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FLORIDA

FE405

EXTENSION

Institute of Food and Agricultural Sciences

2003 Handbook of Employment Regulations Affecting Florida Farm Employers and Workers: Migrant Labor Housing [State]¹

Leo C. Polopolus, Michael T. Olexa, Fritz Roka, and Carol Fountain²

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:
 - Any 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.

1. This is EDIS document FE405, a publication of the Department of Food and Resource Economics, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL. Published July 2003. This information is included in Circular 1200, Handbook of Employment Regulations Affecting Florida Farm Employers and Workers. First published February 1992 as Circular 1043. Revised December 2002 as Circular 1200. Please visit the EDIS website at <http://edis.ifas.ufl.edu>.

2. Leo C. Polopolus, Professor Emeritus, Department of Food and Resource Economics, University of Florida, Gainesville, FL; Michael T. Olexa, Professor, Department of Food and Resource Economics, University of Florida, Gainesville, FL; Fritz Roka, Associate Professor, Department of Food and Resource Economics, Southwest Florida Research and Education Center, Immokalee, FL; and Carol Fountain, Assistant Editor, Department of Food and Resource Economics, University of Florida, Gainesville, FL; Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL.

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- 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.
- Washroom, 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 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 §§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

Chapters 381.008 - 381.0088 and 633.022,
Florida Statutes.

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

Requests for information concerning permits,
compliance, regulations or other problems should be
addressed to the local HRS County Public Health
Unit.