

ENGINEERING AND GINNING

Federal Labor Laws

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ABSTRACT

Cotton gins, like most businesses, must comply with a number of federal labor laws. Although ginners are usually considered agricultural employers and are exempted from some federal regulations, they still must pay close attention to all federal statutes and know what is expected of them. The National Cotton Ginners' Association has developed A Ginner's Practical Guide to Compliance with the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) that gives additional details on the labor laws covered in this section.

The following is a summary of the major federal labor laws affecting cotton ginners. These laws can be changed or altered by Congress, so a careful, periodic review of these regulations by employers is recommended. Employers should note that many states have instituted laws that exceed requirements of the federal statutes. It is important every employer ensures they are following labor laws applicable in their individual state. For more detailed information on these laws, gin employers should consult the references in this section and contact the appropriate regulatory agencies or their ginners' association.

I. DISCUSSION

Minimum Wage and Overtime Provisions. The Fair Labor Standards Act (FLSA) establishes minimum wages and maximum hours allowable without overtime pay. The law contains several agricultural partial exemptions (FLSA Sections 13(h) and 13(i)) that apply to cotton gins. These exemp-

tions allow cotton ginners to pay the regular hourly rate to gin employees working up to 10 hours/day or 48 hours/week for 14 weeks/year. These exemptions must be applied to entire groups of employees, so the rule should be understood fully before claiming these exemptions.

In addition, the U.S. Department of Labor (DOL) has specific requirements when paying bonuses to employees. Promised or non-discretionary bonuses are considered wages and must be calculated based on an employee's regular rate of pay for each work-week and any hours when extra half-time must be paid, regardless of when the bonus is paid. For example, if a weekly bonus is paid, the bonus must be broken down into an hourly rate based on hours worked that week. Overtime must then be paid on the bonus for all overtime hours during that week. One simple method to comply with this rule is to express all bonuses paid as a percentage of gross wages, which would automatically include the overtime component.

Each employer subject to FLSA provisions is required to maintain records of the wages, hours, and other employment conditions and practices for every employee. The administrator or a designated representative of the Wage and Hour Division of the DOL can enter a gin and inspect the employment conditions, practices, and employment records and can conduct any investigation deemed necessary to determine whether violations have occurred.

Occupational Safety and Health Standards. The Occupational Safety and Health Act was enacted in December 1970 to assure safe and healthful working conditions for working men and women. It also established the Occupational Safety and Health Administration (OSHA). DOL regulations require every employer, unless specifically exempt, follow OSHA standards. OSHA establishes specific duties for employers in a "General Duty Clause" Section 5(a)(1) of the OSH Act. The employer's duty is to furnish each employee with a workplace that is free of recognized hazards that have caused or are likely to cause death or serious physical harm (U.S. Department of Labor, 1988). It is also the employer's duty to comply with OSHA standards established in the law.

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It is the employee's duty, under the law, to comply with those standards and with all rules, regulations, and orders that have been issued after the law's passage and that are applicable to employee conduct.

Agricultural employers are subject to a number of OSHA standards and provisions, including those for temporary labor camps, anhydrous ammonia storage and handling, roll-over protective structures, slow-moving vehicles, guards for farm equipment and cotton gins, and hazard communication (29 CFR, 1928.21). Cotton gins are covered under the 1928 OSHA Standards for Agriculture, which includes specific parts of the 1910 General Industry Standard.

Parts of the 1928 and 1910 Standards that apply to cotton gins are:

- 1928.21 – Applicability of Standards
- 1928.57 – Guarding of farm field equipment, farmstead equipment, and cotton gin.
- 1910.142 – Temporary Labor Camps
- 1910.145 – Slow-Moving Vehicles
- 1910.1200 – Hazard Communication (www.cotton.org/ncga/upload/HAZARD-COMMUNICATION-STANDARD.pdf)
- 1910.1201 – Retention of Department of Transportation (DOT) Markings, Placards, and Labels.

OSHA requirements for guards in cotton gins are summarized in the Cotton Gin Regulatory Issues section. Details and a sample program for the hazard communication standard can be obtained on the National Cotton Ginners' Association (NCGA) website.

Other pertinent OSHA provisions require employers to inform employees of OSHA's obligation to protect employees.

OSHA Reporting Requirements. Under OSHA recordkeeping regulation (29 CFR 1904), covered employers are required to prepare and maintain records of serious occupational injuries and illnesses, using OSHA 300 Log and OSHA 301 Injury and Illness Incident Report. Employers with 10 or fewer employees are normally exempt from federal OSHA injury and illness recordkeeping and posting requirements. Beginning on 1 February of each year, employers are required to post a summary of the total number of job-related injuries and illnesses that occurred during the previous calendar year (OSHA Form 300A-Summary). The previous calendar year summary must be posted from 1 February to 30 April. The summary must include the total number of job-related injuries and illnesses that occurred

in the previous calendar year and were logged on OSHA Form 300. Note that the Form 300A must be posted even if zero work related injuries or illnesses occurred. These records must be kept for 5 years.

Employers are required to notify OSHA within 8 hours after the death of any employee from a work-related incident or within 24 hours of any inpatient hospitalization, amputation, or eye loss of any employee as a result of a work-related incident. Amputation has been expanded to include the complete or partial loss of a limb and includes the loss of finger tips with or without bone loss. You must report the fatality or injury/hospitalization to OSHA. This notification may be made by phone, fax, or online. For more information related to notification, visit the OSHA web site at www.osha.gov.

OSHA is authorized to conduct workplace inspections to assure compliance with the law. Safety and health officers, upon presenting appropriate credentials, are authorized to enter a workplace without delay and at reasonable times. Most inspections are conducted without advance notice and usually place emphasis on employee training, machine guarding, posting, and recordkeeping.

Migrant and Seasonal Agricultural Worker Provisions. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), passed in 1983, is the only major labor law dealing strictly with agricultural employment. MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The MSPA also requires farm labor contractors to register with DOL. The act provides migrant and seasonal farm workers with assurances about pay, working conditions, and work-related conditions.

Under the law, farm labor contractors and their employees who contract out farm labor must obtain a certificate of registration from DOL before they perform such contracting. Migrant and seasonal workers also must be provided with written statements of earnings and deductions. In addition, farm-labor contractors, agricultural employers, and agricultural associations must disclose to migrant and seasonal workers information about wages, hours, and other working conditions and about housing, when provided. Each person who owns or controls housing provided to migrant agricultural workers must ensure that the facility complies with the federal and state safety and health standards covering that housing. Migrant housing cannot be occupied until it has

been inspected and certified to meet these safety and health standards. The certification of occupancy must be posted at the site. Vehicles used for transporting migrant and seasonal workers must be safe and properly insured (See MSPA Compliance at www.dol.gov/compliance/guide/mspa.htm).

For agricultural employers and agricultural associations that use a farm-labor contractor, the law requires them to take reasonable steps to determine whether the contractor has a valid certificate of registration. In addition, they must save wage records received from contractors for 3 years.

MSPA designates both criminal and administrative sanctions against anyone who violates the law. The law also permits anyone aggrieved by a violation of any of the law's provisions to file suit in Federal District Court.

Immigration Provisions and Verification I-9.

In 1986, Congress reformed U.S. immigration laws found in section 274A of the Immigration and Nationality Act (INA) through the Immigration Reform and Control Act of 1986 (IRCA). These provisions further changed with the passage of the Immigration Act of 1990 and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. The purpose of the law is to require employers to hire only individuals who may legally work here: U.S. citizens, noncitizen nationals, lawful permanent residents, and aliens authorized to work. To comply with the law, employers must verify the identity and employment authorization of each person they hire. The Homeland Security Act of 2002 combined numerous federal agencies with a mission dedicated to homeland security. On 1 March 2003, the authorities of the former Immigration and Naturalization Service (INS) were transferred to three new agencies in the U.S. Department of Homeland Security (DHS): U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). USCIS is responsible for most documentation of alien employment authorization, for Form I-9, and for the E-Verify employment eligibility verification program. ICE is responsible for enforcement of the penalty provisions of section 274A of the INA and for other immigration enforcement within the U.S. At this time, E-Verify is not required by all states but has been included in proposed immigration reform legislation. In April 2009, the DHS issued new worksite enforcement guidelines for ICE, shifting the focus from the illegal foreign worker to the employer that

hired the worker. It is imperative that employers not willingly hiring or employing ineligible employees.

Employers must complete Form I-9 each time they hire any person to perform labor or services in the US in return for wages or other remuneration. Remuneration is anything of value given in exchange for labor or services, including food and lodging. The requirement to complete Form I-9 applies to new employees hired after 6 November 1986. This requirement does not apply to employees hired on or before 6 November 1986, who are continuing in their employment and have a reasonable expectation of employment at all times. Instructions for filling out Form I-9 can be found at <http://www.uscis.gov/i-9>.

The H-2A program is another provision of IRCA that allows employers who are anticipating a shortage of domestic workers to apply for permission to bring in nonimmigrant aliens for temporary or seasonal agricultural work. The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the US to fill temporary agricultural jobs. H-2A information can be found at H-2A Temporary Agricultural Workers (www.uscis.gov/working-united-states/temporary-workers/h-2a-agricultural-workers/h-2a-temporary-agricultural-workers).

Posting Requirements. Employers are required to post in the workplace certain statutes and regulations that are enforced by agencies within the DOL. The department provides electronic copies of the required posters, and some of the posters are available in languages other than English. Please note that posting requirements vary by states, and not all employers are covered by each of the department's statutes and therefore, may not be required to post a specific notice. See DOL Poster Requirements <http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm>. Most states have additional labor-related posting requirements.

II. LIST OF WEBSITES

United States Department of Labor. Summary of the Major Laws of the Department of Labor. <http://www.dol.gov/opa/aboutdol/lawsprog.htm>

United States Department of Labor. Compliance Assistance - Wages and the Fair Labor Standards Act (FLSA). <http://www.dol.gov/whd/flsa/>

United States Department of Labor Wage and Hour Division.
Migrant and Seasonal Agricultural Worker Protection
Act (MSPA). [http://www.dol.gov/compliance/laws/
comp-msawpa.htm](http://www.dol.gov/compliance/laws/comp-msawpa.htm)

Department of Labor Occupational Safety & Health Admin-
istration. Occupational Safety and Health Standards for
Agriculture. [https://www.osha.gov/pls/oshaweb/owas-
tand.display_standard_group?p_toc_level=1&p_part
number=1928](https://www.osha.gov/pls/oshaweb/owastand.display_standard_group?p_toc_level=1&p_part_number=1928)

U.S. Citizenship and Immigration Services. Handbook for
Employers Guidance for Completing Form I-9. [http://
www.uscis.gov/sites/default/files/files/form/m-274.pdf](http://www.uscis.gov/sites/default/files/files/form/m-274.pdf)

National Cotton Ginners' Association. [http://www.cotton.org/
ncga/](http://www.cotton.org/ncga/)