantially limits a major life activity such as hearing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning, or working. Certain diseases are protected, such as HIV (whether symptomatic or asymptomatic), alcoholism, and past drug addiction. The ADA, in the regulatory text, also clearly informs people who use alcohol that they will be held to the same standards as others while at work and that the use of alcohol in the workplace is prohibited.

Anyone currently using illegal drugs is not protected by the ADA and may be denied employment or fired on the basis of such use. The ADA does not prevent employers from conducting drug testing or making employment decisions based on verifiable results.

## Hiring Philosophy of ADA

The ADA does not require that an employer hire any disabled person; an individual must be qualified to perform the essential functions of the job with or without reasonable accommodation.

Thus, an applicant or employee must satisfy the job requirements for educational background, experience, skills, licenses, and any other job-related standards. He or she must also be able to perform those tasks that are essential to the job, with or without reasonable accommodation.

The ADA does not interfere with the employer's right to hire the best-qualified applicant. However, an employer should be able to demonstrate the necessity of those qualities the best applicant is expected to exhibit.

## ADA Terminology

To comply with the ADA, it is important to understand the meaning of certain terms. The essential functions of a job are the basic job duties an employee must be able to perform, with or without reasonable accommodation. Each job should be carefully analyzed to determine which functions or tasks are essential for performance.

This analysis should take place before advertising, recruiting, hiring, promoting, or firing. A well-prepared job description is critical to documenting the essential functions of a job.

The ADA requires employers to make reasonable accommodation to permit a disabled person to perform a job. Reasonable accommodation is any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to:

- Participate in the job application process.
- Perform the essential functions of a job.
- Enjoy benefits and privileges of employment equal to nondisabled employees.

It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a

disability. The only exception is if doing so would impose an undue hardship on the operation of the business.

An undue hardship means that an accommodation would be unduly costly, extensive, substantial, or disruptive or would fundamentally alter the nature or operation of the business. Among the factors to be considered in determining whether an accommodation is an undue hardship are cost of the accommodation, employer's business size and financial resources, and the nature and structure of the business operation.

In difficult situations, the employer must consider alternatives. For example, if costs cause the undue hardship, the employer must consider possible outside funding and whether the costs could be offset by state and federal tax credits or deductions. The employer also must give the applicant or employee the opportunity to provide the accommodation or pay that portion of the accommodation constituting an undue hardship.

## Medical Examinations

During the recruitment/interviewing process, it is unlawful to ask an applicant whether he or she is disabled or about the nature or severity of a disability. It is also unlawful to require an applicant to take a medical examination before making a job offer.

Medical examinations may be required, but only after making an offer of employment, and only if they are required for all applicants in the same job category. However, if the individual is not hired because of the medical examination, the employer must show that the reasons are job-related and that no reasonable accommodation would make it possible for the applicant to perform the essential job functions.

*Reminder:* An applicant may be asked about his or her ability to perform job functions as long as the questions are not phrased in terms of a disability.

## Enforcement

Employers found in violation of the ADA may be prohibited from continuing discriminatory employment practices. They may also be ordered to

hire or reinstate an individual, provide lost pay, or provide any other relief the court chooses to impose.

Attorneys' fees and court costs may also be awarded.

### **Age Discrimination in Employment Act of 1967**

The Age Discrimination in Employment Act of 1967 (ADEA) was passed to encourage the employment of older persons (forty or older) based on ability rather than age and to prohibit arbitrary discrimination based on age.

#### **Coverage**

This law applies to employers of twenty or more workers employed during at least twenty calendar weeks of the current or preceding year. It prohibits discrimination against individuals age forty or older in matters of hiring; discharging; wages; and terms, conditions, or privileges of employment.

The law prohibits statements in advertisements that indicate preference, limitations, specifications, or discrimination on the basis of age.

#### **Inappropriate Phrases**

It is unlawful to use such phrases as *age twenty-five to thirty-five*, *young*, *boy*, *girl*, or similar phrases. It is also unlawful to use such phrases as *age forty to fifty*, *age over sixty-five*, *retired*, or *supplement your pension* since they may discriminate against others in the forty-or-older age group.

The act does not prohibit specification of a minimum age below forty in advertisements (e.g., must be age eighteen or over). However, the Florida Human Rights Act of 1977 prohibits age discrimination without age limits.

There are permitted exceptions to these rules, but they should be used with care. An exception is permitted where age is a bona fide occupational qualification and is reasonably necessary to the normal operation of the particular business. Be aware that this exception is narrowly construed, and that the employer has the burden of proof to show that it applies.

*Note:* The law prohibits employers from discriminating against older employees based on the claim it is more costly to employ older persons. The only exceptions relate to employee benefit plans.

#### **Enforcement**

Employers violating the Age Discrimination in Employment Act may be ordered to discontinue their discriminatory practices. They may also be ordered to hire, reinstate, promote, or pay lost wages. Liquidated damages (an amount equal to lost wages) may be ordered in cases of willful violations. Attorneys' fees and court costs may also be ordered.

### **National Origin Discrimination in IRCA of 1986**

#### **Coverage**

The 1986 Immigration Reform and Control Act (IRCA) made it illegal for employers of four or more employees to discriminate against individuals in hiring, firing, recruiting, or referring for a fee based on their citizenship status or national origin. Permanent and temporary residents as well as United States citizens are protected under this law.

*Note:* The 1996 Immigration Act provides that intent must be shown to make discrimination stick. When an employee has invalid documents, a possible course of action, according to INS, is to require the employee to correct the deficiency, produce other documents, or, failing to do so with a reasonable period, be fired.

#### **Employer Responsibilities**

IRCA requires employers to fill out and retain an I-9 form for each employee, not merely those who look foreign. Also, IRCA makes it illegal to practice document discrimination by requiring prospective employees to present a particular type of employment documentation.

The key to compliance with IRCA's conflicting missions (prohibiting the hiring of unauthorized persons, while also prohibiting discrimination based on national origin or citizenship status) is to systematize the I-9 process and treat every applicant

and employee exactly the same. Consistent practices are a good defense against discrimination charges.

Employers should base all hiring decisions solely on the applicant's ability to perform the job in question. Each job description should be carefully drafted and should include the specific tasks involved and what skills are needed to adequately perform the job.

Job applicants should only be asked those questions that relate to the job. Examples may include, "Have you harvested onions previously?" or "Have you driven a four-wheel vehicle before?" Do not ask where the applicant was born.

After you determine an applicant meets the job qualifications and you offer the person the job, present the I-9 form. Allow the person to show you any acceptable documents he or she wishes.

Do not specify which employment documents you will accept. This constitutes prima facie evidence of national origin discrimination.

*Example:* Do not say, "Do you have a green card?" or "I'd like to see your Social Security card and driver's license."

*Note:* It is permissible to ask for a Social Security card for purposes of completion of tax documents only and only after the hiring and I-9 processes are completed.

Accept any documents (within reason) that appear to be genuine on their face and do not request more or different documents than those the person presents. If an employer turns away a prospective employee because the documents seemed fraudulent and they are later found to be genuine, the employer is exposed to charges of discrimination.

## Enforcement

The Office of Special Counsel for Immigration Related Unfair Employment Practices in the Department of Justice handles national origin discrimination complaints against employers of four to fourteen workers. The Equal Employment Opportunity Commission handles national origin

discrimination complaints against employers of fifteen or more workers.

Penalties for discrimination include up to \$1,000 per person for document discrimination. Hiring and other discrimination violations carry fines ranging from up to \$2,000 per person for first offenses, up to \$5,000 per person for second offenses, and up to \$10,000 per person for three or more offenses.

Employers who illegally discriminate may also be ordered to hire or pay lost wages to applicants turned down for jobs and employees who are illegally discharged.

(See also section on *Immigration Reform*.)

## **Enforcement Generally for Civil Rights/Antidiscrimination**

Enforcement of discrimination complaints under the Civil Rights Act, ADA, Age Discrimination in Employment Act and Equal Pay Act is handled initially by the federal Equal Employment Opportunity Commission (EEOC), which is within the U.S. Department of Justice.

The EEOC has cooperative enforcement agreements with selected state and local agencies, called deferral agencies. The EEOC refers discrimination complaints to these deferral agencies and generally requires that complaints be filed directly with the deferral agency if one is designated.

In Florida, complaints are filed with the Commission on Human Relations as one of the other designated *706 agencies* (<http://fchr.state.fl.us>).

## **Florida Designated 706 Agencies**

[An agency designated by the EEOC to enforce employment discrimination]

Pinellas County Office of Human Rights

400 South Fort Harrison Avenue, Suite 300

Clearwater, FL 34616

(813) 464-4880	712 West Ross Avenue
	Tampa, FL 33602
Metro-Dade Department of Community Affairs	(813) 223-8241
111 NW First Street, Suite 620	
Miami, FL 33128	Additional non-706 agencies that handle and investigate discrimination complaints are located in Fort Myers, Gainesville, Pensacola, Tallahassee, and Tampa.
(305) 375-5730	
Florida Commission on Human Relations	<b>Responsible Agency</b>
325 John Knox Road, Bldg F, Suite 240	U.S. Equal Employment Opportunity Commission
Tallahassee, FL 32303-4149	1801 "L" Street NW
(850) 488-7082	Washington, DC 20507
	(202) 663-4900 or
Jacksonville Community Relations Commission	dial toll-free 1(800) 669-4000
421 West Church Street, Suite 705	<a href="http://www.eeoc.gov">http://www.eeoc.gov</a>
Jacksonville, FL 32202	<b>District Office</b>
(904) 630-4911	Equal Employment Opportunity Commission
	2 South Biscayne Boulevard, Suite 2700
Orlando Bureau of Human Relations	Miami, FL 33131
400 South Orange Avenue, Room 103	(305) 536-4491
Orlando, FL 32801	<b>Area Office</b>
(407) 246-2308	501 East Polk Street, 10th Floor
	Tampa, FL 33602
St. Petersburg Human Relations Department	(813) 228-2310
175 Fifth Street North, PO Box 2842	<b>Earned Income Tax Credit [Federal]</b>
St. Petersburg, FL 33731	<b>Purpose</b>
(813) 893-7345	Provides qualified employees with earned income tax credits for their tax returns or advanced payments throughout the year.
Tampa Office of Human Rights	

### **Who Must Comply**

All employers, including farmers, must pay Advance Earned Income Tax Credit if the employee is eligible and requests payment.

### **Exemptions**

Employers who pay agricultural workers on a daily basis are not required to pay advance earned income tax credit.

### **Employer Responsibilities**

- Employers must notify employees not having income tax withheld that they may be eligible for earned income tax credits.
- If requested by the employee, the employer must provide Form W-5 ("Earned Income Credit/Advance Payment Certificate"), which is available at the nearest Internal Revenue Service (IRS) office or post office. Once the employer has given notice, there is no further responsibility unless the worker chooses to select the earned income tax credit.
- If a worker selects advance earned income tax credit and files a Form W-5, the employer must:
  - Compute the employee's gross pay. (For agricultural employees, gross pay is interpreted as those wages subject to Social Security and Medicare Taxes.)
  - Compute the employee's Social Security, Medicare and Withholding Tax.
  - Refer to tables in IRS Circular E, "Employer's Tax Guide," and compute the Advance Earned Income Tax Credit payment based on the employee's gross pay for pay period.
  - Add Advance Earned Income Tax Credit to the employee's pay for the pay period.
  - Show the amount of Advance Earned Income Tax Credit payments during the year on the employee's Form W-2.

- Retain all records of Advance Earned Income Tax Credit payments for four years. These records should include the following information:

- Copy of the employee's Form W-5.
- Amount and date of the employee's earnings.
- Dates of the employee's employment.
- Dates and amount of tax deposits made.
- Copies of returns filed.
- On the Form W-5, the employee must show if he or she is married and whether the spouse has a Form W-5 in effect for the year. If the employee indicates the spouse has a Form W-5 in effect, the employer will use the table titled "Married With Both Spouses Filing Certificate."
- Employers must file the appropriate forms with the Internal Revenue Service, Form 941, "Employer's Quarterly Tax Return," for non-farm packinghouses, canners, and processors or Form 943, "Annual Tax Return for Agricultural Employers," for farm employers.
- Employers must also file Form W-3, "Transmittal of Income and Tax Statements," annually, by February 28th, accompanied by a Form W-2 for each individual employee to the Social Security Administration. (See section on *Social Security*.)

### **Employer Reimbursement**

Employers are reimbursed by the IRS for Advance Earned Income Tax Credit payments as follows:

- The employer deducts the amount of the Advance Earned Income Tax Credit payment from his or her total liability for withholding taxes as he or she periodically remits funds to IRS.
- If the Federal Income taxes withheld are not sufficient to cover the amount of the Advance Earned Income Tax Credit payments to his or her

employees, the employer may deduct the excess from the employee's contribution to Social Security and Medicare.

- If there is still an excess of Advance Earned Income Tax Credit payments, the employer may deduct the excess from the employer's contribution to Social Security and Medicare.
- If, for any payroll, the Advance Earned Income Tax Credit payments are more than the withheld income tax and the Social Security and Medicare taxes (including the employer's share of Social Security and Medicare taxes), the employer may do one of the following:

1. Reduce each Advance Earned Income Tax Credit payment proportionately.
2. Make full payment of Advance Earned Income Tax Credit amount and have full amounts treated as an advance payment of employer's tax liability.

### ***Employee Eligibility***

The eligibility requirements for Advance Earned Income Tax Credits are detailed on Form W-5. They include the following:

- The employee's expected earned income and adjusted gross income (including the spouse's) must each be less than \$25,078, if there is one child. For more than one child, earned income must be less than \$28,495. (These figures change annually. Check with the IRS.)
- The employee generally must have a child living with him or her more than half the year, including when the child is away at school or on vacation. (The entire year for a foster child.)
- If married, the employee must file a joint tax return or, if eligible, file as head of household and have a qualifying child.
- The employee and any spouse must be at least twenty-five years of age.
- Employees are ineligible for any program benefits if income from investments (dividends and interest) exceeds \$2,200 in a given year.

- The employee must file a Form W-5 with his or her employer. The employee is solely responsible for determining eligibility when filing a Form W-5.
- The employee must not have foreign earned income, must file an annual tax return (Form 1040), and must expect to be eligible for Advance Earned Income Tax Credits the following year.
- Employers must stop making Advance Earned Income Tax Credit payments for the remainder of the year to employees receiving total compensable wages of \$25,078 (if one child) or \$28,495 (if more than one child).

### **Responsible Agency**

Department of the Treasury

Internal Revenue Service

Washington, D.C. 20224

<http://www.irs.ustreas.gov>

For local offices, see the telephone directory for

- U.S. Government
- Internal Revenue Service

For toll-free information, dial 1(800) 829-1040

## **Emergency Planning and Community Right-to-Know Law [State]**

### ***Purpose***

To facilitate awareness and emergency planning regarding the potential chemical hazards in local communities.

### ***Program***

This law seeks to encourage emergency planning efforts at the state and local levels and to increase the public's access to information about the potential chemical hazards that may exist in their communities.

Any facility that produces, uses, or stores extremely hazardous substances (EHS) in excess of the Threshold Planning Quantity (TPQ) must comply with some or all requirements of this law. In addition, all businesses which have a spill or an unauthorized release of an EHS in excess of the Reportable Quantity (RQ) must immediately report such spills or releases.

### ***Who Must Comply***

If you have restricted use and/or danger labeled pesticides or chemicals on your property in sufficient quantities, you may need to comply with this law.

### ***Responsible Agency***

State Emergency Response Commission

2555 Shumard Oak Boulevard

Tallahassee, FL 32399-2100

(850) 413-9970

1-800-635-7179 (Florida only)

<http://www.dca.state.fl.us/cps/SERC/serc.htm>

## **Family and Medical Leave Act of 1993 [Federal]**

### ***Purpose***

To provide for unpaid job protected leave for family and medical reasons.

### ***Employer Coverage***

The Family and Medical Leave Act (FMLA) of 1993 defines covered employers as those who are engaged in or affect interstate commerce if they employ fifty or more workers during twenty or more weeks in the current or preceding year. Most agricultural businesses fall under the interstate commerce definition.

Employers using the services of farm labor contractors (FLCs) may find that their permanent and seasonal workers, added to the FLC's crew, equal the fifty or more workers over a twenty-week period.

FMLA's definition of joint employment is similar to that of the Fair Labor Standards Act which in agriculture usually presumes a joint employment status.

### ***Employee Coverage***

To be covered by the FMLA, an employee must meet all the following criteria:

- Have worked for the employer at least twelve months (not necessarily consecutive months; working any part of a week counts as a whole week).
- Have worked at least 1,250 hours over the previous twelve-month period preceding leave.
- Work at a work site, or within seventy-five miles of a work site, where at least fifty workers are employed by the employer.

Under FMLA, work sites are single locations or a group of sites within the seventy-five mile area.

### ***Basic Provisions***

Employers covered by FMLA are required to permit eligible employees to take up to twelve weeks of unpaid leave during a twelve-month period for any of the following reasons:

- For the birth of a child, or placement of a child for adoption or foster care.
- To care for a spouse, child, or parent with a serious health condition.
- For employee's own serious health condition that makes the person unable to perform job.

A *serious health condition* involves inpatient care in a medical facility or continuing treatment by a health care provider. FMLA was not designed to cover short-term illnesses like colds or flu.

FMLA requires the employer to protect the employee's job, benefits, and seniority during the FMLA leave period. The employee must be restored to his or her previous position, or an equivalent position, with equal pay, benefits, and other terms and conditions of the job.



Group health insurance coverage must be maintained unchanged for the duration of the leave, even if a co-payment arrangement is customary. In this situation, an employer must make arrangements for the employee on FMLA leave to continue to pay the appropriate share of health insurance premiums during the leave period.

Other benefits such as sick leave or vacation time may, but are not required to, accrue during the FMLA leave period. Be sure not to dock leave earned before the commencement of FMLA leave.

Employers may require employees to exhaust accrued vacation, sick leave, or personal leave before taking FMLA leave.

When the leave is for the birth or adoption of a child, the FMLA requires the employee to give thirty-days' notice of his or her intent to take leave. However, if the date of the birth or adoption requires leave to begin in less than thirty days, the employee must give such notice as is practicable.

Notification requirements are similar for leaves due to a serious health condition. The FMLA enables employers to require medical certification to support a request for leave because of a serious health condition. The employer may also require second or third medical opinions, at the employer's expense.

### ***Determining the Twelve-Month Period***

The employer is permitted to choose any one of the following methods for determining the twelve-month period in which the twelve weeks of leave entitlement occurs:

- The calendar year.
- Any fixed twelve-month leave year, such as a fiscal year, a year required by state law, or a year starting on an employee's anniversary date.
- The twelve-month period measured forward from the date of any employee's first FMLA leave begins.
- A rolling twelve-month period measured backward from the date an employee uses any FMLA leave.

### ***On Return from FMLA Leave***

An employee is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay, and any other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employer's obligations may be governed by the Americans with Disabilities Act (ADA). An equivalent position is one that is virtually identical to the employee's former position in terms of pay; benefits; and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority. An employer may deny job restoration to salaried eligible employees (key employees), if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer or may delay restoration to an employee who fails to provide a fitness-for-duty certificate to return to work. Under the Act, a key employee is a salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the employer within seventy-five miles of the employee's worksite.

### ***Posting Requirement***

Every employer covered by the FMLA is required to post and keep posted on its premises, in a conspicuous place where employees are employed, whether or not it has any eligible employees, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it readily can be seen by employees and applicants for employment. In addition, if an FMLA-covered employer has any

eligible employees and has any written guidance to employees concerning employee benefits or leave rights (e.g., employee handbook), information concerning FMLA entitlements and employee obligations under the FMLA must be included in the handbook or other documents. If such employer does not have written policies, manuals, or handbooks describing employee benefits and leave provision, the employer must provide written guidance to any employee concerning all the employee's rights and obligations under the FMLA. This notice must be provided to employees each time notice is given.

### ***When Leave Is Not Foreseeable***

When the approximate timing of the need for leave is unforeseeable, an employee should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employer within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is unfeasible. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employer's internal rules and procedures may not be required when FMLA leave is involved. If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employer may delay the taking of FMLA leave until thirty days after the date the employee provides notice to the employer of the need for FMLA leave. If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may delay continuation of FMLA leave until an employee submits the certificate.

### ***FMLA and Antidiscrimination Policy***

Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability (e.g., Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act). FMLA's legislative history explains that FMLA is not intended to modify or affect the

Rehabilitation Act of 1973, as amended; the regulations concerning employment which have been promulgated pursuant to that statute; or the Americans with Disabilities Act of 1990 or the regulations issued under that Act.

### ***FMLA and ADA***

If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employer must make reasonable accommodations, barring undue hardship, in accordance with the ADA. At the same time, the employer must afford an employee his or her FMLA rights. ADA's disability and FMLA's serious health condition are different concepts and must be analyzed separately. FMLA entitles eligible employees to twelve weeks of leave in any twelve-month period. Whereas the ADA allows an indeterminate amount of leave, barring undue hardship, as a reasonable accommodation. FMLA requires employers to maintain an employee's group health plan coverage during FMLA leave on the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period. Whereas ADA does not require maintenance of health insurance unless other employees receive health insurance during leave under the same circumstances.

### ***Enforcement***

Failure to post an FMLA poster in a conspicuous place can result in a civil money penalty of up to \$100 for each separate offense.

Eligible employees denied leave or reinstatement may file a complaint with the U.S. Department of Labor. They are also entitled to file a private right of action lawsuit to obtain relief.

The FMLA provides damages equal to lost wages, benefits, and other compensation. Employees may also receive compensation for actual losses, such as the cost of care for children or parents, up to an amount equal to twelve weeks (of the employee's) earnings. Courts may also award employees attorneys' fees and related costs.

***Additional Information***

- USDL Issues Final Family and Medical Leave Act (FMLA) Regulations. FFVA Labor Bulletin, No. 502, February 17, 1995 (Report from USDL).

***Responsible Agency*****Regional Office**

U.S. Department of Labor

ESA Wage and Hour Regional Office

61 Forsyth Street, Room 6M12

Atlanta, GA 30303

(404) 562-2092

<http://www.doleta.gov/regions/reg03>

**District Offices**

District Director

3728 Phillips Highway, Suite 219

Jacksonville, FL 32207

(904) 232-2489

District Director

10300 Sunset Drive, Room 255

Miami, FL 33173-3038

(305) 598-6607 [English]

(305) 598-7471 [Spanish/Creole]

District Director

4905 West Laurel Avenue, Suite 300

Tampa, FL 33607-3838

(813) 288-1242

**Farm Labor Contractor Registration and Testing [State]*****Purpose***

To establish state standards and registration procedures for farm labor contractors (crew chiefs) operating in the State of Florida.

***Who Must Register***

A Farm Labor Contractor Registration certificate is required by any individual who:

- For a fee or other valuable consideration, recruits, transports into or within the state, supplies, or hires, at any one time in any calendar year, one or more farm workers to work for or under the direction, supervision, or control of a third person.
- Recruits, transports into or within the state, supplies, or hires, at any one time in any calendar year, one or more farm workers and who, for a fee or other valuable consideration, directs, supervises, or controls all or any part of the work of such workers.

***Program Requirements***

Labor contractors must do the following:

- Annually apply for and obtain a certificate of registration from the Department of Business and Professional Regulation. Renewals will be in the birth month of the crew leader or on the date of incorporation if the applicant is a corporation.
- Pay a nonrefundable fee (\$75.00) for filing an application for a Certificate of Registration.
- Carry his or her certificate of registration at all times and produce or display the certificate to all persons with whom he or she plans to deal as a farm labor contractor.
- Promptly pay monies due workers and semi-monthly or at the time of payment present each worker with a completed Notice of Payment which should include the amount and rate of compensation, the number of hours worked, the employer's name, the employer's federal employment identification number, and a

detailed itemization of all deductions from each worker's wages.

- Prominently display in English and Spanish, if necessary, at the workplace and in vehicles used to transport workers:

1. A copy of his or her statement of working conditions (LES Form LET 3103). (This form is not required if federally required form WH-516 is already posted.)
2. A statement indicating the rate of compensation he or she receives from the grower and what rate he or she is paying the workers (LES Form ESF 3101).

- Provide liability insurance coverage on all vehicles used to transport workers in an amount at least equal to that provided by the financial responsibility laws of Florida.
- Submit proof that each vehicle used to transport farmworkers is in compliance with the vehicular safety standards of the state in which the vehicle is registered.
- Provide Workers' Compensation coverage for all workers, unless exempt under agricultural small employer status.
- Furnish the Department of Business and Professional Regulation with a set of his or her fingerprints.
- Retain, for three years, a copy of each Notice of Payment and other required payroll information. Applicant should be prepared to provide copies of payroll receipts or check stubs if requested by the registering agency.

*Note:* Unlike MSPA, the State Act does not have a provision for a Farm Labor Contractor Employee Certificate. Therefore, any individuals performing contractor activities in Florida must register as a contractor under the State Act even though they have an Employee Certificate under MSPA.

### ***Labor Contractor Test***

Applicants for a Certificate of Registration must take a written or oral examination, in the language of the applicant, which demonstrates his or her knowledge of the duties and responsibilities of a farm labor contractor. A \$35 fee will include the test and educational materials. This will be a one-time test, except that the Department of Business and Professional Regulation (DBPR) may require an applicant for renewal of the Certificate of Registration to retake the test if:

- During the prior certification period the DBPR issued a final order assessing a civil money penalty or revoked or refused to renew or issue a Certificate of Registration.
- The DBPR determines that new changes in the duties and responsibilities of farm labor contractors necessitates a new test. In this situation, all applicants for renewal would be required to be retested.

### ***Exclusions***

The Florida Farm Labor Contractor Registration Law does not apply to:

- Any person, or an immediate family member of such person, who is the owner or lessee of a farm or who is the owner or lessee of a packinghouse or food processing plant and who employs workers in planting, cultivating, harvesting, or preparing agricultural products for delivery to such packinghouse or food processing plant.
- Any person who transports workers solely by means of a car pool.

### ***Additional Information***

- Chapter 450, Part III, Florida Statutes
- Rule 38H-11, Florida Administrative Code

### ***Responsible Agency for Registration***

Florida Department of Business and Professional Regulation

Division of Professions

Post Office Box 1698

Tallahassee, FL 32302-1698

(850) 488-3131

<http://fcn.state.fl.us/dbpr>

### **Responsible Agency for Compliance and Enforcement**

Florida Department of Business and Professional Regulation

Division of Professions

Post Office Box 1698

Tallahassee, FL 32302-1698

(850) 488-3131

<http://www.state.fl.us/dbpr/pro/farm/compliance/farmlabor.index>

## **Field Sanitation and Drinking Water [Federal]**

### **Purpose**

To provide federal standards of field sanitation and drinking water for hand laborers.

### **Who Must Comply**

Employers who currently employ or have employed during the past twelve months at any one time eleven or more employees engaged in hand labor operations in the field must provide toilets, hand washing facilities, and drinking water to such employees at no cost to the employees.

### **Definitions**

- *Handwashing facility.* This means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap, and single-use towels.
- *Potable water.* This means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the

U.S. Environmental Protection Agency's national Interim Primary Drinking Water Regulations, published in 40 C.F.R., Part 141.

- *Toilet facility.* This means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets, and sanitary privies.

### **Employer Responsibilities**

- Provide toilets and handwashing facilities:
  - One toilet facility and one handwashing facility for every twenty employees or fraction thereof.
  - Toilet facilities shall be adequately ventilated, screened, and constructed to ensure privacy with self-closing doors that can be closed and latched from the inside.
  - Toilet and handwashing facilities shall be accessible to employees and in close proximity to each other. Facilities shall be located within a one-quarter mile walk of each hand laborer's place of work in the field.
  - Where, because of terrain problems, it is unfeasible to locate facilities within the one-quarter mile distance, the facilities shall be located at the closest vehicular access to the field.
- Provide potable drinking water which is readily accessible to all employees:
  - The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet the needs of all employees.
  - The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

- Maintain potable drinking water, toilets, and handwashing facilities in accordance with appropriate public health sanitation practices:
  - Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered, and shall be regularly cleaned.
  - Toilet facilities shall be operational and maintained in a clean and sanitary condition.
  - Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition.
  - Disposal of waste from facilities shall not cause unsanitary conditions.
- The employer shall notify each employee of the location of drinking water and sanitation facilities and provide employees with reasonable opportunities during the work day to use them.
- It is the employer's responsibility to inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine, and agricultural residues:
  - Use the water and facilities provided for drinking, handwashing, and elimination.
  - Drink water frequently, especially on hot days.
  - Wash hands both before and after using the toilet.
  - Urinate as frequently as necessary.
  - Wash hands before eating and smoking.

### **Exemptions**

- Employers who currently employ ten or fewer employees in hand-labor field operations and who have not employed, during the past twelve months at any one time, eleven or more

employees engaged in hand-labor field operations.

- Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less during the day, including transportation time to and from the field.
- Activities such as logging operations, the care and feeding of livestock, or hand labor operations in permanent structures (e.g., canning facilities or packing houses) are not included in hand labor operations.

### **Additional Information**

- Labor Bulletin No. 450, Florida Fruit and Vegetable Association, Orlando, FL, July 29, 1987.
- 29 C.F.R., Part 1928.110.
- Federal Register, Vol. 52, No. 84, Friday, May 1, 1987 (Rules and Regulations).

### **Responsible Agency**

U.S. Department of Labor

[See *Occupational Safety and Health (OSHA)* section.]

## **Field Sanitation and Drinking Water [State]**

### **Purpose**

To provide state standards of field sanitation and drinking water for hand laborers.

### **Who Must Comply**

The Florida State Field Sanitation Standard requires toilets, handwashing facilities, and drinking water where five to ten farmworkers are employed in one location at one time.

### **Employer Responsibilities**

- *Location of facilities.* Where five to ten hand-laboring farmworkers are employed in one location at one time, one toilet facility and one handwashing unit shall be provided. The toilet

and handwashing unit shall be located adjacent to each other. The facilities shall be located within a one-quarter mile walk of any hand-laborer's place of work in the field. Where it is unfeasible to locate facilities as required above due to terrain, the facilities shall be located at the point of closest vehicular access.

- *Field toilet facilities.* These shall be constructed and maintained in accordance with provisions of Section 10D-6.051, F.A.C., emptied at least weekly, and provide a minimum storage capacity of fifty gallons per unit. Septage from all field toilet facilities shall be disposed by a method approved by the county public health unit. The department shall approve portable, water-flushed units when determined appropriate for a particular situation. Toilet facilities shall have a screened ventilation opening and self-closing doors that can be closed and latched from the inside and shall be constructed to ensure privacy.
- *Field hand washing units.* These shall be convenient and supplied with potable water in portable containers and shall be provided with soap or other cleanser and single-use hand-drying towels. A waste container shall be provided for the used towels, and the wastewater from the hand washing unit shall not cause a sanitary nuisance.
- *Drinking water.* This shall be potable and provided in containers constructed of smooth, impervious, corrosion-resistant material and shall be maintained by sanitary methods. The containers shall be marked with the words *Drinking Water* in English and the native language of the majority of the workers. Single service cups shall be provided unless water is dispensed from a fountain equipped with an angled, protected jet outlet. Ice used for cooling drinking water shall be made from potable water. The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet the needs of all employees. County public health unit staff, during the normal course of their work, shall take water samples at random to ensure the potability of the drinking water.

### **Fines**

- No soap, hand drying towels, or waste container for towel disposal (\$50).
- Toilet facilities that are not screened or self-closing and do not ensure privacy (\$75).
- Handwashing facilities not available or not located adjacent to the toilet. Facilities not located within one-quarter mile walking distance of farmworkers (\$100).
- Water containers improperly constructed or not marked in English and the native language of the majority of the workers. Single service cups not provided and ice not from an approved source (\$100).
- Waste water from handwashing facility causes a sanitary nuisance. The amount of drinking water available is insufficient to prevent dehydration or disease. Toilet facilities do not provide a minimum fifty gallon storage capacity (\$250).
- Sewage from toilet facilities is not properly disposed or toilet and drinking water facilities are not provided:
  - First Offense (\$250).
  - Second Offense (\$500).

Department of Business and Professional Regulation crew chief (labor contractor) compliance officers shall also issue field sanitation citations to violators of requirements of this section.

To have the amount of the imposed fine reduced up to one-half, the citation recipient must submit physical proof to the department's county public health unit director, administrator, or other authorized staff that the violation was corrected within twenty-four hours from the time of the citation. In reducing the amount of the fine, department staff shall take into consideration such factors as the gravity of the violation and the history of compliance of the violator.

The citation recipient may request an administrative hearing within twenty-one days of the date of receipt of the citation by following procedures listed on the citation HRS-H Form 4084.

*Note:* The Florida State Field Sanitation Standard provides coverage where five to ten farmworkers are employed in one location at one time; the federal OSHA standard covers employers of eleven or more workers engaged in hand labor operations in the field. Under these two sets of laws, most employers are either covered by the state standard or the federal OSHA standard, but not both.

### **Related Information**

- Chapter 381.006(7), Florida Statutes.
- Chapter 10D-10.038(1)(b) 1, 2, 3, & 4, Florida Administrative Code.
- Labor Bulletin No. 439, Florida Fruit and Vegetable Association, Orlando, April 2, 1986.
- Labor Bulletin No. 501, Florida Fruit and Vegetable Association, November 17, 1994.

### **Responsible Agency**

Department of Health

Division of Environmental Health

4042 Bald Cypress Way

Tallahassee, FL 32399

(850) 245-4250

<http://www.doh.state.fl.us.index.html>

Requests for information concerning permits, compliance and other problems should be referred to the local County Public Health Unit.

## **Florida Landlord-Tenant Law [State]**

### **Purpose**

Defines terms for termination of tenancy by either party.

### **Program**

The Florida Landlord-Tenant law was amended in 1981 to include housing provided to employees as an incidence of employment with or without the payment of rent. If the dwelling unit is furnished without rent as an incident of employment and there is no agreement as to the duration of tenancy, the duration is determined by the periods for which wages are payable (i.e., weekly, monthly, etc.).

### **Notice Requirements**

A tenancy without a specific duration may be terminated by either party giving written notice as follows:

<b>Tenancy</b>	<b>Notice</b>
Yearly	At least sixty days prior to the end of the annual period
Quarterly	At least thirty days prior to the end of the quarterly period
Monthly	At least fifteen days prior to the end of the monthly period
Weekly	At least seven days prior to the end of the weekly period

### **Additional Information**

- Chapter 83, Florida Statutes.

## **Human Rights Act of 1977 [State]**

### **Purpose**

To protect employees from workplace discrimination.

### **Who Must Comply**

All employers of fifteen or more workers for at least twenty weeks in the current or preceding year.



**Employers Must**

Refrain from any discriminatory practices based on race, color, religion, sex, national origin, age, handicap, or marital status, such as:

- Discharge or failure or refusal to hire.
- Discrimination on compensation, terms, conditions, or privileges of employment.
- Limiting, segregating, or classifying employees or applicants for employment.
- Discrimination in apprenticeship or training programs.
- Printing or causing to be printed or published any notice of employment which specifies a discriminatory preference or limitation.
- Discrimination against anyone who opposes discriminatory practices or assists, testifies, or participates in any discrimination investigation.
- Discrimination in the sale, rental, or financing of housing.

Post a notice, in a conspicuous place, setting forth the basic provisions of the Human Rights Act of 1977 and indicating how and where to file complaints.

Preserve all employment records once a complaint has been filed against the employer.

Employees have 180 days from the date of a perceived discriminatory act to file a complaint with the Florida Commission on Human Relations at its offices in Tallahassee.

**Other Information**

- Chapter 760, Florida Statutes.
- Section 22-T, Florida Administrative Code.

**Responsible Agency**

Florida Commission on Human Relations

2009 Apalachee Parkway, Suite 100

Tallahassee, FL 32301

Phone (850) 488-7082 or

dial toll-free 1(800) 342-8170

<http://fchr.state.fl.us>

**Immigration Reform Programs  
[Federal]****Purpose**

A national policy on immigration is established which requires that all employers hire only those persons legally entitled to work in the United States.

**Who Must Comply**

There are no small employer or agricultural employer exemptions. All employers, including employers of permanent, year-round workers, as well as seasonal workers, are subject to civil and criminal penalties for violation of federal immigration policies.

**Immigration Reform and Control Act (IRCA)  
of 1986**

- IRCA makes it unlawful for an employer to hire, recruit, or refer for a fee two types of persons. First is an alien the employer knew (or should have known) was unauthorized to work in the United States. Second is any individual for whom the employer has not completed and retained an employment authorization form (Form I-9).
- IRCA prohibits employers from continuing to employ aliens found to be unauthorized after they were hired.
- IRCA imposes record-keeping requirements for verification of the identity and employment eligibility of every employee. If an employer ignores this responsibility and knowingly hires workers not authorized to work in the United States, he or she is subject to a range of fines and possible criminal penalties.
- The definition of knowingly hiring has been expanded under IRCA to hold liable an employer for hiring undocumented aliens if it can be

proven that the employer should have known an individual was unauthorized (i.e., constructive knowledge).

- IRCA contains strict prohibitions on discriminating against any individual based on national origin or citizenship status.

### ***Employers Must***

- Have employees and prospective employees complete their part of Form I-9 when they start to work. Employers must then check the form for completeness.
- Inspect the employee's documents establishing the employee's identity and eligibility to work, noting the employee's document ID number and expiration date.
- Properly complete the employer's part of Form I-9. This must be completed within three business days or at the time of hire if employment is for less than three days.
- Retain Form I-9 for at least three years or one year after the employee leaves, whichever is longer.
- Present Form I-9 for inspection when requested by an INS, DOL or OSC officer. Inspection officers are required to give at least three days advance notice before an inspection.

### ***Exceptions to Form I-9 Requirements***

There are limited exceptions to the Form I-9 record-keeping requirements. I-9 forms do not need to be completed for household employees who work on an intermittent basis.

I-9 forms are not required for persons provided by a contractor providing contract services (such as employee leasing). I-9 forms do not need to be completed for independent contractors or their employees.

You may rely on a state employment service to complete I-9 forms for persons referred by the state employment agency if the agency performs that service. (The Florida Jobs and Benefits Center will

complete and retain the I-9 form only if requested to do so by the individual employer.)

However, employers have, in some cases, found that workers referred by state agencies were actually illegal. The fact that a worker was referred by the Jobs and Benefit Center office does not necessarily relieve an employer of liability under IRCA for hiring an illegal alien, although using this office does relieve much of the liabilities.

If an employer relies on a state employment service (SES) for I-9 services, certification must be retained by the employer in the same manner as an I-9 form and presented for inspection if requested. Using an SES I-9 service relieves an employer from liability for knowingly hiring an illegal alien.

Some grower organizations have set-up I-9 offices to serve as agents for their members in completing and retaining I-9 forms. Generally, the worker is issued a picture ID card that he or she presents to the member employer when hired. It should be noted that the employer is still responsible for compliance and may be liable for violations of the law if the I-9 office errs.

### ***Enforcement***

IRCA charges the INS with primary enforcement of the law. However, INS has entered into an agreement with the United States Department of Labor (DOL) which is authorized to inspect I-9 record keeping. Most IRCA compliance/I-9 inspections take place during regular DOL wage/hour inspections. If DOL suspects the employer of knowingly hiring illegal aliens, inspectors will alert the INS. Agencies must give employers three days' notice of IRCA inspections. Note: In 1996, DOL's budget was increased substantially for these inspections.

IRCA sharply limited the INS's ability to conduct open field searches. The INS is currently required to obtain a search warrant to enter farms, orchards, groves, ranch lands, or other open agricultural properties without the owner's consent. This restriction does not apply within twenty-five miles of the United States border or in cases of hot pursuit.

Civil money penalties and criminal penalties may be levied against employers for failure to comply with IRCA. These include:

- *Hiring, recruitment, and referral violations:*  
Employers will be subject to a cease-and-desist order and fined according to the following scale:
  - \$250 - \$2,000 for each alien for the first offense.
  - \$2,000 - \$5,000 for each alien for the second offense.
  - \$3,000 - \$5,000 for each alien for the third and subsequent offenses.
- *Record keeping/I-9 verification violations:*  
Employers will be subject to a cease-and-desist order and fined according to the following scale:
  - \$100 - \$1,000 for each individual, regardless of whether or not the person is illegally employed.
- *Bonding violations:* If it is found that an employer required employees to post bonds against liability for employer sanctions, the fines are \$1,000 for each employee.
- *Document fraud:* Any individual who has knowingly engaged in or used, accepted, or received any forged or counterfeited documents is subject to fines ranging from \$250 to \$5,000 for each instance of use, acceptance or creation of a document.

In cases that can establish a pattern and practice of violating IRCA's hiring and referral provisions, fines are \$3,000 per illegal alien plus up to six months in prison.

### ***Discrimination***

Employers of four or more employees may not discriminate against any person (other than an unauthorized alien) in hiring, discharging, recruiting, or referring for a fee because of national origin or citizenship status. Because Title VII of the Civil Rights Act of 1964 is in effect for employers of fifteen or more employees, discrimination complaints involving national origin will be reported as follows:

(1) one to three employees, not covered; (2) four to fourteen employees, to the Office of Special Counsel, Department of Justice, and (3) fifteen or more employees, to the Equal Employment Opportunity Commission. (For Florida deferral agencies, see *Human Rights-Discrimination* section.) Discrimination complaints involving citizenship status against employers of four or more employees will be filed with the Department of Justice.

### ***Recruiters and Referrers for a Fee***

Recruiters/referrers for a fee should complete a Form I-9 for any person they refer who is hired by an employer. The Form I-9 should be completed within three business days of hiring.

The recruiters or referrers may designate agents to complete the verification process on their behalf, but they are still responsible for obtaining and filing a copy of the Form I-9, and are still responsible and liable for compliance with the law. Recruiters and referrers must retain the Form I-9 for three years after the date the referred individual was hired by the employer.

### ***Independent Contractors***

Employers can be held liable for the actions of an independent contractor if an unauthorized alien is hired and the user of the independent contractor has actual knowledge of the lack of work authorization. Independent contractor is redefined as follows: "The term independent contractor includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results."

Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls himself/herself/itself, will be determined on a case-by-case basis.

### ***Three Pilot Employment Eligibility Verification Programs***

The 1996 Illegal Immigration Reform law permits a limited number of employers to contact INS to verify an employee's immigration status. This law established three four-year pilot programs, which are

voluntary on the part of the employers. However, employers, in pilot states, who violate employer sanctions are required to participate in the pilot programs.

The first pilot program, the Basic pilot program, requires participating employers to seek INS confirmation of a new employee's employment eligibility within three days of hiring, by way of a toll-free telephone number or some other electronic medium. The INS is then supposed to confirm within three working days whether or not the employee under inquiry is eligible for employment.

If the inquiry comes back as tentative non-confirmation, the applicant has ten days to contest the decision. However, the employer may terminate the employee for other lawful reasons. If the employee contests the non-confirmation, the employer may not terminate the employment during this time period. If the employee does not contest a tentative non-confirmation within ten working days, the employer is free to fire the employee.

The second pilot program, the Citizenship Attestation pilot program, follows the same concept as the Basic program, except participating employers will not have to seek any documents from workers claiming to be United States citizens. Employers can only participate in this pilot program with the permission of the Attorney General. This program is also limited to 1,000 employers.

The third pilot program, the Machine-Readable Document pilot program, operates like the Basic pilot program. However, if a new employee presents a driver's license or other state-issued identification document that includes a machine-readable social security number, the employer will be required to scan the document through a machine-readable confirmation device.

Employers participating in the pilot programs are shielded from civil and criminal liability for actions taken in good faith reliance on the information provided through the confirmation system.

### ***Correction of I-9 Forms***

The 1996 law provides that an employer, who, in good faith, makes a technical or procedural error in completing the I-9 form, will have an opportunity to correct the error without penalty.

The only employers not allowed to utilize this good faith defense are those who fail to correct their non-compliance within ten working days of receiving an explanation from INS that the agency found them out of compliance, or employers who engage in a pattern and practice of violations.

### ***Reduction in Number of I-9 Documents***

The 1996 law generally reduces the number of documents that can be used to establish an individual's employment authorization and/or identify for I-9 purposes. However, as of June 1997, INS has not yet decided which documents may be used.

Under the new Act, the following can be used by employees to establish both employment authorization and identity:

- United States Passport.
- Resident Alien Card.
- Other documents designated by Attorney General (unexpired foreign passport or visa).

To establish employment authorization, individuals may present the following:

- Social Security card.
- Other documents acceptable to Attorney General.

### ***Unfair Immigration-Related Employment Procedures***

Under the 1996 law, an employer's request for more or different documents than are required to confirm an employee's identity and authorization to work or an employer's refusal to honor documents that reasonably appear to be genuine will only be considered document abuse if made for the purpose, or with the intent, of unlawfully discriminating

against the employee on the basis of citizenship status or national origin.

### ***Unauthorized Use of Social Security Numbers***

With the 1996 law, the Commissioner of Social Security is required to inform INS of aliens who have a social security number when they are not authorized to work. The purpose of this requirement is to assist INS in building a database of employers who are employing illegal aliens.

### ***Expansion of Document Fraud***

The 1996 Act substantially increases the criminal penalties for fraudulent use of government documents. Thus, putting false information on an I-9 form may now constitute document fraud.

### ***Additional Information***

- Handbook for Employers: Instructions for Completing Form I-9, U.S. Department of Justice, Immigration and Naturalization Service, Washington, D.C., November 1991.
- Labor Bulletin No. 444, Florida Fruit and Vegetable Association, Orlando, FL, November 7, 1986.
- Labor Bulletin No. 448, Florida Fruit and Vegetable Association, Orlando, FL, April 3, 1987.
- Labor Bulletin No. 463, Florida Fruit and Vegetable Association, Orlando, FL, November 15, 1988.
- Labor Relations Bulletin No. 512, Florida Fruit and Vegetable Association, Orlando, FL, October 31, 1996.
- Labor Relations Bulletin No. 531, Florida Fruit and Vegetable Association, Orlando, FL, March 4, 1999.
- Labor Relations Bulletin No. 537, Florida Fruit and Vegetable Association, Orlando, FL, November 16, 1999.

- Labor Relations Bulletin No. 548, Florida Fruit and Vegetable Association, Orlando, FL, April 18, 2001.
- Labor Relations Bulletin No. 549, Florida Fruit and Vegetable Association, Orlando, FL, June 22, 2001.
- Labor Relations Bulletin No. 555, Florida Fruit and Vegetable Association, Orlando, FL, May 10, 2002.

### ***Responsible Agency***

U.S. Department of Justice

Immigration and Naturalization Service

425 "I" Street, N.W.

Washington, D.C. 20536

1-800-375-5283

<http://www.ins.usdoj.gov/graphics.index.htm>

### ***District Office***

U.S. Department of Justice

Immigration and Naturalization Service

7880 Biscayne Boulevard

Miami, FL 33138

<http://www.ins.usdoj.gov/graphics/fieldoffices/miami/aboutus.htm>

### ***Sub Offices***

5524 West Cypress Street

Tampa, FL 33607-1708

(813) 228-2138

4121 Southpoint Boulevard

Jacksonville, FL 32216

(904) 791-2624

301 Broadway

Riviera Beach, FL 33401

(407) 684-2887

## **Income Tax Withholding for Farm Workers [Federal]**

### ***Purpose***

To withhold federal income taxes on the cash wages of farmworkers.

### ***Who Must Comply***

Farm employers are required to withhold federal income taxes from any employee's wages (including family members) if either of the following two tests is met:

- A worker is paid \$150 or more per year.
- The farm employer's total annual labor expenditures for the year are \$2,500 or more.

### ***Exemptions***

Farm employers are exempt from withholding income taxes from workers paid less than \$150 in a calendar year or if the farm employer's annual payroll was less than \$2,500.

Hand harvest employees are exempt from income tax withholding if they meet all these criteria:

- Are paid by the piece on a job that is ordinarily paid on a piece rate basis.
- Commute daily to the farm from a permanent residence.
- Were employed in agriculture fewer than thirteen weeks during preceding calendar year.

Wages paid to exempt employees do count, however, toward the employer's total annual labor expenditures of \$2,500 or more.

Taxable wages includes salaries, commissions, bonuses, wages, fees, or any items of value. If a

worker is paid fully or partially with commodities, the value of the commodities is treated as income subject to withholding and Social Security. However, the value of meals and lodging furnished for the convenience of the employees is not taxable under most circumstances.

Employers of permanent residents and/or workers holding I-688 and I-688A cards issued under the Immigration Reform and Control Act of 1986 should consider these workers subject to income tax withholding.

In contrast, H-2A workers who are nonresident aliens admitted legally to perform agricultural service on a temporary basis are not required to have federal income taxes withheld.

### ***Employer Responsibilities***

Employers are required to:

- Ensure that workers complete Form W-4, "Employee's Withholding Allowance Certificate," at the time of employment. If the worker chooses to claim full exemption from withholding on Line 7 of the W-4, the employer may accept the claim of exempt status.
- Withhold income taxes on cash wages paid for agricultural labor. Copies of Form W-4 must be sent to the IRS when an employee either claims more than ten exemptions or claims exemption from withholding and wages exceeding \$200 per week.
- Send payments to the IRS through a local bank. The payments must be accompanied by Form 8109, the federal tax deposit coupon. The IRS automatically sends you a coupon book when you apply for an employer ID number. The amount of combined Social Security (FICA) and withheld income tax determines how often deposits must be made. The deposit schedule is identical to that for depositing FICA (Social Security) taxes.
- Give employees Form W-2, "Wages and Tax Statement," by January 31st for preceding year.

- Send copy "A" of Form W-2 and Form W-3 ("Transmittal of Income and Tax Statements") together with Form 943 ("Employer's Annual Tax Return for Agricultural Employers") to the IRS by January 31st. This can be deferred if the tax was paid in full by February 10th.

Farm employers may rely on a farm labor contractor (FLC) for withholding FICA and income taxes from worker wages. However, if an FLC fails to submit withheld wages according to the law, employers may, under the joint employer principle, be held liable for unpaid withholding and penalties.

Employers need to be aware that the Department of Labor's (DOL) Wage and Hour Division may enforce failure to deposit withheld FICA and income taxes in a timely manner as failure to pay wages when due, a violation of the Fair Labor Standards Act.

This would add DOL fines and penalties to the fines and penalties levied by the IRS for failure to withhold and deposit taxes in a timely manner.

### **Determining Employer of Farmworkers**

Many farmers hire or contract with crew leaders or labor contractors to manage their farmworkers. Whether the farmer or the crew leader/labor contractor is the employer of the farmworker (and has responsibility for submitting wage reports) depends on the circumstances. (See *MSPA* section for the latest definition of joint employment.)

Independent labor contractors may handle all the wage-reporting responsibilities. However, if a written agreement states that the crew leader is the farmer's employee, the farmer obviously is responsible for all wage reporting and record keeping.

### **Written Agreement**

If the farmer and the crew leader agree that the farmer will handle Social Security and IRS tax withholding matters (and that the crew leader is the farmer's employee), they should prepare a *written agreement*. No special form is needed, but the agreement should be signed by both parties and include the following:

- Names and addresses of the farmer and the crew leader.
- Location of the farm, kind of crop and operation, and approximate dates of the work.
- Statement that the crew leader will furnish a crew to do the work.
- Statement that the crew leader and crew workers are employees of the farmer who will report their wages and pay Social Security and Medicare taxes that are due.
- Statement about charges made by the crew leader for services, wages to be paid to workers and any transportation, housing and insurance to be provided.

(See also section on *Social Security and Medicare*.)

### **Employee Tax Obligations**

Farm employees should be aware that every citizen or resident of the United States, whether an adult or minor, who has \$4,000 or more income must file a return. In the case of married couples filing joint returns, the amount is \$6,700. These figures increase to \$5,000 if one individual is over sixty-five years of age and to \$7,500 if both are over sixty-five. The taxable income thresholds change from year to year; the current amount should be obtained from IRS.

A farm employee is required to file a declaration of estimated tax using Form 1040-ES if he or she expects to have a tax liability of \$500 or more from sources not subject to withholding. The tax may be paid in four equal installments.

### **Related Information**

- Circular A, Agricultural Employer's Tax Guide, Publication No. 51, Internal Revenue Service. (Revised annually)
- Circular E, Employer's Tax Guide, Publication 15, Internal Revenue Service. (Revised annually)
- Revenue Reconciliation Act of 1989, Subtitle F, Part IV, Section 7631 (a), (b), and (c).

- Labor Bulletin No. 470, Florida Fruit and Vegetable Association, Orlando, FL, December 5, 1989.
- Social Security Handbook for Farmers. Social Security Administration. (Revised annually)

***Responsible Agency***

U.S. Department of the Treasury

Internal Revenue Service

Washington, D.C.

<http://www.irs.gov>

For local offices, see the telephone directory for

- United States Government
- Internal Revenue Service

For information, dial 1(800) 829-1040

To order tax forms, dial 1(800) 829-3676