



UNIVERSITY OF  
**FLORIDA**

**EXTENSION**

Institute of Food and Agricultural Sciences

## **2003 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers--Part 2 <sup>1</sup>**

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Leo C. Polopolus, Fritz Roka, and Carol Fountain<sup>2</sup>

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## **Migrant Farm Labor Camps [Federal]**

### ***Purpose***

To provide federal standards for employer or farm labor contractor-provided housing for migrant farmworkers.

### ***Federal Regulations***

There are two sets of federal regulations that apply to employer or farm labor contractor-provided housing for migrant workers. These are:

- The Department of Labor's (DOL) Employment and Training Administration (ETA) housing standards.

- The Occupational Safety and Health Administration's (OSHA) migrant farm labor housing regulations.

Federal agricultural labor housing standards apply only to housing and camps for migrant workers. Nonmigrant workers who permanently reside in housing provided by employers are not covered by these regulations.

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

The 500 man-day and family farm exemptions in the Fair Labor Standards Act (FLSA) and Migrant and Seasonable Agricultural Worker Protection Act (MSPA) do not apply to employers who house migrant farmworkers.

Housing one or more migrant workers requires compliance with either ETA or OSHA standards, depending on when the housing was built.

Housing built to the earlier, less restrictive ETA standards may be operated under those standards until it undergoes major modifications. Migrant labor housing built after April 3, 1980, must comply with OSHA standards.

Under MSPA, all migrant housing must have a pre-occupancy inspection and is subject to inspections by the Wage and Hour Division, regardless of whether or not the housing is a condition of employment.

### ***Housing Inspections***

Agricultural employers using the U.S. Employment Service's interstate recruitment service (Jobs and Benefits Center) must have housing inspected and approved before completion of the worker's application.

Under MSPA and if a request for inspection is made at least forty-five days prior to the date of occupancy and the agency has not conducted an inspection, migrant workers may occupy the housing unless prohibited by state law.

Occupancy after the failure of an agency to perform a timely inspection does not relieve the housing provided from having to meet all applicable federal and state safety and health standards.

Inspections of migrant labor housing (delegated to the Wage and Hour Division) are done post-occupancy in response to complaints following a report of a fatality or injury or on a random basis. OSHA does not license migrant housing.

The three DOL agencies responsible for enforcement of housing standards coordinate their inspections. ETA, through state employment service agencies, conducts pre-occupancy inspections of facilities on farms it supplies with workers.

The Wage and Hour Division inspects migrant housing owned or operated by crew leaders which has not already been inspected by ETA.

OSHA inspects those camps not covered by the other two agencies.

MSPA requires that the housing occupancy certificate be posted in a prominent location, in addition to DOL's Form 521, the Housing Terms and Conditions Statement.

### ***Employer Responsibilities***

Employers must meet minimum federal, state, and local housing standards. ETA and OSHA standards specify requirements for:

- Housing site.
- Shelter and housing.
- Water supply.
- Toilet facilities.
- Sewage disposal.
- Laundry, handwashing, and bathing facilities.
- Electrical lighting.
- Refuse and garbage disposal.
- Cooking and eating facilities.
- Screening and insect and rodent control.
- Fire, safety, and first aid facilities.

- Reporting of communicable diseases.

*Note:* Check housing frequently during occupancy to make sure it has not fallen out of compliance due to worker neglect or other reasons.

DOL's Wage and Hour Division will conduct a pre-occupancy inspection of migrant farmworker housing upon written request. Inspection is required to receive a certificate of occupancy. Contact your local Wage and Hour Division office.

(See also section on *Migrant and Seasonal Agricultural Worker Protection Act.*)

### ***Related Information***

- Part 654, Subpart E, Housing for Agricultural Workers, Employment and Training Administration, Federal Register, March 4, 1980, 14180-14186.
- General Industry, OSHA Safety and Health Standards (29 C.F.R. 1910), OSHA 2206 (Rev. January 1976), U.S. Department of Labor, Occupational and Safety Administration, 1971.
- Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) 29 U.S.C. 1801.
- Regulations, Part 500: Migrant and Seasonal Agricultural Worker Protection, WH Publication 1455 (Revised 12/84), U.S. Department of Labor, Wage and Hour Division.

### ***Responsible Agency***

U.S. Department of Labor

- Occupational Safety and Health Administration (OSHA)
- Employment and Training Administration (ETA)
- Employment Standards Administration (ESA)

### **Area and Field Offices**

For OSHA offices, see *OSHA* section.

**Pre-occupancy inspections and compliance with ETA standards is by:**

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>

**Regional offices can be found in the telephone directory under**

U.S. Government

U.S. Department of Labor

Wage and Hour Division

[For additional contact information, see section on *Migrant and Seasonal Agricultural Worker Protection Act (MSPA)*.]

**Migrant Labor Housing [State]*****Purpose***

To provide State standards for migrant labor camps and/or residential migrant housing facilities.

***Who Must Comply***

Anyone who operates a Migrant Labor Camp or dwelling unit(s) defined as Residential Migrant Housing.

***Definitions***

- *Migrant labor camp.* One or more buildings, structures, barracks, or dormitories and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises.
- *Residential migrant housing.* A building, structure, barracks, or dormitory and land appertaining thereto, that is rented or reserved

for occupancy by five or more migrant farmworkers, except:

- Housing furnished as an incident of employment.
- A single-family residence or mobile home dwelling unit that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.
- A hotel, motel, or resort condominium, as defined in Chapter 509, that is furnished for transient occupancy.
- Any housing owned or operated by a public housing authority except for housing specifically provided for persons whose principal income is derived from agriculture.
- *Common areas.* That portion of a migrant labor camp or residential migrant housing not included within private living quarters and where migrant labor camp or residential migrant housing residents generally congregate.
- *Invited guest.* Any person who is invited by a resident to a migrant labor camp or residential migrant housing to visit that resident.
- *Other authorized visitors.* Any person, other than an invited guest, who is:
  - A federal, state, or county government official.
  - A physician or other health care provider whose sole purpose is to provide medical care or medical information.
  - A representative of a bona fide religious organization who, during the visit, is engaged in the vocation or occupation of a religious professional or worker such as minister, priest, or nun.
  - A representative of a nonprofit legal services organization who must comply with the Code of Professional Conduct of the Florida Bar.

- Any other person providing services for farmworkers funded in whole or in part by local, state, or federal funds but who does not solicit or attempt to solicit funds.
- *Private living quarters.* A building or portion of a building, dormitory, or barracks, including its bathroom facilities, or a similar type of sleeping and bathroom area which is a home, residence, or sleeping place for migrant labor camp residents. The term includes residential migrant housing.
- *Migrant farmworker.* A person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last twelve months and who has changed residence for purposes of employment in agriculture within the last twelve months.

### **Permit Requirements**

A person who establishes, maintains, or operates a migrant labor camp in this state without first having obtained a permit from the department and who fails to post such permit and keep such permit posted in the camp to which it applies at all times during maintenance or operation of the camp commits a misdemeanor of the first degree. Persons who establish, maintain, or operate any residential migrant housing in this state without first having obtained a permit from the department commit a misdemeanor of the first degree.

### **Compliance Requirements with Sanitary Code of Florida**

Migrant camps must comply with the Sanitary Code of Florida for the following:

- Sites.
- Shelters.
- Water supply.
- Sewage and liquid waste disposal.
- Insect and rodent control.
- Heating.

- Lighting.
- Plumbing.
- Toilets.
- Washrooms, bathing, and laundry facilities.
- Food service facilities.
- Living space per occupant.
- Maintenance of premises.
- Fire protection.
- Responsibility of operator.

### **Drinking Water Standards**

The Florida Department of Environmental Protection (DEP) periodically sends Public Drinking Water Analysis Reporting forms to owners of migrant labor camps. These reporting forms are quite detailed and require the following for existing labor camps:

- Quarterly bacteriological sampling.
- Nitrate sampling every sixty months.
- Turbidity sampling once a day for surface water systems.
- Maintain a disinfection system that provides a chlorine residual of 0.2 milligrams per liter.
- Provide a certified operator.

### **Fines for Violations**

The department may impose a fine of up to \$1000 for each violation of this section. If the owner of the land on which a violation of this section occurs is other than the person committing the violation and the owner knew or should have known upon reasonable inquiry that this section was being violated on the land, the fine may be applied against such owner.

### ***Fees***

Each migrant labor camp operator or owner of residential migrant housing who is subject to the Act shall pay to the department the following annual application fee:

- Camps or residential migrant housing with capacity for five to fifty occupants (\$125).
- Camps or residential migrant housing for fifty-one to 100 occupants (\$225).
- Camps or residential migrant housing for 101 or more occupants (\$500).

Any existing migrant labor camp or residential migrant housing that is substantially renovated or newly constructed is exempt from the annual application fee described in this section for the next annual permit after the renovations or construction occurred. Any existing migrant labor camp or residential migrant housing that, during any permit year, has no major deficiencies cited by the department, no uncorrected deficiencies and no administrative action taken against it is exempt from the annual application fee described in this section for the next annual permit period.

### ***Variations***

An owner or operator may apply for a permanent structural variance from the department's rules by filing a written application and paying a fee set by the department, not to exceed \$100. This application must:

- Clearly specify the standard from which the variance is desired.
- Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility and to prevent a practical difficulty or unnecessary hardship.
- Clearly set forth the specific alternative measures the owner or operator has taken to protect the health and safety of occupants and adequately show that alternative measures have achieved the same result as the standard from which the variance is sought.

Any variance granted by the department must be in writing, must state the standard involved, and must state as conditions of the variance the specific alternative measures taken to protect the health and safety of the occupants. In denying the request, the department must provide written notice of the applicant's right to an administrative hearing to contest the denial within twenty-one days after the date of receipt of the notice.

Notwithstanding any other provision of this Chapter, any housing that is furnished as a condition of employment so as to subject it to the requirements of the Occupational Health and Safety Act of 1960, 29 U.S.C. § 655, shall only be inspected under the temporary labor camp standards at 29 C.F.R. § 1910.142.

### ***Right of Entry***

The department or its inspectors may enter and inspect migrant labor camps or residential migrant housing at any time. A person may not prohibit or attempt to prohibit an invited guest access to or egress from the private living quarters of the resident who invited the guest by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner. Any invited guest must leave the private living quarters upon the reasonable request of a resident residing within the same private living quarters.

Other authorized visitors have a right of access to or egress from the common areas of a migrant labor camp or residential migrant housing as provided in this subsection. A person may not prohibit or attempt to prohibit other visitors access to or egress from the common areas of a migrant labor camp or residential migrant housing by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner, except as provided in this section. Owners or operators of migrant labor camps or residential migrant housing may adopt reasonable rules regulating hours of access to housing, if such rules permit at least four hours of access each day during nonworking hours of Monday through Saturday and between the hours of 12 Noon and 8 p.m. on Sunday. Any other authorized visitor must

leave the private living quarters upon the reasonable request of a person who resides in the same private living quarters.

Any person prevented from exercising rights guaranteed by this section may bring an action in the appropriate court of the county in which the alleged infringement occurred; and, upon favorable adjudication, the court shall enjoin the enforcement of any rule, practice, or conduct that operates to deprive the person of such rights.

Other visitors are licensees, not guests, or invitees, for purposes of any premises liability.

The housing owner or operator may require invited guests and other visitors to check in before entry and to present picture identification. Migrant labor camp and residential migrant housing owners or operators may adopt other rules regulating access to a camp only if the rules are reasonably related to the purpose of promoting the safety, welfare, or security of residents, visitors, farmworkers, or the owner's or operator's business.

Rules relating to access are unenforceable unless they have been conspicuously posted in the migrant labor camp or migrant residential housing and a copy has been furnished to the department.

This section does not create a general right of solicitation in migrant labor camps or residential migrant housing. This section does not prohibit the erection or maintenance of a fence around a migrant labor camp or residential migrant housing if one or more unlocked gates or gateways in the fence are provided; nor does this section prohibit posting the land adjacent to a migrant labor camp or residential migrant housing if access to the camp is clearly marked; nor does this section restrict migrant workers residing within the same living quarters from imposing reasonable restrictions on their fellow residents to accommodate reasonable privacy and other concerns of the residents.

### **Complaints**

Any person who believes that the housing violates any provision of §§ 381.008 - 381.00895 or rules adopted thereunder may file a complaint with

the department. Upon receipt of the complaint, if the department finds there are reasonable grounds to believe that a violation exists and that the nature of the alleged violation could pose a serious and immediate threat to public health, the department shall conduct an inspection as soon as practicable. In all other cases where the department finds there are reasonable grounds to believe that a violation exists, the department shall notify the owner and the operator of the housing that a complaint has been received and the nature of the complaint. The department shall also advise the owner and the operator that the alleged violation must be remedied within three business days. The department shall conduct an inspection as soon as practicable following such three-day period. The department shall notify the owner or the operator of the housing and the complainant in writing of the results of the inspection and the action taken. Upon request of the complainant, the department shall conduct the inspection so as to protect the confidentiality of the complainant.

### **Retaliation**

An owner or operator of housing subject to the Act may not, for the purpose of retaliating against a resident of that housing, discriminatorily terminate or discriminatorily modify a tenancy by increasing the resident's rent; decreasing services to the resident; bringing or threatening to bring against the resident an action for eviction or possession or another civil action; refusing to renew his or her tenancy or intimidating, threatening, restraining, coercing, blacklisting, or discharging the resident. Examples of conduct for which the owner or operator may not retaliate include, but are not limited to, situations in which:

- The resident has complained in good faith, orally or in writing, to the owner or operator of the housing, the employer or any government agency charged with the responsibility of enforcing the provisions of §§ 381.008 - 381.00897.
- The resident has exercised any legal right provided in this Chapter with respect to the housing.

A resident who brings an action for or raises a defense of retaliatory conduct must have acted in good faith.

This section does not apply if the owner or operator of housing proves that the eviction or other action is for good cause, including, without limitations, a good-faith action for nonpayment of rent, a violation of the resident's rental or employment agreement, a violation of reasonable rules of the owner/operator of the housing/employer, or a violation of this Chapter or the Florida Residential Landlord and Tenant Act.

### ***Nondiscrimination***

The Legislature declares that it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs. The Legislature further finds that discriminatory practices that inhibit the development of farmworker housing are a matter of state concern.

Any owner or developer of farmworker housing who has qualified for a permit to operate, or who would qualify for a permit based on plans submitted to the department, or the residents or intended residents of such housing, may invoke the provisions of this section.

A municipality or county may not enact or administer local land-use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.

This section does not prohibit the imposition of local property taxes, water service, and garbage collection fees; normal inspection fees; local bond assessments; or other fees, charges, or assessment to which other dwellings of the same type in the same zone are subject.

This section does not prohibit a municipality or county from extending preferential treatment to farmworker housing, including, without limitation, fee reductions or waivers or changes in architectural

requirements, site development or property line requirements, or vehicle parking requirements that reduce the development costs of farmworker housing.

### ***Occupants Must***

- Use the sanitary and other facilities provided.
- Refrain from willful destruction of camp property.

### ***Related Information***

- Florida Statutes, §§ 381.008 - 381.0088 and § 633.022.
- Florida Administrative Code, 10-D-25, Part III.
- Labor Bulletin No. 461, Florida Fruit and Vegetable Association, Orlando, FL, September 19, 1988.
- Labor Bulletin No. 467, Florida Fruit and Vegetable Association, Orlando, FL, July 26, 1989.
- Labor Bulletin No. 491, Florida Fruit and Vegetable Association, Orlando, FL, May 25, 1993.

### ***Responsible Agency***

Florida Department of Health

Division of Environmental Health

4042 Cypress Way

Tallahassee, FL 32399

(850) 245-4250

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

### ***Requests for Information Concerning***

Permits, compliance, regulations or other problems should be addressed to the local HRS County Public Health Unit.



## **Migrant Seasonal Agricultural Worker Protection Act (MSPA) [Federal]**

### ***Purpose***

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) establishes federal standards specific to farmworkers. (No other U.S. industry has a labor standard that applies solely to its workforce.)

The original intent behind MSPA was to ensure that migrant and seasonal workers received information and standards on pay rates and deductions, working conditions, insured transportation, and employment activities.

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

MSPA applies to any agricultural employer:

- Who owns or operates a farm, ranch, processing facility, cannery, gin, packing shed, or nursery.
- Who produces or conditions seed.
- Who recruits, selects, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker, unless otherwise exempt.

### ***Definitions***

- *Migrant Agricultural Worker.* Is a person who is in agricultural employment of a seasonal or other temporary nature and who is absent overnight from his or her permanent place of residence.
- *Seasonal Worker.* Is a person who is similarly employed but does not have to be away from his or her permanent residence overnight.
- *Agricultural Employers/Agricultural Associations.* Are not required to register as farm labor contractors.
- *Farm Labor Contractors.* Must be registered before any solicitation or recruitment of workers or any other covered activity. Also, any of his or her employees engaged in labor contracting activities must be registered. Registration must include *all* expected farm labor contracting activities.

- *Agricultural Employment.* While tractor drivers are not covered under MSPA, tractor drivers who also do field work such as manually pruning fruit trees during the summer are covered.
- *Joint Employment.* The Wage and Hour Division of the U.S. Department of Labor amended its definition of joint employment on March 12, 1997, as follows:

"The definition of the term *employ* includes the joint *employment* principles applicable under the Fair Labor Standards Act. The term *joint employment* means a condition in which a single individual is regarded under law as an employee of two or more persons at the same time."

A determination of whether the employment is to be considered joint employment depends on all the facts in that particular case.

If the facts establish that two or more persons are completely disassociated with respect to the employment of a particular employee, a joint employment situation does not exist. When employers share responsibility for activities set out in the following factors or in other relevant facts, this is an indication that these employers are not completely disassociated with respect to the employment and that the agricultural worker may be economically dependent on both persons.

If it is determined that a farm labor contractor is an independent contractor, it still must be determined whether or not the employees of the farm labor contractor are also jointly employed by the agricultural employer/association. Joint employment under the Fair Labor Standard Act is joint employment under MSPA.

In determining whether or not an employment relationship exists between the agricultural employer/association and the agricultural worker, the ultimate question to be determined is the economic reality of whether the worker is so economically dependent upon the agricultural employer/association as to be considered his/her/its employee.

Factors to be considered in determining whether or not an employment relationship exists include:

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

### ***Disclosure Requirements***

MSPA requires employers to disclose a variety of employment terms and conditions to migrant and seasonal workers. The disclosure burden is greater for employers with migrant workers. All disclosures must be in English, Spanish, or another language

understood by the workers. The United States Department of Labor (DOL) has disclosure forms available in English, Spanish, and Haitian Creole. Farm labor contractors must also provide a written disclosure statement to workers, regardless of the type of worker.

Among the requirements:

- Migrant workers must be provided with written disclosure of the terms and conditions of employment at the time of recruitment.
- Written disclosure must be provided to seasonal workers upon request.
- Day-haul seasonal workers in the canning, packing, ginning, or seed conditioning industries must receive written disclosure of terms and conditions of employment at the place and time of recruitment.

Farm labor contractors, agricultural employers, and agricultural associations are all subject to MSPA's disclosure requirements. Using DOL Form WH-516 is recommended.

Disclosure must cover these items:

- Place of employment.
- Wage rates (including piece rates) to be paid.
- Crops and kinds of work.
- Period of employment.
- Transportation, housing, and any other benefits provided (plus cost to the worker).
- Whether Workers' Compensation and unemployment insurance are provided.
- Whether a strike or work stoppage is in progress.
- Any commission (kickback) arrangement between the employer and any local merchant selling to employees.

Following Congressional action with the *Adams Fruit Bill* in 1996, disclosure requirements pertaining to Workers' Compensation were substantially

expanded. Growers must disclose whether Workers' Compensation is provided and, if so, the name of the Workers' Compensation insurance carrier, the name of the policy holder, the name and telephone number of each person who must be notified of an injury or death, and the time period within which the notice must be given. Optional Form WH-516 has been revised accordingly.

The Workers' Compensation disclosure requirement can alternatively be met by the employer providing the worker with a photocopy of any notice regarding Workers' Compensation insurance required by state law.

When properly used, the disclosure form can be a useful tool for employers in hiring/replacing workers. Generally, stating on the disclosure form that no guarantees exist as to the length of employment (season) and employment activities and practices protects the employer from breach of contract claims.

*Note:* The MSPA regulations prescribe fines and penalties for false or misleading statements (29 C.F.R. 500.77). An employer who promised one rate of pay in the WH-516, but pays another, lower rate may be assessed penalties not only for showing a false rate of pay, but may also be assessed back wages for the difference in the two rates. The same occurs for deductions. An employer who does not list specific deductions from pay for items such as picking sacks or transportation costs will be penalized for not disclosing this information and will be required to refund the deductions.

### **Exemptions**

The two major MSPA exemptions are the family farm and small business exemptions. A farm operator must meet only one of the two tests, not both. If he or she meets the test for a family business, even though he or she hires over 500 man-days of labor, he or she is exempt from MSPA. (A man-day is any day in which one nonfamily worker works one hour.)

Under the family business exemption, a person who engages in a farm labor contracting activity on behalf of a farm that is owned or operated exclusively by that person or by an immediate family member is exempt from MSPA.

*Immediate family* members include spouses, children, stepchildren, parents, stepparents, brothers, and sisters. The exemption does not apply if anyone other than those people engages in MSPA activities (recruiting, soliciting, hiring, employing, furnishing, or transporting), even if it is at the direction of an immediate family member. *Note:* The DOL contends that a referral from the Jobs and Benefits Center breaches the family exemption.

The family business exemption also does not apply if a licensed or unlicensed farm labor contractor is used at any time during the year.

The small business exemption exempts from MSPA coverage agricultural employers who did not use more than 500 man-days of agricultural labor during any calendar quarter of the previous year. All labor performed on the farm, whether seasonal or full-time, counts toward calculation of the 500 man-day test.

In a joint employment relationship, the man-days worked are counted toward each employer for purposes of the man-day test.

Other MSPA exemptions include:

- *Local short-term contractors.* A person engaging in farm labor contracting activities solely within a 25-mile intrastate radius of his or her permanent place of residence for thirteen or fewer weeks per year is exempt from MSPA. If this person uses U.S. mail; a telephone; or advertising to recruit, solicit, hire, or furnish workers from outside the twenty-five miles or across a state line, the exemption does not apply. If the person exceeds the limit of weeks in a calendar year, he or she immediately loses the exemption and is subject to MSPA the following year.
- *Specific industry exemptions.* These include some custom combine operations, hay harvesting, sheep shearing, custom poultry operations, seed production operations, and shade-grown tobacco.
- *Local packing house workers.* Packing house and grading shed workers who do no field work and who return to their permanent home or

residence each night are not covered under MSPA so long as they are not day-haul workers. The first day a worker is transported and hired in this manner makes him or her a day-haul seasonal worker and, therefore, subject to MSPA requirements.

### ***Posting Requirements***

The yellow MSPA poster (DOL Form 1376) must be posted in a conspicuous place where migrant and seasonal workers are employed. This poster outlines workers' rights and protections. In joint employment situations, both parties are equally responsible for displaying the poster. The poster should be secured so it cannot easily be removed.

Where there might be a language problem, DOL Form WH-516, the yellow MSPA poster (Form 1376), and Form WH-521 (housing) must be in a language spoken by the workers. The DOL's Wage and Hour Division also has Form WH-501 (wages and payroll available in Spanish), but it is an optional form.

### ***Farm Labor Contractors***

Farm labor contractors (FLC) must be registered for all activities in which they will be engaged before being engaged in those activities. This includes registration for license to hire and employ, as well as housing, transportation, and driving authorization.

The FLC's license should indicate all activities likely to be performed and all housing and vehicles authorized to use. Employees of FLCs engaged in such activities must be licensed as well.

FLCs and their registered employees must carry their certificates of registration at all times and upon request exhibit the certificates.

FLCs must seek to amend their certificates of registration each time changes occur in address, vehicles, and/or housing to be used.

Copies of all payroll records of FLCs must be provided to the grower, processor, or packer for each place of employment.

A licensed employee of an FLC may have what is known as an "E" certificate. This type of license means that the individual may only work on behalf of the FLC shown on his or her license. The individual with an "E" certificate may not work for, or represent any other FLC, nor work as an FLC in his or her own right.

Anyone using an FLC who will be transporting should closely check that all transportation vehicles to be used are listed on the license. The transportation authorization also has its own expiration date and it is usually different from that of the license itself. Most FLCs meet the insurance requirements for transportation authorization by having Workers' Compensation. The name of the policy holder is on the bottom of the FLC's federal license. The contractor and Workers' Compensation holder should be in the same name, unless the grower using the FLC will provide the Workers' Compensation coverage. In that case, the name of the growers as well as the Workers' Compensation holder will be on the federal license.

If the FLC is providing housing, the name of the facility and location will be indicated on the FLC federal license.

### ***Wage and Payroll Records***

Employees must be given complete wage statements when paid (no less than semi-monthly).

FLCs and/or agricultural employers must produce for each employee specific information (Form WH-501). The following information must be made, kept, and preserved for three years:

- Basis on which wages are paid (piece work or hourly).
- Number of piece-work units earned (if paid on piece rate).
- Number of hours worked.
- Total pay period earnings.
- Specific sums withheld and purpose for each sum withheld.

- Net pay.
- Employee's name.
- Employee's permanent address.
- Employee's social security number.
- Employer's name.
- Employer's address.
- Employer's IRS identification number.

### ***Housing Safety and Health Standards***

- Housing requirements apply only to migrant agricultural workers.
- Each person who owns or controls a facility or real property used as housing for migrant agricultural workers must ensure that the facility or real property complies with all substantive Federal and State safety and health standards applicable to such housing. Thus, an inspection certificate is required. The joint employment (responsibility) concept applies when more than one person is involved in providing housing for migrant agricultural workers.
- Substantive Federal Standards are provided by the Employment and Training Administration (ETA) and the Occupational Safety and Health Administration (OSHA). (See *Farm Labor Camps Temporary [Federal]*.)
- Substantive State of Florida standards are in Chapter 381: Public Health, Florida Statutes, and Florida Administrative Code. (See *Farm Labor Camps Seasonal Labor [State]*.)
- Housing must be certified by state or local health authorities or other appropriate agency that the housing meets applicable safety and health standards. A copy of the certificate of occupancy must be posted at the housing site and the certificate must be retained for three years.
- Each farm labor contractor, agricultural employer, or agricultural association providing housing for any migrant agricultural worker must post in a conspicuous place at the housing site for the entire period of occupancy or present a

written statement to the worker at the time of recruitment the following information on the terms and conditions of occupancy (WH-521):

- Name and address of the employer(s) providing the housing.
- Name and address of person(s) in charge of the housing.
- Mailing address and phone number where occupants can be reached.
- Who may live in the housing.
- The charge (rent) to be made for the housing.
- Meals to be provided and the cost to workers.
- Charges for utilities.
- Any other charges or conditions of occupancy.
- *Exemptions to Housing Standards.* MSPA housing standards do not apply to any person who, in the ordinary course of business, regularly provides housing to the general public and who provides housing to any migrant agricultural worker on the same or comparable terms and conditions.
- *Special Notes.* Persons providing housing subject to this Act should develop and implement procedures to make certain compliance is maintained in the housing. Growers face increased risk of negligence claims for accidents arising at housing they provide. Even if there is Workers' Compensation applicability and coverage in connection with a labor camp injury, the worker may nevertheless seek statutory damages for MSPA violations.

### ***Driver, Vehicle, and Insurance Requirements***

These regulations apply to farm labor contractors and growers who provide transportation of any migrant or seasonal agricultural worker. These regulations do not cover tractors, harvesting, or

similar equipment while the equipment is engaged in planting, cultivating, or harvesting.

**Car Pooling.** New DOL regulations (May 1996) explain how car-pooling situations are treated where neither the grower nor FLC has anything whatsoever to do with arrangements between individual workers and an unregistered person who uses his or her own vehicle to transport workers:

- To be exempt from MSPA-covered transportation arrangements, car-pooling must be on a voluntary basis. If growers help to organize car pools, they likely will lose their exempt status. The workers themselves must pay the driver any cost reimbursement amount they work out. It is permissible, however, for a grower to provide workers a travel advance to cover travel to the worksite without creating MSPA coverage.
- If the driver in a voluntary car-pool situation is to avoid becoming a farm labor contractor within the meaning of MSPA, he or she must collect from his or her fellow workers no more than an amount which reasonably reflects the actual costs of shared transportation.

**Vehicle Standards.** Transportation standards apply whether on the farm or on the road. DOL has standards in effect that cover passenger automobiles, station wagons, and the cabs of pick-ups regardless of the distance they travel in connection with transportation of migrant or seasonal workers and regardless of the type of workers carried. These regulations apply also to other vehicles if the round-trip distance over which migrant or seasonal workers are transported is less than seventy-five miles and if the vehicle is not used for a day-haul operation.

Vehicles used for day-haul and vehicles used or intended to be used for transportation of migrant or seasonal agricultural workers for a round-trip distance greater than seventy-five miles must meet the regulations issued by the Interstate Commerce Commission. These include driver qualification and driving standards, as well as vehicle standards.

### ***Qualification of Drivers***

- Every driver and everyone responsible for hiring, supervising, training, assigning, and dispatching drivers must comply with and be conversant with the requirements applicable to drivers.
- Drivers must meet DOT physical requirements and have obtained a medical examination of such compliance and certification within the immediately preceding 36-month period [Form WH-515]. Copies must be maintained. The driver must carry proof of certification with him or her when driving. The employer must maintain a copy of his or her principal place of business.
- Drivers must be at least twenty-one years of age, with at least one year of driving experience.
- Drivers must be able to read and speak English sufficiently to understand traffic signals in English and to respond to official inquiries.
- Drivers must possess a valid permit qualifying the driver to operate the type of vehicle driven by him or her.

### ***Driving of Motor Vehicles***

- Drivers must be instructed to and must in fact drive in accordance with the law and regulations as well as be conversant with the requirements of the regulations.
- Drivers may not drive under the influence of alcoholic beverages nor, regardless of alcoholic content, drink any such beverage or liquor while on duty.
- No person shall permit or require operation of vehicles between such points in such a period of time so as to allow or necessitate operation of vehicle in excess of applicable speed limits.
- Drivers may not operate any vehicle until they have satisfied themselves that prescribed parts, accessories, and emergency devices are in good working order.

- Drivers may not operate vehicles loaded so heavily or so improperly distributed or inadequately secured as to prevent safe operation of vehicles.
- Tailgates and doors must be securely in place during operation.
- No objects may obscure a driver's view or freedom of motion or prevent ready exit in emergency.
- Vehicles may not carry more passengers than seating capacity; passengers must remain seated.
- Every person shall provide for meal stops at intervals not to exceed six hours and for a period of not less than thirty minutes duration. There must be at least one rest stop between each meal stop.
- No person shall drive nor shall any person permit or require a driver to drive for more than ten hours in the aggregate (excluding rest stops and stops for meals) in any 24-hour consecutive period unless the driver has been afforded eight consecutive hours' rest immediately following the ten hours' aggregate driving.

**Vehicle Use Restrictions.** Vehicles transporting workers include only buses, trucks without trailers attached, and one semi-trailer attached to a truck tractor with no other trailer attached. Closed vans without windows or ventilation may not be used. Trucks must meet compartment requirements: fixed seats, ventilators, etc.:

- Any truck used for transporting workers over 600 miles must be stopped for a period not less than eight consecutive hours before or upon completion of 600 miles travel and any subsequent 600-mile intervals.
- Required lamps and reflectors cannot be obscured and must be operational.
- Drivers must take prescribed steps to avoid fuel ignition, including turning off engine to fuel vehicle and not smoking near vehicles being fueled. Drivers may not carry reserve fuel except in properly mounted fuel tanks.

- Except in an emergency, no driver shall permit any unauthorized person to drive his or her vehicle.
- Protection of passengers from weather must be provided.
- Driver must set parking brake and block wheels on leaving vehicle.
- Rear of vehicle should display "This vehicle stops at railroad crossing" signs and comply with all regulations pertaining to railroad crossings.

*Note:* Any driver operating a vehicle with sixteen or more passengers must have a Commercial Driver's License (CDL). (See section on *Transportation - Motor Carrier Safety Regulations for Transporting Migrant Farm Workers.*)

Also, DOT Physical Examination Form CO-730, valid for twenty-four months, is an acceptable substitute for Form WH-515.

### ***Insurance and Liability Bond Requirements***

Neither farm labor contractors nor agricultural employers may transport any migrant or seasonal agricultural worker nor his or her property in any vehicle unless they have insurance policies or liability bonds in effect at specified minimum levels based on seating capacity of each particular vehicle. Vehicle liability cannot be less than \$100,000 for each seat, but the total insurance is not required to be more than \$5,000,000, regardless of the seating capacity of the vehicle. Insurance requirements may be met by having Workers' Compensation insurance, a certificate of liability insurance in the seat-based required amount covering transportation of all passengers who are not employees and workers whose transportation is not covered by Workers' Compensation insurance, property damage insurance in the minimum amount of \$50,000 for the property of others, or a general liability policy for the same protection. Also, the grower should be insured, if possible, in the crew leader's insurance certificate. Under the 1996 Adams Fruit Bill, Workers' Compensation is defined as sole relief and workers may not seek additional damage claims against their employer.

### **Grower Obligations Regarding Registration**

No grower or packer subject to the law may utilize a farm labor contractor's services to supply migrant or seasonal agricultural workers unless he or she first takes reasonable steps to determine that a contractor possesses a valid certificate of registration authorizing activities for which the contractor may be utilized. To check a labor contractor's status, telephone the Division of Professions of the Florida Department of Business and Professional Regulation in Tallahassee.

Where you know or would reasonably be expected to know that a labor contractor with whom you are dealing is providing housing or transportation to his or her crew members, you must ascertain that he or she has transportation and housing registration certificates for the vehicles and housing he or she is using. Under the law, he or she must have a valid certificate before he or she engages in any covered activity. All paperwork should be complete before recruiting workers and certainly before crew members move into housing controlled by the crew leader or begin work.

### **Enforcement**

#### **Criminal Sanctions**

- Any person who willfully and knowingly violates the Act or any regulation may be fined up to \$1,000 or sentenced to a prison term not to exceed one year, or both. For any subsequent conviction, the defendant may be fined up to \$10,000 or sentenced to a prison term not to exceed three years, or both.
- A Farm Labor Contractor working without a certificate may be fined up to \$10,000 or sentenced to up to three years in prison, or both.

#### **U.S. Department of Labor Enforcement**

- The U.S. Secretary of Labor may petition a Federal District Court for a temporary or permanent injunction if the Secretary determines that the Act has been violated.
- The U.S. Secretary of Labor may fine any person who commits a violation of the Act or regulations a penalty of up to \$1,000 for each

violation after notice of penalty, opportunity for agency hearing, etc. Unless a hearing is requested within thirty days or otherwise pursuant to regulations, the U.S. Secretary of Labor's assessment is a final and unappealable order. However, if the hearing procedure is utilized, the person against whom a penalty has been ordered may obtain limited review by a Federal District Court by following applicable procedures.

### **Private Right of Action by Workers Represented by Legal Aid Attorney or Private Attorneys**

Any person claiming violation of the Act or regulations by a farm labor contractor or agricultural employer or other person (including housing owner or person who controls housing) may file suit in Federal District Court. Upon a finding that the defendant violated the Act without bodily injury or death, each plaintiff may be awarded actual damages or statutory damages of up to \$500 per violation. If the MSPA violation caused death or bodily injury and there is Workers' Compensation coverage and applicability, the employee may recover under the Workers' Compensation law and sue for MSPA statutory damages and equitable relief. Statutory liability for most violations is \$500 per violation. However, in the amendments passed in 1995, Congress allowed the possibility of up to \$10,000 for certain violations of the transportation safety provisions of the Act.

Liability, in a class action not involving a \$10,000 statutory claim, limits Court awards to no more than the lesser of up to \$500 per plaintiff/violation, or up to \$500,000 damages or equitable relief. For violations where \$10,000 statutory penalties are available, multiple infractions of a single provision of the Act constitute only one violation for purposes of determining available statutory damages. A \$500,000 cap on class action damages applies in addition to Workers' Compensation remedies. Full judgment may be collected against any joint employer/defendant found liable.



***Discrimination Prohibited***

No one may intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate against any migrant or seasonal worker because he or she, with just cause, filed a complaint, testified about a complaint, or exercised any right or protection under MSPA. A worker who is so discriminated against may obtain back pay, damages, and other relief.

***Additional Information***

- Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) 29 U.S.C. 1801.
- Regulations, Part 500: Migrant and Seasonal Agricultural Worker Protection, WH Publication 1455 (Revised 12/94), U.S. Department of Labor, Wage and Hour Division.
- Labor Bulletin No. 416, Florida Fruit and Vegetable Association, Orlando, FL, May 15, 1983.
- Labor Bulletin No. 419, Florida Fruit and Vegetable Association, Orlando, FL, August 23, 1983.
- Labor Bulletin No. 501, Florida Fruit and Vegetable Association, Orlando, FL, November 17, 1994.
- Labor Relations Bulletin No. 507, Florida Fruit and Vegetable Association, Orlando, FL, November 30, 1995.
- Labor Relations Bulletin No. 509, Florida Fruit and Vegetable Association, Orlando, FL, May 31, 1996.
- Labor Relations Bulletin No. 511, Florida Fruit and Vegetable Association, Orlando, FL, September 12, 1996.
- Labor Relations Bulletin No. 557, Florida Fruit and Vegetable Association, Orlando, FL, July 16, 2002.
- The National Farmworker Jobs Program. Washington, D.C. <http://wdsc.doleta.gov/msfw>

***Responsible Agency***

Florida Labor Contractor REGISTRATION is obtained from the local offices of the

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>

For local offices, see the telephone directory for

- Florida, State of
- Business and Professional Regulation, Department of
- Professions, Division of
- Florida, Jobs and Benefits Center

Farm Labor Contractor COMPLIANCE AND ENFORCEMENT is by the

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>

For local offices, see the telephone directory for

- U.S. Government
- Labor, Department of
- Wage and Hour Division

Farm Labor Specialists are located at the following offices:

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

3444 McCrory Place, Suite 155

Orlando, FL 32803-3712

(407) 648-6471

4905 West Laurel Avenue, Suite 300

Tampa, FL 33607

(813) 228-1242

10300 Sunset Drive, Room 255

Miami, FL 33173-3083

(305) 598-6607 [English]

(305) 598-7471 [Spanish]

3728 Phillips Highway, Suite 219

Jacksonville, FL 32207

(904) 232-2489

## **Minimum Wage (Fair Labor Standards Act) [Federal]**

### ***Purpose***

To provide federal minimum hourly wage standards to workers and covered employees.

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

Any farmer using more than 500 man-days of labor during any calendar quarter of the preceding

calendar year (the equivalent of about seven full-time employees working five days a week).

If the employer did not employ more than 500 man-days of agricultural labor in any quarter of the preceding calendar year, his or her agricultural employees are exempt from the minimum wage provisions of the Act for the entire following calendar year. Conversely, if the employer used more than 500 man-days of farm labor in any calendar quarter of a year, coverage extends to the entire following calendar year even if the employer does not use 500 man-days of labor in any quarter of the second year.

Employees are excluded from the minimum wage and overtime requirements of the law as well as the 500 man-day test if such employee is the parent, spouse, child, or other member of his or her employer's immediate family.

The following employees are also exempt from the minimum wage and overtime requirements of the law, but their man-days of work must be counted toward the 500 man-day test:

- Employees who are paid on a piece-rate basis, AND were employed in agriculture as hand-harvest laborers fewer than thirteen weeks in the previous year AND commute to work daily (non-migrants).
- An employee in agriculture whose employer did not, during any calendar quarter of the preceding calendar year, use more than 500 man-days of agricultural labor.
- Any agricultural employee sixteen-years- old or younger who is:
  - Employed as a hand-harvest laborer.
  - Paid on piece-rate basis in an operation which is customarily and generally recognized as paid for on piece-rate basis in the region.
  - Employed on the same farm as his or her parent(s) or person(s) standing in place of his or her parent(s).

- Paid at the same piece rate as employees over age sixteen on the same farm.
- Employees principally engaged in livestock range production who must be available at all hours to care for such livestock. (The judicial application of this exemption does not turn on the characteristics of land use for grazing but on conditions under which the employees perform their duties. The exemption is applicable only if the method of operation is such that the computation of hours worked caring for the stock would be *extremely difficult*).

### **Minimum Wage**

Employers must, if covered, pay at least the minimum wage to all covered employees. Beginning September 1, 1997, the minimum wage increased to \$5.15 an hour.

### **Opportunity Wage**

Employers may pay entry wages of not less than \$4.25 an hour to workers less than twenty years of age, but only for the first ninety consecutive calendar days (not days of work). Employers, however, cannot take action to displace regular employees to hire workers under age twenty at the opportunity wage.

### **Record-Keeping**

Payroll records must be maintained for at least three years for each employee, including family members of employees.

This three-year requirement for records preservation includes any contracts, agreements, or memoranda concerning employment; and any collective bargaining agreements. In addition, sales and purchase records are to be maintained for three years.

The following records must be retained for a two-year period:

- Basic employment and earnings records such as time cards or time sheets.
- Wage rate tables or schedules.

- Order, shipping, and billing records.
- Itemized support for additions to and deductions from wages.

These records should include:

- Full name of employee (same name as used for Social Security purposes).
- Complete home address, including zip code.
- Sex and occupation in which employed.
- Identification of employees who are:
  - Members of an employer's immediate family.
  - Hand-harvest workers paid on a piece-rate basis.
  - Employees principally engaged in range livestock production.
- The number of man-days worked each week or month (a man-day is any day during which an employee does agricultural work for one hour or more).
- Time of day and day of week on which work week begins.
- Basis on which wages are paid (i.e., rate per hour, rate per day, or rate per piece work).
- Hours worked each work day and total hours worked each work week.
- Total daily or weekly earnings, depending on the applicable pay period.
- Total additions to or deductions from wages with an explanation of each.
- Total wages paid each pay period together with proof of payment to individual workers, including cash advances or other deductions.
- Date of payment and pay period covered by payment.

Have on file a statement from each exempt piece-rate employee showing the number of weeks employed in agriculture during the preceding year.

Have on file the date of birth and the parents' names for each exempt minor (under age sixteen) paid on a piece-rate basis.

Maintain a file showing the full name, present and permanent address, and date of birth of any minor under age eighteen who works when school is in session or works in a hazardous occupation.

Display the official poster "Notice to Employees" where employees can see it. This poster contains basic information on minimum wages.

### ***Overtime Exemption***

Employees employed in agriculture as defined by the Fair Labor Standards Act are exempt from overtime. In general, under the primary definition of agriculture, if the employee is engaged in cultivating the soil; or growing or harvesting crops; or raising livestock, bees, fur-bearing animals, or poultry, he or she is engaged in agriculture and exempt from overtime. Under the secondary definition of agriculture, any practices performed, other than those listed under the primary definition such as office work, shipping, warehousing, transporting, sales, etc., are exempt only if performed by employees of the farmer with respect to products grown by their employer or, if performed on a farm, as an incident to and in conjunction with products grown on the particular farm on which they are working. Performance in a week of any work which is not exempt under the primary or secondary definition will cause the employee to be subject to overtime for that week.

Because some employees of Florida agricultural employers handle or otherwise work on products not grown by their employer or do work not within the definition of agriculture as outlined above, the employer should seek professional legal counsel or advice from the local U.S. Department of Labor, Wage and Hour office concerning specifics of the overtime exemption.

However, workers (not employed by the farmer on whose farm they are working) who work solely on a farm where their work relates only to fruits, vegetables, or nursery products grown on that farm are exempt from overtime.

Citrus grove caretakers who have full responsibility for growing citrus in groves owned by others are considered to be farmers with respect to the crop they are growing.

### ***Overtime Exemption for Agricultural Transportation***

The complete overtime exemption is available for any employee engaged in the transportation or preparation for transportation of fruits and vegetables to the first place of processing or first marketing within the same state (even when performed by a non-farmer). However, mechanics and office workers of a harvester or purchaser are not exempt from overtime.

This overtime exemption also applies to any employee transporting farmworkers to be employed in the harvesting of fruits or vegetables between any place in the same state and the farm (whether or not performed by the farmer).

### ***Certain Deductions Possible***

Employers may deduct the cost of certain items from farmworker wages. However, care should be exercised because deductions of certain items cannot reduce wages below the minimum wage.

Deductions that *may* lawfully reduce wage level below the current minimum wage are:

- Taxes required by law (e.g., Social Security, Medicare, and withholding tax).
- *Third Party* deductions authorized by the employee (e.g., union dues, savings bonds, merchant accounts, insurance premiums, churches, and charitable organizations) so long as the employer receives no profit or benefit directly or indirectly.
- Salary advances exclusive of interest charges. Receipts must be obtained and retained.

- Housing and meals not exceeding the lesser of actual costs or fair rental value and meeting a number of specified conditions dealing with profit and rate of return on investment (29 C.F.R., Part 531). Housing facilities must be maintained for the benefit of employees, occupancy must not be mandatory, and costs cannot include depreciation when the facilities have been fully depreciated. Recent rulings by the Department of Labor indicate some migrant housing may have no fair rental value. If you provide and charge farmworkers for housing that can only be used by migrant workers and, thus, has no fair rental value, this rental charge cannot reduce their wages below the current minimum wage.

Currently, a deduction that may not lawfully reduce wage level below the current minimum wage is *transportation advances* (the legality of this deduction is being appealed in the courts). This policy applies where agricultural employers provide daily transportation to assure a sufficient number of workers. However, when the following three factors are all present, agricultural employers may deduct from workers' wages the lesser of reasonable costs or fair value of such transportation regardless of whether such deductions will decrease workers' wages below the minimum wage:

- The workers must know the location of their work site.
- Alternative transportation sources (i.e., personal automobile or car-pool) must be readily available.
- The workers are not required to use the employer's transportation.
- Charges for contractor's (crew leader) services.
- Charges for "Tools of the Trade and Other Materials Incidental to Carrying on the Employer's Business."

### ***Retaliation Policy***

The minimum wage law forbids any person to discharge or in *any other manner* discriminate against any employee because he or she has filed any

complaint or instituted or caused to be instituted any proceeding under or related to this law.

### ***Posting Requirements***

The official poster of the U.S. Department of Labor, "Notice to Employees" must be displayed where employees can see it. It must also be securely affixed. The following notation may be added: "Overtime provisions not applicable to employees employed in agriculture."

Failure to post is considered a violation of the minimum wage law.

### ***Enforcement***

The U.S. Department of Labor's Wage and Hour Division enforces the minimum wage law (Fair Labor Standards Act).

Following an inspection by the Department of Labor, an employer can be ordered to pay back wages and liquidated damages. Civil money penalties for violations of minimum wage law can be:

- Civil money penalties up to \$1,000 per violation, per employee for willful or repeated violations of minimum wage and/or overtime pay requirements.
- Civil lawsuits by the U.S. Department of Labor.
- Civil lawsuits by employees.
- Criminal indictments and penalties for violations under the Act by Department of Labor.

### ***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>

## Area Offices

See *Child Labor [Federal]* section.

## Occupational Safety and Health Act (OSHA) [Federal]

### Purpose

Provides general safety standards, inspection, and posting requirements for covered employers and their workers.

### Who Must Comply

Employers engaged in businesses involved in interstate commerce are subject to the regulations of the Occupational Safety and Health Act (OSHA).

### Exemptions

Exempted from OSHA regulations are the following:

- Family farm operators who employ only immediate family members.
- Agricultural employers who have employed ten or fewer employees (full-time or part-time) at all times during the previous twelve months and do not maintain a migrant labor camp.

*Note:* Exemption means exempt from audits and inspections. It does not mean that the hazards and liability have been removed or eliminated.

### Definitions

A farming operation is defined as any operation where a farmer grows or harvests crops, raises livestock or poultry, or is engaged in related activities. Farming operations include farms, ranches, orchards, dairy farms, or similar establishments. Production of ornamental plants and other nursery products is considered a farming operation.

## Requirements for Employers of Eleven or More Workers

- Inform employees of your safety regulations.
- Post OSHA's Job Safety and Health poster in a permanent place where notices to employees are customarily posted.
- Report within eight hours to the nearest OSHA area office (by telephone or in writing) any fatal accident involving an employee or any other accident resulting in the hospitalization of three or more employees.
- Maintain up-to-date (within six working days) records of all occupational injuries and illnesses.
- Post the annual summary of your OSHA No. 200 log on February 1st of the following year. This posting must be maintained for the entire month of February in a conspicuous place.
- Retain all records of occupational injuries and illnesses for five years after the end of the year.
- Furnish a place of employment free from recognized hazards that could cause death or serious physical harm to employees. (This requirement enables an OSHA inspector to cite an employer who should have recognized a serious hazard, even if OSHA does not have a specific standard related to that hazard.)

### OSHA's Agricultural Standards

OSHA has the following standards that apply specifically to agriculture:

- Storage and handling of anhydrous ammonia.
- Temporary labor camps.
- Pulpwood logging.
- Slow-moving vehicle emblems, signs, and tags.
- Rollover protective structures.
- Guarding of farm field equipment, farmstead equipment, and cotton gins.

- Field sanitation. (Enforced by the Wage and Hour Division.)

Included in these standards are very specific training requirements (e.g., the Hazard Communication Standard, which requires employers using hazardous chemicals to instruct employees on their safe handling and that employers must train employees in the safe operation of tractors).

### **Employee Requirements**

Each employee must comply with all safety and health regulations that are applicable to his or her own actions and conduct. He or she must obey all rules, regulations, and safety procedures required by his or her employer to comply with the law, including participation in safety training and certifying that he or she has received such training. The employee is not subject to fines for noncompliance as is his or her employer; however, repeated failure to observe recommended safety procedures or use provided safety equipment is grounds for dismissal when properly documented.

### **Inspections**

There are four categories of OSHA inspections. They are:

- Imminent danger.
- Fatality/catastrophic investigations.
- Complaints/referrals.
- Programmed.

The first three categories are considered unprogrammed inspections conducted in response to specific evidence of hazardous conditions at a workplace. Programmed inspections can be health and/or safety inspections and are normally comprehensive in scope.

OSHA is authorized to conduct workplace inspections without advance notice. Inspectors (also called compliance officers) are authorized to enter workplaces without delay and at reasonable times. If an employer refuses admission to his or her property, OSHA must obtain a warrant.

*Note:* Always insist on seeing an OSHA compliance officer's credentials. Also, be aware that an OSHA inspector has the right to interview employees during work hours.

### **Enforcement**

Penalties for OSHA violations can be very costly. OSHA classifies violations by their nature: willful, repeated, serious, and other-than-serious.

Civil money penalties for violations range from \$5,000 to \$70,000 for each willful violation; up to \$70,000 for each repeated violation; up to \$7,000 for each serious violation (penalties are mandatory); and up to \$7,000 for each other-than-serious violation. In addition, employers violating OSHA safety and health standards may face criminal prosecution.

Criminal penalties include: up to \$10,000 and six months imprisonment for an employee's death (first offense), up to \$20,000 and one year imprisonment for making false statements in OSHA documents, and up to \$5,000 and three years imprisonment for assaulting an OSHA official.

### **Job and Workplace Safety Information**

SB 230 repealed Florida Statute 442, "Occupational Safety and Health" effective June 30, 2000. As a result the 17 offices of the Division of Safety were closed.

There are still several occupational safety and health resources available for Florida citizens. The first is the 21d Program [formerly the 7(c)(1) Program] which is now housed at the University of South Florida.

USF Safety Florida Consultation Program

4003 East Fowler Avenue

Tampa, FL 33617

Dial toll-free 1(866) 273-1105

<http://www.safetyflorida.usf.edu>

[http://www.safetyflorida.usf.edu/map\\_location.html](http://www.safetyflorida.usf.edu/map_location.html)

Another resource is the Florida Partnership for Safety and Health, Inc., a not-for-profit all volunteer public sector safety and health corporation. Its mission is to provide low-cost safety and health training and resources to Florida's public sector. For more information about the organization, visit <http://www.fpslh.net> via the Internet or you may telephone Steve McGinn, Board Chairman for FPSH at (407) 425-9142, extension 317 or email him at [Smcginn@flcities.com](mailto:Smcginn@flcities.com).

### **Other Information**

- For additional information, contact your County Cooperative Extension Service Office or the Extension Safety Specialist, Department of Agricultural and Biological Engineering, IFAS, University of Florida, Gainesville, FL 32611, (352) 392-1864. Safety programs, publications, and audio-visual materials are available.
- For pesticide safety training material, contact your County Cooperative Extension Service office or the Pesticide Information Office, Building 847, University of Florida, Gainesville, FL 32611, (352) 392-4721.
- Labor Bulletin No. 469, Florida Fruit and Vegetable Association, Orlando, FL, September 18, 1989.
- FFVA Bulletin No. 509, Florida Fruit and Vegetable Association, Orlando, FL, May 31, 1996.
- FFVA Bulletin No. 513, Florida Fruit and Vegetable Association, Orlando, FL, February 21, 1997.
- Labor Relations Bulletin No. 528, Florida Fruit and Vegetable Association, Orlando, FL, December 10, 1998.
- Labor Relations Bulletin No. 531, Florida Fruit and Vegetable Association, Orlando, FL, January 16, 2001.
- Labor Relations Bulletin No. 547, Florida Fruit and Vegetable Association, Orlando, FL, February 21, 2001.

- Labor Relations Bulletin No. 553, Florida Fruit and Vegetable Association, Orlando, FL, December 18, 2001.

*Note:* The National Agricultural Safety Database (NASD) provides a compendium of agricultural safety and health resources. It contains OSHA standards that apply to agriculture and that have been reviewed and/or revised.

- Web site address:  
<http://www.cdc.gov/niosh/nasd/nasdhome.html>.
- OSHA home page address:  
<http://www.osha.gov>.

### **Responsible Agency (Administration and Supervision)**

U.S. Department of Labor

Occupational Safety and Health Administration

200 Constitutional Avenue NW

Washington, DC 20210

<http://www.osha.gov>

### **Regional Office**

61 Forsyth Street SW

Atlanta, GA 30303

(404) 562-2300

<http://www.osha.gov/oshdir/r04.html>

### **Area Offices**

<http://www.osha.gov/oshdir/fl.html>

8040 Peters Road, Bldg. H-100

Fort Lauderdale, FL 33324

(954) 424-0242



1851 Executive Center Drive

Jacksonville, FL 32207

(904) 232-2895

5807 Breckenridge Parkway, Suite A

Tampa, FL 33610-4249

(813) 626-1177

## **Occupational Safety and Health Act (OSHA) Hazard Communication Standard [Federal]**

### ***Purpose***

To require certain employers to inform their employees of the dangers of hazardous chemicals.

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

- Employers who manufacture, import, distribute, store, or use hazardous chemicals in the workplace must inform employees of these hazards by means of a written Hazard Communication Program.
- Agricultural employers with eleven or more employees (full-time or part-time) at any one time during the previous twelve months are subject to enforcement of OSHA's Hazard Communication (or Right-to-Know) Standard.

*Note:* The Environmental Protection Agency, not OSHA, regulates the application of pesticides. (See *Worker Protection Standard-EPA [Federal]* for pesticide safety requirements.)

### ***Hazard Communication Program***

The Hazard Communication Standard requires employers to develop and implement a written Hazard Communication Program for their workplace. The program must specify how the requirements for labeling and other forms of warning, material safety data sheets (MSDSs) and employee information and training will be met. It must also include:

- A list of the hazardous chemicals present in the workplace (on agricultural/horticultural operations, these might include such chemicals as kerosene or propane).
- The methods the employer will use to inform employees of the hazards of nonroutine tasks involving hazardous chemicals.
- The methods the employer will use to inform contractor employers of the hazards their employees may be exposed to in the workplace.

The written Hazard Communication Program must be made available, upon request, to employees, their representatives, OSHA officials, and U.S. Department of Health and Human Services officials.

### ***Labels***

Chemical manufacturers, importers, and distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked with the following information:

- Identity of the hazardous chemical(s).
- Appropriate hazard warnings.
- Name and address of the chemical manufacturer, importer, or other responsible party.

The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers intended for the immediate use of the employee who performs the transfer.

The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed. Employers employing non-English speaking workers may label this material in the worker's language as long as it is also labeled in English.

Employers are not required to label pesticides that are subject to the labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act.

### **Material Safety Data Sheets (MSDS)**

A Material Safety Data Sheet (MSDS) is a document, written in English, containing standardized information about the properties and hazards of toxic substances. Manufacturers and importers of toxic chemicals are required to prepare, update, and furnish MSDSs to their distributors and employers.

If an MSDS is not furnished with a shipment labeled as hazardous chemicals, the purchaser (employer) shall obtain an MSDS from the chemical manufacturer, importer, or distributor.

Employers shall have on file an MSDS for each hazardous substance in the workplace and ensure they are readily accessible during each work shift to employees when they are in the work area(s).

MSDSs shall also be readily available, upon request, to official representatives of the U.S. Department of Labor (OSHA) and the U.S. Department of Health and Human Services.

### **Information and Training**

Employers shall provide employees with information and training on hazardous chemicals in the work area at the time of their initial assignment and whenever a new hazard is introduced into their work area.

- *Information.* Employees shall be informed of the following:
  - Information and training requirements of the law.
  - Any operations in work area where hazardous chemicals are present.
  - The location and availability of the written Hazard Communication Program, including the required list(s) of hazardous chemicals and required MSDS.
- *Training.* Employee training shall include at least:
  - Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area.

- The physical and health hazards of the chemicals in the work area.
- The measures employees shall take to protect themselves from these hazards, including specific procedures employer has implemented to protect employees from exposure to hazardous chemicals such as appropriate work practices, emergency procedures, and personal protective equipment to be used.
- The details of the Hazard Communication Program developed by the employer, including an explanation of the labeling system and the MSDS and how employees can obtain and use the appropriate hazard information.

*Note:* Farmworkers in a field where pesticides are being applied or have been applied are not subject to hazard communication training for those pesticides. However, transporters of pesticides are subject to the Hazard Communication Standard training requirements.

Also, workers who may come into contact with other hazardous chemicals in the workplace (such as kerosene or propane) are subject to hazardous communication training for those chemicals.

### **Inspections and Enforcement**

The same inspection and enforcement criteria apply to OSHA's Hazard Communication Standard as to general OSHA regulations. (See section on *General OSHA Regulations.*)

### **Additional Information**

- 29 C.F.R., Part 1910.1200.
- Federal Register, Vol. 52, No. 163, Monday, August 24, 1987, 31851-31886.
- Labor Bulletin No. 453, Florida Fruit and Vegetable Association, Orlando, FL, November 5, 1987.

### **Responsible Agency**

U.S. Department of Labor

200 Constitution Avenue, NW

Washington, DC 20210

Dial toll-free 1(800) 487-2365

<http://www.dol.gov>

[See *Occupational Safety and Health Act (OSHA)* section for addresses and phone numbers.]

## **Plant Closing Notification/Layoffs (WARN Act) [Federal]**

### **Purpose**

To provide employees with notification of intended layoffs or shut-down.

### **Program/Employer Coverage**

In 1988, Congress passed the Workers Adjustment and Retraining Notification (WARN) Act, also known as the *Plant Closing Act*. The WARN Act covers employers with (a) 100 or more employees, excluding part-time employees or (b) 100 or more employees who, in the aggregate, work at least 4,000 hours per week.

Covered employers must notify workers of intent to shut down work or discontinue employment for fifty or more workers at a single job site for a period of thirty days or more.

There are no seasonal or agricultural exemptions under the WARN Act.

### **Notification Process**

- Employers of 100 or more workers must give at least sixty days' advance notice to their employees of a plant closing or mass layoff.
- Seasonal harvests do not exempt employers from the notification requirements of the WARN Act. Note: Seasonal harvests can be exempted if the workers are notified at the time of hiring that the work is temporary.

- In addition to notifying employees, employers must notify the workers' collective bargaining agent(s) or representatives (if any) and the state dislocated workers' unit, plus the appropriate state and local governmental agencies of closings or layoffs.

### **Penalties**

If an employer fails to provide the appropriate notification, the employer may be required to pay lost wages and benefits to all laid off employees for a period of up to sixty days.

### **Definitions**

- *Employer*. Any business enterprise that employs:
  - 100 or more employees, excluding part-time employees.
  - 100 or more employees who, in the aggregate, work at least 4,000 hours per week.
- *Plant closing*. The permanent or temporary shutdown of a single site of employment or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at a single site of employment during any thirty-day period for fifty or more employees.
- *Employment loss*. This includes:
  - An employment termination other than a discharge for cause, voluntary departure, or retirement.
  - A layoff exceeding six months.
  - A reduction in work hours of more than fifty percent during each month of any six-month period.
- *Plant*. The term *plant* is *not* synonymous with the word *building*, nor is it necessarily a horticultural term.

**Information Required for WARN Notice**

Notice under the WARN Act must contain the following information:

- A statement as to whether the planned action is expected to be permanent or temporary.
- If the entire plant is to be closed, a statement to that effect.
- The expected date when the plant closing or mass layoff will commence and the expected date when the individual employees will be separated.
- An indication of whether or not bumping rights exist.
- The name and telephone number of a company official to contact for further information.

**Joint Employment Situations**

Where farm employers also have farm labor contractors (FLC), the 100-worker threshold can be breached in cases of joint employment. In this situation, the number of workers is measured by adding the number of permanent and seasonal workers directly unemployed by the farmer to the number of workers in the FLCs' crews.

**Note to Seasonal Agricultural Employers**

For covered agricultural employers, it is suggested that signed releases be obtained at the time of hiring, making it clear to employees that the work is seasonal in nature and that the jobs will end at the conclusion of the task (planting, harvesting, etc.).

**Responsible Agency**

U.S. Department of Labor  
 200 Constitution Avenue, NW  
 Washington, DC 20210  
 Dial toll-free 1(800) 487-2365  
<http://www.dol.gov>

**Polygraph Protection for Employees [Federal]****Purpose**

Establishes rights of employees pertaining to polygraph tests.

**Program**

Most private employers are prohibited from using lie detector tests either for pre-employment screening or during the course of employment.

Federal, state, and local governments are not affected by the law. The act permits polygraph tests, subject to restrictions, of certain prospective employees of security service firms (armored cars, alarms, and guards) and of pharmaceutical manufacturers, distributors, and dispensers.

Those employees subject to polygraph tests have certain strict rights, including the conduct and length of the test, the right of written notice, the right to refuse or discontinue a test, and the right not to have the test results disclosed to unauthorized persons.

**Posting Requirements**

All employers, even though they never require polygraph tests, are required to display a poster (WH Publication 1462) in a prominent place where all employees and job applicants can see it.

**Responsible Agency**

U.S. Department of Labor  
 Employment Standards Administration  
 Wage and Hour Division  
 200 Constitution Avenue, NW  
 Washington, DC 20210  
 Dial toll-free 1(866) 487-9243  
<http://www.dol.gov/esa/whd>

## Portal to Portal Act of 1947 [Federal]

### **Purpose**

This federal act establishes a uniform interpretation as to what constitutes compensable working time where travel time to and from work is involved or where certain preliminary or postliminary activity can be construed as work. In general, work starts at the work site unless otherwise provided by contract, custom, or practice. This Act is an Amendment to the Fair Labor Standards Act (FLSA).

### **Responsible Agency**

U.S. Department of Labor

Employment Standards Administration

Wage and Hour Division

200 Constitution Avenue, NW

Washington, DC 20210

Dial toll-free 1(866) 487-9243

<http://www.dol.gov/esa/whd>

## Right-to-Know Law [State]

### **Purpose**

Establishes Florida standards of safety for certain employers who manufacture, produce, use, apply, or store toxic substances.

### **Who Must Comply**

In general, employers, of three or more workers, who manufacture, produce, use, apply, or store toxic substances must comply with the provisions of this Act.

### **Employer Exemptions**

The term employer does not include:

- Employers employing two or fewer employees.
- Employers of domestic workers in private houses.

- Bona fide farmers or an association of farmers employing workers in agricultural labor performed on a farm or in the onsite packing facilities for agricultural products from such farms who employ twelve or fewer regular employees and who employ twenty-four or fewer other employees at one time for seasonal or occasional agricultural labor that is completed in less than thirty continuous days provided that such seasonal or occasional employment does not exceed sixty days in the same calendar year. The term *farm* includes stock, dairy, poultry, fruit, fur-bearing animals, fish and truck farms, ranches, nurseries, and orchards. The term *agricultural labor* includes foremen, timekeepers, checkers, and other farm labor supervisory personnel.

Additionally, most pesticides used by agricultural employers are excluded from the provisions of this law. Section 442.103(4)(e), Florida Statutes, reads as follows:

*"The provisions of this act shall not apply to: Substances or mixtures which may be toxic but which are labeled pursuant to the Federal Insecticides, Fungicide and Rodenticide Act ...."*

However, in Florida, these toxic substances or mixtures must be applied by applicators licensed under the provisions of Florida Statutes: Chapter 388, Mosquito Control Act; Chapter 482, Pest Control Act; and Chapter 487, Florida Pesticide Act.

While an agricultural employer may be exempt from certain provisions of the Act relative to chemicals labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, most farms and farm shops utilize toxic substances that are not exempt from the Act. Hence, unless the farm employer is exempt because of twelve or fewer regular employees, he or she would be subject to the provisions of this law.

### **Covered Employers Must**

- Post a prescribed notice informing workers of their rights under the law.

- Obtain and maintain for thirty years a Materials Safety Data Sheet (MSDS) for each toxic substance present in the workplace and listed in the Florida Substance List.
- Make the MSDSs available to employees upon request within five of the requesting employee's working days.
- Provide instructions to employees, within their first thirty days of employment and at least annually thereafter, on the adverse health effects of each listed toxic substance with which they work in the workplace, how to use each substance safely, and what to do in case of emergency. (See *Employers' Instructional Requirements*.)
- Notify the local fire department of the location and characteristics of each listed toxic substance regularly present in the workplace.

### ***Employee Rights***

Employees are entitled to:

- Know of the listed toxic substances present in the workplace.
- Obtain a copy of the MSDS for each listed toxic substance present in the workplace.
- Instructions, within thirty days of employment and at least annually thereafter, on the adverse health effects of such listed toxic substances with which they work in the workplace, how to use each substance safely, and what to do in case of emergency.
- Refuse to work, under specified circumstances, with a listed toxic substance if not provided a copy of the MSDS for that substance within five working days after submitting a written request to his or her employer.
- Protection against discharge, discipline, or discrimination for having exercised any of the above rights.

### ***Employers' Instructional Requirements***

Employers are required to provide their employees with instructions, either written or in training sessions, which include the following:

- The chemical and common names of listed substances found in the workplace.
- The location of the substance in the workplace.
- Proper and safe handling practices.
- First aid treatment and antidotes in case of overexposure.
- The adverse health effects of the substance.
- Appropriate emergency procedures.
- Proper procedures for clean up of leaks and spills.
- The potential for flammability, explosion, and reactivity.
- The rights of employees under the Right-To-Know Law.

### ***Material Safety Data Sheets (MSDS)***

A Material Safety Data Sheet (MSDS) is a document containing standardized information about the properties and hazards of listed toxic substances. Manufacturers, importers, and distributors of listed toxic substances are required to prepare and furnish MSDSs to their direct purchasers. Employers are required to compile a file of MSDSs on listed toxic substances used in their workplace. In the event employers are, after diligent efforts, unable to obtain an MSDS from a manufacturer, importer, or distributor, they should notify the Toxic Substance Information Center, in writing, to request the Center's assistance in obtaining the MSDS.

### ***Florida Substance List***

The Florida Substance List is a list of toxic substances that are covered by Florida's Right-To-Know Law. The list was compiled by the Toxic Substance Advisory Council and contains the scientific name and, where applicable, the common

name of the substance. Copies can be obtained from the Toxic Substance Information Center.

### **Responsible Agency**

USF Safety Florida Consultation Program

4003 East Fowler Avenue

Tampa, FL 33617

Dial toll-free 1(866) 273-1105

<http://www.safetyflorida.usf.edu>

[http://www.safetyflorida.usf.edu/map\\_location.html](http://www.safetyflorida.usf.edu/map_location.html)

## **Right to Work [State]**

### **Purpose**

The Florida Constitution guarantees that "*...the right to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.*"

- Article 1, Section 6, Florida Constitution.
- Part 1, Chapter 447, Florida Statutes.

## **Social Security and Medicare (Federal)**

### **Purpose**

To provide social benefits to qualified workers who retire, become disabled, and/or require medical assistance.

### **Who Must Comply**

Farm employers must make Social Security and Medicare deductions:

- If they pay an employee \$150 or more in cash wages during a calendar year.
- If they pay total wages of \$2,500 or more per year to all employees. (These criteria are identical to those for income tax withholding).
- For most types of agricultural labor (including the employer's parents, spouse, and children eighteen years of age and older).

- For holders of unexpired I-688A and I-688 employment authorization cards and I-151 permanent resident cards because they are considered residents for purposes of Social Security and Medicare. Employers must deduct Social Security and Medicare taxes from their wages.
- In the case of H-2A temporary foreign agricultural workers, they are not covered by the program. Thus, employers certified by the Department of Labor to employ H-2A workers do not have to withhold Social Security and Medicare taxes from H2-A worker earnings.
- In the case of farm labor contractors, farmers can rely on them to withhold and deposit Social Security and Medicare taxes as part of the farm labor contractors' services. IRS uses a twenty factor test to determine who is responsible for these taxes.
- It is mandatory for farm operators to keep a record of the farm labor contractor's name, permanent address, and employer identification number.

### **Exceptions**

Some types of family employment are not covered by Social Security and Medicare. This exemption is not optional. Noncovered family employment is any work performed by:

- A child under eighteen years of age in the employ of his or her father or mother.
- A parent in the employ of a son or daughter performing domestic service in or about the home of the son or daughter or work not in the course of the son's or daughter's trade or business.

The family exclusion does not apply when the employer is a corporation or association classified as a corporation or a partnership, unless the family relationship exists between the employee and all the partners.

H-2A temporary foreign agricultural workers are exempt from this program, as noted above.

### ***Employers Must***

- **Social Security Taxes.** Withhold 6.2 percent of the employee's cash wages (including the initial \$150) and add 6.2 percent as the employer's contribution (during 1997 the tax is limited to the first \$65,400 of annual wages).
- **Medicare Taxes.** Withhold 1.45 percent of the employee's cash wages (including the initial \$150) and add 1.45 percent as the employer's contribution. The taxable wage base for Medicare is unlimited. The total annual combined employer-employee taxes for Social Security and Medicare are 15.3 percent of gross wages.

### ***Deposit/Record-Keeping Rules***

- Employers must deposit FICA taxes in a Federal Reserve Bank or authorized financial institution, depending on the size of the combined deductions/contributions. Deposits must be accompanied by Form 8109, "Federal Tax Deposit Coupon." The deposit rule schedule is the same as for income tax withholding.
- Employees must be given a Form W-2, "Wage and Tax Statement," showing the amount of earnings, income tax withheld, and amount of Social Security and Medicare deductions by January 31st of each year. Those employees who had zero withheld must be provided with Notice 797, "The Earned Income Tax Credit Refund," or "Copy C" of the W-2 Form. Employees who claimed total exemption in the previous year must fill out a new W-4 Form by February 15th of the following year.
- Attach copies of each employee's W-2 Form to Form W-3, "Transmittal of Income and Tax Statements," and send both to the Social Security Administration by February 28th. File Form 943, "Employer's Annual Tax Return for Agricultural Employers," with the IRS by January 31st of each year (or February 10th if taxes were paid in full).
- The total of W-2 wages and taxes should equal total of the W-3 wages and taxes, which should equal the total of Form 943 wages and taxes.

That figure should then equal the total of taxes deposited. Reconciling and correcting any differences between the various forms will reduce the chance of notices, penalties, and audits.

- Employers are also required to keep payroll records for four years after the taxes are due and paid. These records must include:
  - Names, addresses, and occupations of employees.
  - Periods of employment.
  - Social Security numbers.
  - Employer's identification number (EIN).
  - Total amount and date of each wage payment.
  - Amounts deducted for FICA and income tax withholding.

### ***Self-Employed Farmers***

Under the Self-Employed Contributions Act, self-employed farmers (unincorporated) who report a net income of \$400 or more from farming operations must contribute to Social Security and Medicare. The contribution rate in 1997 was 12.4 percent of annual net earnings up to \$65,400 for Social Security and 2.9 percent of annual net earnings (unlimited) for Medicare (15.3 percent total).

If a farmer also earns wages subject to Social Security and Medicare deductions, he or she must contribute to the self-employment income until the combined earnings reach the 1997 Social Security limit of \$65,400 and the 1997 unlimited Medicare. Self-employed income is reported on Schedule F.

### ***Additional Information***

- Circular A, Agricultural Employer's Tax Guide, Publication 51, Department of Treasury, Internal Revenue Service. (Published annually.)
- Farmer's Tax Guide, Publication 225, Department of the Treasury, Internal Revenue Service. (Published annually.)



The following fact sheets are available from most local Social Security offices

- No. 4 - If You're Self-Employed.
- No. 5 - Reporting Farm Income.
- No. 6 - Crew Leaders and Farmers.
- No. 8 - Agricultural Workers.

### **Responsible Agency**

- U.S. Department of Health and Human Services
- Social Security Administration

For local Social Security offices, see telephone directory for

- U.S. Government
- Health and Human Services
- Social Security Administration

Dial toll-free 1(800) 772-1213

For local Internal Revenue Service offices, see telephone directory for

- U.S. Government
- Internal Revenue Service

For ordering tax forms, dial toll-free 1(800) 829-3676

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

## **Transportation - Alcohol and Drug Testing [Federal]**

### **Purpose**

To establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

### **Who Must Comply**

- This federal program requires that all drivers of commercial motor vehicles (CMV) who are required to obtain a Commercial Driver's License (CDL) be tested for illegal use of alcohol and controlled substances.
- Thus, individuals employed within agriculture who drive a CMV and are required to possess a CDL are covered under the program.
- Employers not subject to this law's requirements will be those few employers who exclusively employ drivers who are not subject to the CDL's requirements (e.g., farmers who employ drivers who have been waived of CDL requirements).

### **Definitions**

- *Employer* is defined as any person who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term employer includes an employer's agents, officers, or representatives. (Thus, growers who employ farm labor contractors who, in turn, employ operators of CMVs with CDLs may be liable to ensure that drivers are properly tested.)
- *Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.
- *Commercial Motor Vehicles* means a motor vehicle used in commerce to transport passengers or property of the motor vehicle which meets one of the following requirements:
  - Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
  - Has a gross vehicle weight rating of 26,001 or more pounds.
  - Is designed to transport sixteen or more passengers, including the driver.

- Is of any size and is used in the transportation of hazardous materials.
- *Confirmation test for alcohol testing* means a second test, following a screening test, with a result of 0.02 or greater of alcohol concentration.
- *Screening test (also known as initial test)* means an analytical procedure (in alcohol testing) to determine whether a driver may have a prohibited concentration of alcohol in his or her system.

### ***Driver/Employer Prohibitions***

- No driver shall report for duty or remain on duty while having an alcohol concentration of 0.04 or greater. Also, no employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.
- No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. Also, no employer having actual knowledge that a driver possesses unmanifested alcohol may permit the driver to drive a CMV.
- No driver shall use alcohol while performing safety-sensitive functions. Also, no employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform safety-sensitive functions.
- No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that such a driver has used alcohol within four hours shall permit a driver to perform safety-sensitive functions.
- No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident or until he or she undergoes a post-accident test, whichever occurs first.
- No driver shall refuse to submit to a post-accident alcohol or controlled substances test. Also, no employer shall permit a driver who refuses to submit to such tests to perform safety-sensitive functions.
- No driver shall report for duty or remain on duty when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV. Also, no employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform safety-sensitive functions. (The employer may require the driver to inform the employer of any therapeutic drug use.)
- No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver tests positive for controlled substances. Also, no employer, having actual knowledge that a driver has tested positive for controlled substances, shall permit the driver to perform safety-sensitive functions.

### ***Tests Required***

#### **Pre-Employment Testing**

- An employer is not required to administer an alcohol test at pre-employment if the driver has undergone an alcohol test within the previous six months with a result indicating a concentration of less than 0.04 and the employer ensures that no prior employer of the driver has knowledge nor records of a violation of the regulations within the previous six months.
- Regarding controlled substances, the employer is not required to administer a pre-employment test if the driver participated in a drug-testing program and met regulation requirements within the previous thirty days. Also, the employer must ensure that no prior employer of the driver of whom the employer has knowledge has records of a violation of regulations within the previous six months.

- Any employer who chooses to employ the exception for pre-employment alcohol or controlled substance testing must obtain the following information:
  - Name and address of testing program used previously by the driver.
  - Verification that the driver participated in the program.
  - Verification that the program conformed to the regulations.
  - Verification that the driver is qualified under the regulations.
  - Date the driver was last tested.
  - Results of any tests taken within the previous six months and any violations of the federal regulations.
- An employer who uses but does not employ a driver more than once a year must make assurances once every six months that the driver participates in an alcohol and controlled substance program.

### Post-Accident Testing

- As soon as practicable following an accident involving a CMV, each employer shall test for alcohol and controlled substances for each surviving driver:
  - Who was performing safety-sensitive functions where the accident involved the loss of human life.
  - Who received a citation under state or local law for a moving traffic violation arising from the accident.
- If an alcohol test is not administered within two hours following the accident, the employer shall prepare and maintain a file record stating reasons why the test was not promptly administered.
- If a controlled substance test is not administered within thirty-six hours following the accident, the employer must attempt to administer a controlled substance test and prepare and maintain on file a record stating the reasons why the test was not promptly administered.
- An employer is required to provide drivers with the necessary post-accident information procedures and instructions prior to the driver operating a CMV so that drivers will be informed regarding testing requirements.
- A driver who is subject to post-accident testing must remain readily available for testing or may be deemed by the employer to have refused to submit to testing.
- The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances conducted by federal, state, or local officials will be considered to meet the requirements of the regulations provided such tests conform to applicable federal, state, or local requirements and that the results of the tests are obtained by the employer.

### Random Testing

- The minimum annual percentage rate for random alcohol testing is twenty-five percent of the average number of driver positions.
- The minimum annual percentage rate for random controlled substance testing is fifty percent of the average number of driver positions.
- The selection of drivers for random alcohol and controlled substance testing may be made by a scientifically valid method such as a random number table or a computer-based random number generator that is matched with a driver's social security number or payroll ID number. Whatever method is used, each driver must have an equal chance of being tested each time selections are made.
- The employer must require that each driver who is notified of selection for random testing proceeds to the test site immediately.

- A driver may only be tested for alcohol while he or she is performing safety-sensitive functions just before the driver is to perform safety-sensitive functions or just after the driver has ceased performing such functions.

### **Reasonable Suspicion Testing**

- An employer must require a driver to submit to alcohol and/or controlled substance tests when the employer has reasonable suspicion to believe that the driver has violated the prohibition of this regulation, except for merely possessing alcohol.
- The driver may be directed to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions just before the driver is to perform safety-sensitive functions or just after the driver has ceased performing such functions.

### **Return to Duty Testing**

- The employer must ensure that, before a driver returns to duty after engaging in conduct prohibited by regulations concerning alcohol, the driver must undergo a return-to-duty alcohol test with a result indicating a concentration of less than 0.02.
- The employer must also ensure that before a driver returns to duty after engaging in conduct prohibited by regulations concerning controlled substances, the driver must undergo a return-to-duty controlled substance test with a result indicating a verified negative for controlled substance abuse.

### **Follow-Up Testing**

- Following determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the employer must ensure that the driver is subject to unannounced follow-up testing as directed by a substance abuse professional.
- Follow-up alcohol testing may only be conducted immediately before, during or immediately after the driver performs safety-sensitive functions.

### ***Handling of Test Results and Record Retention***

- Every affected employer must maintain records of its alcohol misuse and controlled substance use prevention programs.
- The records must be maintained in a secure location with controlled access.
- The following records must be maintained by the employer for a period of five years:
  - Driver alcohol test results for 0.02 or greater alcohol concentrations.
  - Records of driver verified positive controlled substance test results.
  - Documentation of refusals to take required tests.
  - Calibration documentation.
  - A copy of each annual calendar year summary.
- Records related to the alcohol and controlled substance collection process and training must be maintained for a minimum of two years.
- Records of negative and cancelled controlled substance test results and alcohol test results with a concentration of less than 0.02 must be maintained for a minimum of one year.

### ***Reporting of Results***

- All employers covered by this regulation must prepare and maintain an annual calendar year summary of the results of alcohol and controlled substance testing programs.
- Each annual calendar year summary containing information on a verified positive controlled substance test result, alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse requirements must include specified information on the number of drivers, number of urine specimens collected by type of test, number and type of positive tests for controlled substances, etc.

- Where an employer's annual calendar year summary contains only negative controlled substance abuse test results, alcohol screening test results of less than 0.02 and no other violations, an EZ report form may be submitted.

#### ***Access to Facilities and Records***

- No employer may release driver information required by this regulation.
- A driver, however, is entitled, upon written request, to obtain copies of records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to the driver's alcohol or controlled substance tests.

#### ***Medical Review Officer Notification***

- All tests must be reviewed by a Medical Review Officer (MRO). A signed, written notification must be forwarded within three business days of completion of the MRO's review.
- No person may obtain the individual controlled substance test results of any driver without first obtaining a specific written authorization from the tested driver.
- The MRO is not prohibited from releasing the test results to the employer or to officials of the U.S. Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the controlled substance testing program.

#### ***Employer Notification***

- The employer must notify a driver of the results of a pre-employment controlled substance test if the driver requests the results within sixty calendar days of being notified of the disposition of the employment application.
- Employers must also notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substance if test results are verified positive. In addition, the employer must inform the driver which controlled substances were verified positive.

#### ***Information, Training, and Referral***

- Each affected employer must provide educational materials that explain the requirements of the alcohol and drug testing program, plus the employer's policies and procedures for fulfilling these requirements.
- Employers must ensure that copies of the educational materials are distributed to each driver prior to the start of alcohol and controlled substance testing and to each driver subsequently hired or transferred into a position of driving a CMV.
- Employers must ensure that their staff who determine whether reasonable suspicion exists (who subject drivers to testing) receive at least sixty minutes of training on alcohol misuse and receive an additional sixty minutes of training on controlled substance use.
- The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.
- Each driver who has engaged in prohibited conduct must be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the measure of alcohol and use of controlled substances.
- Before a driver returns to duty after engaging in prohibited conduct, the driver must undergo a return-to-duty alcohol test with a test result less than 0.02 or a verified negative result on the controlled substance test.
- Each driver identified as needing assistance in resolving problems associated with alcohol abuse or controlled substance use must be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed and will be subject to unannounced follow-up alcohol and control substance tests administered by the employer following the driver's return to duty.

- Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional affiliated with the employer, or by a substance abuse professional unaffiliated with the employer.

### ***Related Information***

- Controlled Substances and Alcohol Use and Testing, C.F.R., Title 49, Chapter III, Part 382, U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety.

### ***Responsible Agency***

U.S. Department of Transportation

Federal Highway Administration

Office of Motor Carrier Safety

61 Forsyth Street SW, Suite 17T75

Atlanta, GA 30367

(404) 562-3600

<http://www.fmcsa.dot.gov/aboutus/aboutus.htm>

## **Transportation - Motor Carrier Safety Regulations for Drivers of Farm Trucks [Federal]**

### ***Purpose***

Establishes safety and licensing standards for trucks, buses, and semi-trailers where gross vehicle weight exceeds 10,000 pounds.

### ***Program Requirements***

The U.S. Department of Transportation's (DOT) Motor Carrier Safety Regulations cover all interstate and intrastate motor carriers of property or passengers whether common, contract, or private, including drivers, officers, agents, representatives, and employees.

The two broad areas of the safety regulations relevant to agriculture include:

- Drivers of farm trucks subject to Commercial Driver's License (CDL) requirements and hazardous materials regulations.
- Vehicles and drivers transporting migrant farmworkers. [See section on *Migrant and Seasonal Agricultural Worker Protection Act (MSPA)*.]

### ***Farm Vehicle Waivers***

The Motor Carrier Safety Regulations permit states to waive the CDL requirements for certain groups. These include certain farm vehicle operators as long as the vehicle:

- Is controlled and operated by a farmer.
- Is used to transport agricultural products or farm machinery/farm supplies or both to and from a farm.
- Is not used in the operation of a common or contract motor carrier.
- Is used within 150 miles of the person's farm.

This is not a blanket waiver for all drivers of all farm-related vehicles. At its broadest interpretation, it applies only to the farmer-operator of vehicles hauling nonhazardous materials that do not travel more than 150 miles from the farm.

In addition, CDL waivers do not apply to drivers of vehicles designed to transport passengers, including migrant or seasonal agricultural workers.

For these reasons, it is important for farm employers to understand and comply with DOT regulations governing road testing, medical examinations, drug and alcohol testing, equipment, maintenance, and transportation of hazardous materials.

### ***Physical Requirements of Drivers***

Drivers of farm vehicles must meet the physical requirements and comply with all other provisions of the Federal Motor Carrier Safety Regulations.

- A person cannot drive a farm vehicle if he or she has lost a foot, leg, hand, or arm unless he or she has been granted a waiver.

- A person cannot have any impairment of a hand or finger which interferes with prehension or power grasping, or an arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle.
- A driver of a farm vehicle cannot have diabetes, cardiovascular disease, respiratory dysfunction, high blood pressure, arthritis, rheumatism, or epilepsy likely to interfere with the ability to control or drive a motor vehicle safely.
- The driver of a farm vehicle must have visual acuity of at least 20/40 with corrective lenses and not be color blind, must have hearing which is not significantly diminished, and must not be addicted to habit-forming drugs or alcohol.

### **Other Requirements**

#### **Driver's Qualification File**

- Each driver must have a qualification file which may be kept with the driver's personnel file. Operators are required to keep the files at their principal place of business and retain them for three years after termination of the employee.
- If you meet the definition of a farm vehicle operator, you are exempt from the driver's qualification file portion of the regulation.

#### **Road Tests**

- Each person must be tested to demonstrate that he or she is capable of operating the type of motor vehicle he or she intends to drive.
- A driver may present a valid operator's license issued by the state driver's license testing bureau as an alternative to the road test. If he or she does, the employer must photocopy the license and keep it with the driver's qualification file. If the employer chooses to use the road test, it must be given by a person who is competent to evaluate whether the individual taking the test has demonstrated he or she is capable of operating the equipment.
- If you meet the definition of a *farm vehicle operator*, you are exempt from this section of the regulation.

### **Medical Examination**

- The medical examination must be given by a licensed doctor every two years and must be included in the driver's qualification file. The driver of a motor vehicle must have in his or her possession a medical examiner certificate card or a photocopy of the medical examination.
- All *farm vehicle operators* are exempt from the requirements for medical examinations. If you drive a combination vehicle, such as a tractor-trailer, you need to have a medical examination but you do not need to keep a copy of the examination on you.

### **Driving Requirements**

- Employers cannot permit motor vehicles to be operated when the driver's ability or alertness is impaired due to fatigue, illness, or any other reason.
- Drivers may not possess or use any prohibited drugs, amphetamines, or other substances that could jeopardize the safe operation of a motor vehicle.
- Drivers may not use, possess, or have any measurable amount of detectable alcohol while driving or while on duty. They are also prohibited from consuming alcoholic beverages within four hours of going on duty.
- Drivers violating these rules must be placed out of service for twenty-four hours.

### **Equipment**

- The following emergency equipment must be carried on all vehicles in the proper place and ready for use:
  - one fire extinguisher (Type 5BC or larger: properly filled, accessible, and securely mounted).
  - three emergency bi-directional reflective triangles, fuses, or flares.

- one spare fuse or other overload protective device for each type and size used.
- This part of the regulation (Part 393) also details the requirements for lighting devices, reflectors, electrical equipment, brakes, glazing/window construction, fuel systems, coupling devices and towing methods, emergency equipment, protection against shifting or falling cargo, tires, mirrors, horn, rear end projection, loads, and seat belts.

### **Inspection and Maintenance**

- Motor carriers must systematically inspect, repair, and maintain all their vehicles.
- Every driver must complete a written vehicle inspection report at the end of each workday on each vehicle operated. Before dispatching the vehicle, the owner must certify on the report that defects, if any, have been corrected or are unnecessary. The report must be kept for ninety days.
- Owners operating only one motor vehicle are exempt from this requirement.
- Vehicles not passing inspection by enforcement officers and because their condition might cause an accident or breakdown must be taken out of service until repairs are made.

### **Hours of Service Limitations**

The hours of service rules prohibit drivers from:

- Driving more than ten hours following eight consecutive hours off-duty.
- Driving for any period after being on duty fifteen hours following eight hours off-duty.
- Driving after having been on-duty more than sixty hours in any seven consecutive days.
- Driving after having been on-duty more than seventy hours in any period of eight consecutive days (for carriers that operate seven days a week).

These rules have been a source of contention for agricultural retailers and other farm suppliers who were able to win a partial exemption in late 1995.

The law now exempts drivers transporting agricultural commodities or farm supplies for agricultural purposes within a state from the rules under these conditions:

- Transportation is limited to a 100-mile radius from the source of the commodities or the distribution point.
- Transportation occurs during the state's planting and harvest seasons as determined by each state.

### **Penalties**

Violations of the federal Motor Carrier Safety Regulation carry fines ranging from \$1,000 for the first offense up to \$10,000 for willful repeat offenses.

### **Related Information**

- Federal Motor Carrier Safety Regulations, C.F.R., Title 49, Chapter III, Subchapter B, Part 398, U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety.
- Commercial Driver's License: Manual for Truck and Bus Drivers, Florida Department of Highway Safety and Motor Vehicles.

### **Responsible Agency**

U.S. Department of Transportation

Federal Highway Administration

Office of Motor Carrier Safety

61 Forsyth Street SW, Suite 17T75

Atlanta, GA 30367

(404) 562-3600

<http://www.fmcsa.dot.gov/aboutus/aboutus.htm>



## Transportation - Motor Carrier Safety Regulations for Transporting Migrant Farm Workers [Federal]

### **Purpose**

Establishes safety and other standards regarding the transportation of migrant farmworkers.

### **Applicable Laws**

The transportation of migrant and seasonal farmworkers is governed by the DOT's Federal Motor Carrier Safety Regulations and regulations adopted by the U.S. Department of Labor (DOL) in implementing the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

The DOL adopted, virtually intact, the Federal Motor Carrier Safety Regulation dealing with the transportation of migrant and seasonal agricultural workers.

In addition, the DOL adopted its own vehicle standards for automobiles and station wagons used to transport migrant and seasonal agricultural workers and all other vehicles used to transport migrant and seasonal agricultural workers for trips of seventy-five miles or less (excluding day-haul operations). (See *Migrant and Seasonal Agricultural Worker Protection Act (MSPA) [Federal]*.)

The regulations contain provisions setting forth the qualifications of drivers or operators; the driving of motor vehicles, parts, accessories necessary for safe operation, hours of service by drivers, maximum driving time, and inspection and maintenance of motor vehicles.

### **Operator Qualifications**

Regulations on the qualifications of drivers provide that no person shall drive any motor vehicle carrying migrant farmworkers unless he or she meets the following minimum qualifications:

- Be twenty-one years of age or older.
- Have no mental, nervous, organic, or functional diseases likely to interfere with safe driving.

- Have no loss of foot, leg, hand, or arm.
- Have no loss of fingers or impairment of foot, leg, hand, or arm that prevents safe driving.
- Have visual acuity of at least 20/40 corrected.
- Have hearing of not less than 10/20 in one ear.
- Not be addicted to narcotics or habit-forming drugs or excess use of alcoholic beverages.
- Have a physical examination by a licensed doctor of medicine or osteopathy at least every thirty-six months and carry a certificate of physical examination at all times.
- Read and speak English.
- Possess a valid driving permit applicable to the vehicle being driven (i.e., a Commercial Driver's License with a passenger transport endorsement).

### **Operator Regulations**

Regulations governing the driving of motor vehicles carrying migrant farmworkers include:

- Driving rules to be obeyed.
- Driving while ill or fatigued.
- Alcoholic beverages.
- Schedules to conform to speed limits.
- Equipment and emergency devices.
- Safe loading:
  - Distribution and securing of load.
  - Doors, tarpaulins, tailgates, and other equipment.
  - Interference with driver.
  - Property on motor vehicle.
  - Maximum passengers on motor vehicles.
- Rest and meal stops.
- Kinds of motor vehicles in which workers may be transported.

- Lighting devices and reflectors.
- Limitation on distance of travel.
- Ignition of fuel precautions.
- Carrying reserve fuel.
- Driving by unauthorized persons.
- Protection of passengers from weather.
- Unattended vehicle precautions.
- Railroad grade crossings.

### ***Vehicle Specifications***

The regulations also specify certain parts and accessory requirements for vehicles used to transport migrant farmworkers as follows:

- Lighting devices.
- Brakes.
- Coupling devices (fifth wheel mounting and locking).
- Tires.
- Passenger compartment:
  - Floors.
  - Sides.
  - Nails, screws, and splinters.
  - Seats.
  - Protection from weather.
  - Exit.
  - Gate and doors.
  - Ladders and steps.
  - Handholds.
  - Emergency exits.
  - Communication with driver.

- Protection from cold. Prohibited heaters include:
  - Exhaust heaters.
  - Open flame heaters.
  - Heaters permitting fuel leakage.
  - Heaters permitting air contamination.
  - Heaters not securely fastened.

### ***Penalties***

Violations of the federal Motor Carrier Safety Regulations carry fines ranging from \$1,000 for the first offense up to \$10,000 for willful repeat offenses.

### ***Inspections and Licensing***

For vehicle inspections relative to farm labor contractor certification, contact the local U.S. Department of Labor, Wage and Hour Division office. For licensing, contact the Florida Department of Highway Safety and Motor Vehicles.

For local offices, see the telephone directory for

U.S. Government

Labor, Department of

Wage and Hour Division

(See *Transportation - Motor Carrier Safety Regulations for Transporting Migrant Farm Workers [State]* section.)

### ***Related Information***

- Federal Motor Carrier Safety Regulations, C.F.R. Title 49, Chapter III, Subchapter B, Part 398 U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety.
- Commercial Driver's License: Manual for Truck and Bus Drivers, Florida Department of Highway Safety and Motor Vehicles.

**Responsible Agency**

U.S. Department of Transportation

Federal Highway Administration

Office of Motor Carrier Safety

61 Forsyth Street SW, Suite 17T75

Atlanta, GA 30367

(404) 562-3600

<http://www.fmcsa.dot.gov/aboutus/aboutus.htm>

## Transportation of Migrant Farm Workers [State]

**Purpose**

To provide state standards for transporters of migrant farmworkers.

**Who Must Comply**

- Any person who transports, contracts, or arranges for the transportation of one or more migrant workers who do not live in the immediate area for planting, cultivating, or harvesting agricultural crops must comply with this state law.
- A migrant farmworker transporting himself or herself and his or her immediate family is exempt from the provisions of this program.

**Transporter Requirements**

Transporters must comply with the provisions of Chapter 316.620, Florida Statutes, which provides that:

- Tires must:
  - Be adequate for the size and weight of the vehicle.
  - Not be smooth or worn so as to expose fabric.
  - Have a tread configuration in contact with the road.

- Not be regrooved, retreaded, or recapped on the front wheels.

- Passenger compartment must have:

1. A smooth floor without cracks or holes and without protruding obstructions more than two inches high.
2. Sidewalls at least sixty inches high and openings in stake body no more than six inches wide.
3. Floors and interiors free of inwardly protruding nails, screws, splinters, or projecting objects.
4. Passenger seats securely fastened to vehicle. These seats shall be between sixteen to nineteen inches above the floor with back rests at least thirty-six inches above the floor and shall have a seating depth of at least thirteen inches. Seats shall be at least twenty-four inches apart or eighteen inches when face to face with cracks no more than one-quarter inch on the seat and two inches on the back. Surfaces must be smooth and free of splinters.
5. When necessary, passenger protection from inclement weather, using a top at least eighty inches high with provisions for closing sides and ends.
6. An opening for entry or exit at the rear or right side that shall be at least eighteen inches wide and at least sixty inches high and have a door or gate with an operable latch.
7. Ladders or steps with footholds no more than twelve inches apart; lowest foothold or step shall be no more than eighteen inches from the ground.
8. Handholds to permit entry and exit without hazard to passengers.
9. Emergency exits in addition to the exit described in number 6 for vehicles with permanent roofs.

10. The means to enable passengers to communicate with driver.
11. A safe heating method to protect passengers from cold or undue exposure. These types of heaters are FORBIDDEN:
  1. Exhaust heaters.
  2. Open flame heaters.
  3. Heaters permitting fuel leakage.
  4. Heaters permitting air contamination.
  5. Unattached heaters.

### ***Related Information***

- Chapters 316.003, 316.620, and 316.450, Florida Statutes.
- Labor Bulletin No. 339, Florida Fruit and Vegetable Association, Orlando, FL, October 31, 1974.
- Commercial Driver's License: Manual for Truck and Bus Drivers, Florida Department of Highway Safety and Motor Vehicles, November 1989.

### ***Responsible Agency***

Florida Department of Highway Safety and Motor Vehicles

Neil Kirkman Building, 2900 Apalachee Parkway

Tallahassee, FL 32399-0500

(850) 488-5370

<http://www.hsmv.state.fl.us>

For local offices, see the telephone directory under

- Florida, State of
- Highway Patrol

## **Unemployment Compensation [Federal and State]**

### ***Purpose***

This program is intended to benefit persons unemployed through no fault of their own.

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

Any farmworker employer who has in the current calendar year or in the preceding calendar year:

- A payroll of at least \$10,000 in any calendar quarter.
- Five or more employees for some portion of a day in twenty or more weeks during the year.

### ***Responsible Employer***

Depending on the circumstances, the farm operator or labor contractor may be the employer. The factors used to determine whether or not an individual is an independent contractor (i.e., the employer) include:

- What is the extent of control which the business may exercise over the details of the work?
- Is the worker in a distinct occupation or business?
- Is this type of work usually done under the direction of the employer or by a specialist without supervision?
- Is the skill required?
- Who supplies the place of work, tools, and materials?
- What is the length of time employed?
- What is the method of payment?
- Do the parties believe it is an independent relationship?
- Is the work part of the regular business of the employer?

- Is the principal in business?

The *FARM OPERATOR* is the employer under these circumstances:

- The worker is an employee of the farm operator under master/servant common law rules.
- The worker is furnished by the labor contractor but is not treated as an employee of the labor contractor (i.e., the labor contractor is acting on behalf of the farm operator rather than as an employer).
- The labor contractor has entered into a written agreement with the farm operator under which the labor contractor is designated as an employee of the farm operator.

The *LABOR CONTRACTOR* is the employer under these circumstances:

- The labor contractor holds valid certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act of 1983.
- Substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or other mechanized equipment provided by the labor contractor.
- The worker is not an employee of any person under master/servant common law rules.

#### **Farm Related Exempt Employment:**

- Farmworker for an exempt employer (See *Who Must Comply*.)
- Certain students working for credit on a program combining academic instruction with work experience (work-study program).
- Service performed for a son, daughter, or spouse or by a child under age eighteen for his or her father or mother. When the employing unit is a partnership, the exempt relationship must exist with all partners.
- Work performed on a fishing vessel under ten net tons.

- Work performed by temporary H-2A workers (unless workers apply for and are granted a different alien registration status).

#### **Employers Must**

Pay unemployment compensation tax on the first \$7,000 of annual payroll earnings for each employee. There are two parts to the tax: federal and state.

The effective *FEDERAL* tax is 0.8 percent of the first \$7,000 of annual payroll of each employee. (The actual federal tax is 6.2 percent less a credit of 5.4 percent if the employer pays the state tax by January 31st of the following year.)

The *STATE* tax will vary depending on the experience rating of the individual farm employer and the timeliness of tax payments. Farm employers without an experience rating will pay 2.0 percent of the first \$7,000 of the annual payroll of each employee for calendar year 1998 only. Unless the state legislature amends the current law, new employers will then pay a tax rate of 2.7 percent of covered payroll for the next six quarters. At the end of the tenth calendar quarter, the rating process will be completed and taxes paid in the eleventh quarter and subsequent quarters will be based on the experience rating.

Experience ratings are recalculated annually thereafter. Annual rate notices are mailed to all employers on or before March 15th of the applicable year. The current maximum tax rate payable in Florida is 5.4 percent and the minimum tax rate is 0.1 percent.

#### **Posting Requirement**

Employers must display, in a place where all employees can see it, the poster "To Employees" (LES Form BUC-83 in English or LES Form BUC-83S in Spanish).

#### **Record-Keeping Requirement**

Employers must have records available for inspection at any reasonable hour during the business day and maintain records for a period of five calendar years.

### **Employee Eligibility**

In addition to being unemployed, able and available for work, and not subject to any of the disqualifications listed below, a claimant must have the necessary wage credits during the base period.

*Base period.* The base period is the first four of the last five completed calendar quarters prior to the quarter in which a claim is filed.

*Wage credits.* An individual must have wages in two or more calendar quarters during the base period, which is the first four of the last five completed calendar quarters prior to the effective date of the claim. The total base period wages must be at least \$3,400. Also, the total base period wages must be at least 1.5 times the wages in the quarter with the highest earnings.

### **Weekly Benefits**

The weekly benefit amount to which a claimant is entitled is one-half the average weekly wage but not more than \$275 for benefit years beginning January 1, 1998. The maximum benefit amount can only be changed by the Legislature.

### **Employee Claims**

Employees do not pay for unemployment insurance. This cost is borne by the employer. Eligible unemployed farmworkers may file for benefits at the local office of the Division of Unemployment Compensation. (See *Responsible Agency*.)

A farmworker may not be eligible for benefits if it is found that he or she:

- Voluntarily quits his or her job without good cause attributable to his or her employer.
- Was discharged for misconduct connected with his or her work, including drug use as evidenced by a positive, confirmed drug test.
- Fails to apply for or accept suitable work.
- Is unemployed due to participation in a labor dispute.

- Fails to disclose required information on a benefit claim. Willful misrepresentation is also cause for fine and imprisonment.
- Is receiving or is eligible to receive a retirement income from a base period employer.
- Is receiving or is seeking employment benefits under an unemployment compensation law of another state or the United States.
- Is an illegal alien.
- Was terminated from employment for violation of any criminal law punishable by imprisonment.
- Was terminated for unsatisfactory work performance during an established probationary period of employment.

### **Additional Information**

- LES UC Bulletin 1, Unemployment Insurance for Workers Under Florida Unemployment Compensation Law (Revised 4/88).
- LES UC Bulletin 2, Florida Employer, Information on the Florida Unemployment Compensation Law (Revised 8/90).
- Division of Unemployment Compensation, Florida Unemployment Compensation, Employer Handbook (Revised 8/90).

### **Other Information**

- Labor Bulletin No. 364, Florida Fruit and Vegetable Association, October 1977.
- Labor Bulletin No. 413, Florida Fruit and Vegetable Association, March 1983.
- Chapter 443, Florida Statutes.

### **Responsible Agency**

For employer tax information, contact

Florida Department of Revenue

Tax Information Services

5050 West Tennessee Street

Tallahassee, FL 32399-0100

(850) 922-4825 or

dial toll-free 1(800) 482-8293

<http://sun6.dms.state.fl.us/dor/contact.html>

For employee information about unemployment compensation, contact

Florida Agency for Workforce Innovation

Unemployment Compensation

Post Office Drawer 5350

Tallahassee, FL 32314-5350

(850) 921-3372

<http://www2.myflorida.com/awi/unemployment>

<http://www2.myflorida.com/awicontacts.html#unemployment>

<http://www.floridajobs.org/onestop/onestopdir.index.htm>

### Local Offices

Local Unemployment Compensation offices are located in Clearwater, Cocoa, Daytona Beach, Fort Lauderdale, Fort Myers, Fort Pierce, Gainesville, Homestead, Hudson, Jacksonville, Lakeland, Miami, North Dade, South Dade, Naples, Ocala, Orlando, Panama City, Pensacola, Sarasota, South Orlando, St. Petersburg, Tallahassee, Tampa and West Palm Beach

## Work Opportunity Tax Credits (WOTC) [Federal]

### Purpose

Program provides tax credits for employers who hire certain targeted categories of individuals.

### Program

In 1996, Congress created the Work Opportunity Tax Credit (WOTC) program as part of the Small Business Job Protection Act. This program replaces the Targeted Jobs Tax Credit (TJTC) program which expired at the end of 1994.

With the new WOTC program, employers who hire certain targeted categories of individuals will be eligible for tax credits. In most cases, the tax credit will be thirty-five percent of the first \$6,000 in wages for targeted employee.

### Targeted Categories of Individuals

- Referrals from vocational rehabilitation.
- Ex felons.
- Food stamp recipients.
- Children whose parents are on welfare.

Tax credits are also available for employers who hire certain economically disadvantaged youths during any 90-day period beginning May 1st and September 15th and for persons receiving state assistance with minor children, youths living in empowerment zones or enterprise communities, and economically disadvantaged youths.

### Determining Who Qualifies for Program

To determine if an individual is a member of a targeted group, the U.S. Internal Revenue Service (IRS) has developed Form 8850, "Work Opportunity Credit Pre-Screening Notice and Certification Requests." Call the IRS at 1(800) 829-3676 for ordering Form 8850.

### Using Form 8850

- If employers believe that any new hire is a member of a target group, they should complete Form 8850 on or before the day the job is offered to the applicant.
- Both the employer and applicant should sign Form 8850 and the employer must forward it to the state employment service office within three weeks after the applicant begins work.

- The employment service then reviews Form 8850 and determines whether the applicant is a member of a target group.
- If eligible, the state employment service certifies the applicant.

### **Other Information**

- Labor Relations Bulletin No. 512, Florida Fruit and Vegetable Association, Orlando, FL, October 31, 1996.

### **Responsible Agency (Tax Credit)**

U.S. Department of the Treasury

Internal Revenue Service

Washington, DC 20224

<http://www.irs.gov>

### **Responsible Agency (Certification)**

Florida Agency for Workforce Innovation

Work Opportunity Tax Credit

325 John Knox Road, Suite 101, Bldg L

Tallahassee, FL 32303

(850) 921-3299

<http://www.floridajobs.org/wotc/index.htm>

For local offices, see telephone directory under

- Florida, State of
- Business and Professional Regulation, Department of
- Florida, Jobs and Benefits Center

## **Worker Protection Standard-EPA [Federal]**

### **Purpose**

To provide federal safety standards for users, employers, workers, and handlers of agricultural pesticides.

### **Who Must Comply**

Agricultural pesticide users, employers of agricultural workers, and/or pesticide handlers are required to comply with EPA Worker Protection Standards (WPS).

More specifically, the EPA Worker Protection Standard (WPS) applies to you if:

- You own or manage a farm, forest, nursery, or greenhouse where pesticides are used in the production of agricultural plants and where workers are employed.
- You have a contract for the services of agricultural workers to do tasks related to the production of agricultural plants on a farm, forest, nursery, or greenhouse. This includes labor contractors and others who contract with growers to supply agricultural laborers.
- You operate a business in which you or people you employ apply pesticides that are used for the production of agricultural plants.
- You operate a business in which you or people you employ perform tasks as a crop advisor on any farm, forest, nursery, or greenhouse.

*Family farmers* with no employees and their immediate family members are exempt from many WPS provisions. Family farmers, however, must observe the appropriate restricted-entry intervals (REIs) and must use the proper personal protective equipment (PPE) listed on pesticide labels.

### **The Worker Protection Standard**

The **information** component of WPS is designed to ensure that employees will be informed about exposure to pesticides, including:



- Pesticide safety training for workers and handlers.
- Pesticide safety posters for workers and handlers.
- Access to labeling information for pesticide handlers and early entry workers.
- Access to specific information of pesticide treatments at each establishment.

The **protection** component ensures that employees will be protected from exposures to pesticides by requiring employers to:

- Prohibit handlers from applying pesticides in a way that exposes workers or other persons.
- Exclude workers from areas being treated with pesticides.
- Exclude workers from areas that remain under a restricted entry interval (REI) with narrow exceptions.
- Protect early-entry workers who are doing permitted tasks in treated areas during an REI via special instructions and personal protective equipment.
- Notify workers about treated areas so they can avoid inadvertent exposure.
- Protect handlers during handling tasks via personal protective equipment and monitoring while handling highly toxic pesticides.

The **mitigation** of pesticide exposure component requires that employees have an opportunity to receive:

- Decontamination facilities with ample supplies of water, soap, and towels for routine washing and emergency decontamination.
- Emergency assistance concerning transportation to a medical care facility if poisoned or injured by a pesticide.
- Information about the pesticide(s) to which they may have been exposed.

### ***Pesticide Users Not Covered by WPS***

The EPA Worker Protection Standard does not cover pesticides applied for the following:

- On pastures or rangelands.
- For control of vertebrate pests such as rodents.
- As attractants or repellents in crops.
- For mosquito abatement via government-sponsored public pest control programs.
- On livestock or other animals or in or around animal premises.
- Home fruit and vegetable gardens and home greenhouses (non-commercial).
- On plants in parks, golf courses, etc. intended only for decorative or environmental benefit.
- Control of vegetation along rights-of-way, other non-crop areas, termite control, and wood preservation.
- Research uses of unregistered pesticides.

### ***Standards for Workers***

The WPS is directed toward the working conditions of employees who handle agricultural pesticides (mix, load, apply, clean, or repair equipment, flaggers, etc.) and employees who perform tasks related to cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests.

### **Entry Restrictions During Pesticide Application**

Agricultural employers may not allow or direct any person, other than appropriately trained and equipped handlers, to enter or to remain in the treated area(s). Specific entry rules are promulgated separately for nurseries and greenhouses.

## Entry Restrictions After Pesticide Application

After the application of any pesticide on an agricultural establishment, the agricultural employer may not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired. Some exceptions to this re-entry rule are permitted, such as no-contact activities, certain short-term activities, and agricultural emergencies.

For additional exceptions or waivers from the early entry requirements, contact:

Director, Office of Pesticide Programs  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, D.C. 20460  
<http://www.epa.gov/pesticides>

Decisions regarding these petitions are published in the Federal Register. Contact the EPA for guidelines in submitting requests.

## Notice of Pesticide Applications

Notification to workers of pesticide applications is required as follows:

- For greenhouse operations, all pesticide applications must be posted with an approved EPA poster and, if the pesticide label has a statement requiring both the posting and oral notification to workers, the employer must also provide oral notification.
- For farms, nurseries, and/or forests, notification of pesticide application must consist of an approved EPA poster and oral notification if required by the pesticide label. If the pesticide label does not require both posting and oral notification, the employer must give notice of the application to the workers *either* by posting the sign or orally.

## Posted Warning Signs

When posted warning signs are required, they must have the same legend and design as the standard fourteen inches by sixteen inches (14"x16") EPA WPS warning sign. EPA allows the use of smaller warning signs in nurseries and greenhouses under certain conditions.

## Oral Warnings

The agricultural employer must provide oral warnings to workers in a manner understandable to the worker.

The oral warning must consist of:

- The location and description of the treated area.
- The time during which entry is restricted.
- Instructions not to enter treated areas until restricted entry interval has expired.

## Specific Information About Applications

**Specific Information About Applications.** The WPS requires that employers post the following specific information within the last thirty days a pesticide has been applied or restricted entry interval has been in effect:

- Location and description of the treated area.
- The product name, EPA registration number, and active ingredients.
- The time and date pesticide is to be applied.
- The restricted entry interval for the pesticide.
- Emergency information, including the name, phone number, and address of the nearest emergency medical facility.
- EPA's WPS pesticide safety poster or its equivalent. (Refer to Florida's "Pesticide Safety Sheet: A Guide for Florida Farm Workers," Florida Department of Agriculture and Consumer Services, 1(800) 435-7352).

The above information must be displayed in a central location on the farm, nursery, or greenhouse where it can be readily seen and read by workers.

### **Pesticide Safety Training for Workers**

Each worker must be trained at least once every five years, unless the person is a certified applicator or a trained handler working under the supervision of a certified applicator.

General pesticide worker safety information must be presented to workers either orally from written materials or audio/visually. The information must be presented in a manner that the worker can understand using nontechnical terms. The person conducting the training must meet certain prescribed criteria.

Since January 1, 1996, employers have been required to provide workers with complete WPS pesticide safety training before their sixth day of entry into an area where a restricted entry interval (REI) was in effect in the last thirty days.

### **Decontamination Facilities**

Employers and handlers must provide facilities for decontamination in the event of pesticide exposure. The decontamination facility must remain available for thirty days beyond the expiration of the restricted entry interval.

The employer is required to provide workers with enough water for routine washing and emergency eye flushing. Also, the employer must provide soap and single use towels at each decontamination facility in quantities sufficient to meet workers' needs.

In addition, the employer must assure that at least one pint of water is immediately available to each worker performing *early entry* activities for which pesticide labeling requires protective eyewear.

The decontamination facility must be reasonably accessible to and not more than one-fourth mile from where workers are working. In most cases where employers are in compliance with the OSHA Field Sanitation Standard, they are in compliance with the EPA decontamination standard for workers.

### **Emergency Assistance**

In the event a worker or handler becomes ill while working and there is reason to believe pesticide exposure may be the cause, employers must make arrangements to transport the individual to an emergency medical facility.

The employer must also ensure that certain information be made available to medical personnel, including product name, EPA registration number and active ingredient, the antidote or recommended treatment listed on the chemical's label, and the circumstances of the exposure.

### **Standards for Pesticide Handlers**

Given the EPA's WPS definition of a handler of pesticides, the regulations cover the application, information about the application, and notice of application to agricultural employers.

### **Restrictions During Application**

The handler's employer and the handler must assure that no pesticide is applied so as to come in contact any worker or other person other than an appropriately trained and equipped handler.

### **Information About Applications**

When handlers (except those employed by commercial pesticide handling establishments) are on an agricultural establishment and within the last thirty days a pesticide has been applied on the establishment or a restricted entry interval has been in effect, the handler's employer must display specific information about the pesticide. (See *Standards for Workers* section for details.)

### **Notice of Application to Agricultural Employees**

Before the application of any pesticide on or in an agricultural establishment, the handler's employer must provide specified information to any agricultural employee for the establishment. (See *Standards for Workers* section for types of information required.)

For posted pesticide safety information, refer to *Standards for Workers* section for details.

### **Safety Training for Handlers**

**Safety Training for Handlers.** Pesticide handlers must be trained before performing any handling task. EPA has specific concepts that must be included in that training. Anyone who teaches the complete WPS worker training or handler training must:

- Present the training orally or audiovisually with the aid of written materials, audiovisual materials, or both.
- Present the information in a manner trainees can understand, using a translator, if necessary.
- Be able to respond to trainees' questions.

### **Labeling and Site Specific Information**

The handler's employer must assure that, before the handler performs any handling activities, the handler has either read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to the safe use of the pesticide.

### **Safe Operation of Equipment**

The handler's employer must assure that, before the handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

### **Personal Protective Equipment**

Any person who performs tasks as a pesticide handler must use the clothing and personal protective equipment (PPE) specified on the labeling for use of the pesticide. The EPA's WPS regulations permit certain exceptions to the PPE specified on the product labeling.

The handler's employer must assure that all PPE is used correctly for its intended purpose and is used according to the manufacturer's instructions.

Also, the handler's employer must assure that all PPE is cleaned according to the manufacturer's

instructions or pesticide product labeling instructions before each day of reuse.

### **Who Is Responsible/Liable**

EPA's compliance position is that agricultural establishment overseers, operators, and/or employers, including labor contractors, are jointly responsible for providing WPS protection to workers. They are also jointly responsible for compliance with the various WPS requirements. The responsible (liable) party could possibly be narrowed by consideration of the following ten factors:

- Who has control over pesticide use.
- Who directs pesticide use.
- Who has control over the agricultural establishment for posting and other WPS-related responsibilities.
- Who gives directions on the agricultural establishment for posting and other WPS-related responsibilities.
- Who has control over the practices used by agricultural workers in the establishment.
- Who directs the practices used by agricultural workers in the establishment.
- What are the measures taken to comply with provisions of the WPS.
- What are the actions taken in response to incidents of noncompliance.
- What is the history of prior violations.
- What is the ability to assure continuing compliance with the WPS.

### **WPS Protections to Workers Employed by Labor Contractors**

In the WPS, the agricultural employer is responsible for providing protections. When agricultural workers are employed on an establishment through a labor contractor, the establishment owner/operator and the labor contractor are jointly responsible for providing WPS

protections to workers. EPA, however, will likely decide on a case-by-case basis who should be held accountable for a given violation.

The EPA agency suggests that when workers are hired through a labor contractor, the contract between the owner or operator of the establishment and the labor contractor should specify which protections under the WPS are to be provided by each party.

### ***Enforcement***

Penalties for failure to comply with the WPS are the same as those for using a pesticide inconsistent with the label.

Generally, fines are up to \$1,000 per offense for private applicators, including owners/operators of agricultural operations, and up to \$5,000 per offense for commercial applicators.

Criminal penalties may apply for knowingly violating the standard. They can be up to \$1,000 and thirty days in jail for owner/operators and up to \$25,000 and one year in jail for commercial applicators.

### ***Retaliation Prohibited***

Employers must not prevent or discourage any worker or handler from complying or attempting to comply with the WPS. Also, employers must not fire nor otherwise retaliate against any worker or handler who attempts to comply.

### ***Related Information***

- Protect Yourself From Pesticides: Guide for Pesticide Handlers, U.S. EPA, EPA 735-B-93-003, Washington, D.C., December 1993.
- The Worker Protection Standard For Agricultural Pesticide: How to Comply: What Employers Need to Know, U.S. EPA, EPA 735-B-93-001, Washington, D.C., July 1993.
- Labor Bulletins 495, 496, 497, 503, 504, 508 and 511. Florida Fruit and Vegetable Association, Orlando, FL.

## ***Responsible Agencies***

### **National Office**

Director, Office of Pesticide Programs

U.S. Environmental Protection Agency

401 M Street, SW

Washington, D.C. 20460

<http://www.epa.gov/pesticides>

### **Regional Office**

U.S. Environmental Protection Agency, Region 4

61 Forsyth Street SW

Atlanta, GA 30303-3104

(404) 562-9900 or

dial toll-free 1(800) 241-1754

<http://www.epa.gov/region4/home/phonenumbers.html>

### **State Agency**

Florida Department of Environmental Protection

3900 Commonwealth Boulevard, MS-49

Tallahassee, FL 32399

Dial toll-free 1(800) 435-7352

<http://www.dep.state.fl.us>

## **Workers' Compensation [State]**

### ***Purpose***

To assure quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate a worker's return to gainful re-employment at a reasonable cost to the employer.

### **Covered Employers**

All agricultural employers who employ six or more regular employees or employ twelve or more seasonal employees for more than thirty days at one time or forty-five total days in a calendar year.

### **Covered Employers Must**

Purchase Workers' Compensation insurance by any one of four options:

- Standard policy on open market.
- Individual self insurance.
- Group self insurance.
- Joint underwriting plan of the Florida Department of Insurance.

### **Cost of Insurance**

Varies depending on employment activity and experience rating of each employer. (Florida Department of Insurance approves all Workers' Compensation premium rates for each employment activity and job classification.)

Premium rates are defined as percentages of payroll.

### **Posting Requirement**

Employers *not* required to have Workers' Compensation and who do not have coverage must post clear written notice in a conspicuous location at each work site.

### **Reporting Any Injury**

- Employers, on receiving notice that an employee has been injured, must complete and file a "Notice of Injury Form" (LES Form DWC-1) with the insurance carrier.
- The "Notice of Injury Form" must be in the carrier's hands within seven days from the date that the employer has actual knowledge of accident or injury. A copy of the form shall also be sent to the Florida Division of Workers' Compensation.

- The insurance carrier or self-insured employer must mail Form DWC-1 to the Division of Workers' Compensation in Tallahassee within thirty days of receipt.
- If injury results in death, the employer must give a special notice by telephone or telegraph to the Bureau of Industrial Safety and Health (850) 499-3044 within twenty-four hours. This special notice is not required if the death occurs after the accident has been reported.

### **1993 Legislative Reform Act Goals**

- Lower costs for employers.
- Slow increase in Workers' Compensation health care costs.
- Create incentives for return to work.
- Reduce number of permanent total disability awards.
- Discourage fraud.
- Promote work place safety.
- Protect rights of employees to benefits.

### **Revised Benefits Schedule**

- Total number of weeks an injured worker can receive benefits (excluding permanent total) reduced to 401 weeks from date of accident.
- Wage loss concept was eliminated; but old law still applies to dates of accident before January 1, 1994.
- Temporary total and temporary partial disability benefits limited to 104 weeks combined.
- Impairment benefits and supplemental benefits replace wage loss benefits (for accidents after January 1, 1994).
- Funeral death benefit increased up to \$5,000.

### **For Slowing Increase in Health Care Costs**

- Implementation of managed care: managed care arrangements can be offered by insurer/carrier to employers after April 1, 1994.

- Managed care defined as total management of the health of the injured.
- Managed care arrangements mandatory for all employers after January 1, 1997.
- Insurer/carrier must submit managed care arrangements to Agency for Health Care Administration for approval of plan.
- Premium rate discounts of up to ten percent can be authorized by the Department of Insurance.

### ***Incentives for Return to Work***

- Hiring individuals with permanent impairments promoted by Florida law.
- Individual impaired workers must apply to Division of Workers' Compensation for Preferred Worker I.D. cards. (Must have 204 or more P.I. rating.)
- Individual presents I.D. card to hiring employer.
- Hiring employer sends I.D. card to Division's Special Disability Trust Fund.
- Employer may be reimbursed for the amount of the Workers' Compensation premium paid for the new preferred worker after six months of continuous service.
- New employer may be reimbursed for up to three years if preferred worker is retained.
- Employers must make good faith efforts to rehire the injured worker within thirty days after employer has been notified the worker has reached maximum medical improvement.
- Work can be offered in a 100-mile radius of the injured worker's residence.
- Obligation to rehire injured workers applies to employers who have over fifty employees.

### ***Reduction in Number of Permanent Total Disability Awards***

- To be defined permanent total, the injury must be catastrophic in nature.

- Employers/carriers have the right to conduct vocational evaluations or testing of workers who are permanent total once every calendar year and must give employees seven days notice.

### ***Fraud Discouraged***

- By more clearly defining fraudulent activities.
- By increasing penalties for illegal activities.
- By establishing the Bureau of Workers' Compensation Hotline at 1(800) 378-0445.

### ***Promoting Workplace Safety***

The Florida Occupational Safety and Health Act contains a provision for a discount in Workers' Compensation premiums for employers who adopt and implement an approved workplace safety program.

### ***Elements of Acceptable Workplace Safety Program***

- Management commitment and involvement.
- Safety committee.
- Safety and health training.
- First aid procedures.
- Accident investigations.
- Record keeping procedures.
- Safety rules and policies.

### ***Premium Discount for Workplace Safety Program***

Employers who implement safety program approved by the Division of Safety are eligible for premium credits of up to twenty-seven percent.

### ***Protecting Rights of Employees to Benefits***

- Employees Assistance and Ombudsman (E.A.O.) Office created to assist injured workers.
- All disputed issues must go through E.A.O. process before any formal litigation.

- E.A.O. has thirty days after receiving request for assistance to resolve disputes.
- If dispute is resolved at E.A.O. level, no claimant attorney fees are allowed by state statute.
- If dispute is not resolved, E.A.O. will assist unrepresented worker in completing the formal Petition of Benefits.

### ***Drug-Free Workplace Program***

- The purpose of this program is to avoid work-related accidents resulting from drug abuse by employees.
- The Florida Administrative Code for Drug-Free Workplace Standards, as adopted by the Agency for Health Care Administration, shall be utilized for all drug testing pursuant to the Florida Workers' Compensation program.
- Insurance premium discounts of up to five percent are possible for employers having acceptable drug-free workplace programs.

### ***Enforcement***

- The Florida Division of Workers' Compensation can issue Stop Work orders on employers who are required to have coverage and fail to do so.
- There is a \$100 per day fine for each day an employer is not in compliance.

### ***Additional Information***

- Chapters 440 and 442, Florida Statutes.
- The Division of Workers' Compensation has a toll-free number that can be used from anywhere in Florida by dialing 1(800) 342-2762, or contact the local area office nearest you.
- Wage Loss and You, Department of Insurance, Division of Workers' Compensation.
- Workers' Compensation and You, Department of Insurance, Division of Workers' Compensation.

- Facts about Workers' Compensation Insurance for Employers, Department of Insurance, Division of Workers' Compensation.

### ***Responsible Agency***

Florida Department of Insurance

Division of Workers' Compensation

200 East Gaines Street

Tallahassee, FL 32399-0300

(850) 413-31001 or

Dial toll-free 1(800) 342-2762

<http://www2.myflorida.com/les/wc>

<http://www2.myflorida.com/les/wc/organization/addresses.html>

### ***Local Offices***

For local offices, see the telephone directory under

- Florida, State of
- Insurance, Department of
- Workers' Compensation, Division of