

**A GINNER'S PRACTICAL GUIDE TO COMPLIANCE WITH THE FAIR LABOR  
STANDARDS ACT (FLSA) AND THE MIGRANT AND SEASONAL  
AGRICULTURAL WORKER PROTECTION ACT (MSPA)**

Originally Prepared by the Lubbock, TX Office of the Department of Labor, Wage and Hour Division for  
the Texas Cotton Ginners' Association, and the National Cotton Ginners' Association

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This Guide should not be construed as legal advice or legal opinion on any specific fact or circumstances. Additionally, it does not fully address every issue under the laws discussed because it serves only as a summary of requirements. Users are urged to consult a Wage and Hour Division expert or competent legal counsel concerning particular situations and legal questions. Ginners are also alerted that many states have additional wage, housing and other requirements besides those under the federal laws and regulations discussed.

October 7, 2008

## **THE FAIR LABOR STANDARDS ACT (FLSA)**

This guide is intended to be a practical guide rather than to be an exhaustive discussion of the provisions of the FLSA. If you have a specific question about the FLSA, you should contact the United States Department of Labor, Wage-Hour Division, [www.dol.gov](http://www.dol.gov), or seek the advice of an attorney. Employers should note that this document covers only the federal statutes and does not cover local and state labor laws and regulations. Increasingly many states have instituted laws that exceed requirements of the federal statutes. It is incumbent on you as an employer to ensure that you are following labor law applicable in your individual state.

Cotton gins are required by the FLSA to pay all employees no less than the FLSA minimum wage and overtime after forty (40) hours in the workweek unless the employee is exempt from either the minimum wage or the overtime standards.

The FLSA provides several exemptions for cotton gins. This guide will explain the exemptions commonly available for gins.

### **Gin Manager**

Typically, the gin manager is exempt from both the minimum wage and overtime provisions of the FLSA under Section 13(a)(1). The manager must have as his “primary duty” the active managerial control of the gin, including the right to hire, to fire, or to make recommendations for such action to be taken. The manager must customarily and regularly direct two or more employees, and the manager must exercise discretionary powers in management. This exemption is available in both the active ginning season and in the dormant season. *Be careful*; to be exempt, the gin manager must be on a salary that is not subject to reduction based on quantity or quality of work and must always direct the work of two or more full-time employees or the equivalent part-time employees. The current salary requirement is \$455 per week or \$1,971.67 per month. (29 CFR 541) Assistant managers do not qualify for exemption under this section.

<sup>1</sup>Section 13(h) Partial Overtime Exemption for Employees Providing Services  
Necessary and Incidental to Ginning of Cotton

During the active ginning season, the FLSA provides a partial overtime exemption for any employee who is employed by his employer exclusively to provide services “necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton” under Section 13(h) for up to 14 workweeks in the aggregate in a calendar year.

As discussed below, during the active ginning season, the FLSA also provides a partial overtime exemption for employees who are actively and exclusively engaged in the ginning of cotton for market under Section 13(i) for up to 14 workweeks in any period of 52 consecutive weeks. The place of employment must be located in a county where cotton is grown in commercial quantities.

Under these exemptions, a covered employee must be paid 1 and ½ times his or her regular rate for all hours worked over 10 in any workday and all hours worked over 48 in a workweek. *Be careful*; the method by which the number of exempt weeks is counted is different for the employees who are employed by such employer exclusively to provide services necessary and incidental to the ginning of cotton and for those employees who are actively and exclusively engaged in the ginning of cotton.

The Section 13(h) group of employees is employees employed by such employer “exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton.” This group includes the following employees:

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<sup>1</sup> Note that the FLSA Sections 13(h) and 13(i) partial overtime exemptions do not appear to be recognized in all states where ginning is done.

## **Sample Section 13(h) Jobs**

### **Truck Drivers**

A truck driver must be 18 years of age or older. The truck driver's duty is to operate a truck, or the truck driver's sole duty is to assist in the trucking operation where seed cotton is hauled from the place of harvest to the gin or to where cotton, cottonseed, or gin trash is hauled away from the gin's premises.

### **Office Person, Combination Bookkeeper and Scale Clerk**

The office person, combination bookkeeper, and scale clerk's duties are to keep records of cotton gins and weights and to maintain customers' accounts, records sales, purchases, and other bookkeeping transactions that are normally required for the operation of a gin.

### **Maintenance or Repair Person**

The maintenance or repair person employed in general maintenance and repair of the gin facility is covered by the partial overtime exemption of Section 13(h). Employees who make operating repairs to the gin during the active season as part of their regular duties are covered by the Section 13(i) partial exemption discussed below. *Be careful*; repair of the gin before and after the active season is general maintenance and is subject to overtime after 40 hours in a workweek.

### **Watchman or Security Guard**

The watchman or security guard remains on duty at the gin to prevent fire, theft, and vandalism. As long as this person is required or permitted to be present for a duty period of fewer than 24 hours, this person must be paid, regardless of whether he or she is allowed to sleep or leave the premises during the period of duty, but the partial overtime exemption does apply to such employees for up to 14 workweeks. See 29 CFR § 785.21.

## WAGE INFORMATION UNDER THE FLSA<sup>2</sup> FOR SECTION 13(h)

All individuals listed above must be paid the FLSA minimum wage rate of \$6.55 per hour. Please note that effective July 24, 2009, this rate will increase to \$7.25 per hour. When claiming one of the overtime-exempt weeks, these employees must be paid time and one-half their regular rate for hours worked in excess of 10 hours in any workday or in excess of 48 hours in any workweek. Daily overtime or weekly overtime must be paid based on whichever payment is greater, and the worker will be paid overtime after 40 hours per week if he or she works more than 40 hours in a workweek outside the 14-week season. We understand that according to U.S. DOL Wage-Hour policy the exempt workweeks apply to all employees in the same job category who are necessary and incidental to the operation, and the exemption cannot apply to individual employees. This means that a gin may not claim an exemption for only part of the employee group to avoid the daily overtime requirements. Furthermore, if an employer uses the Section 13(h) exemption for a particular group of employees, the employer may not use any other exemption under Section 7 or Section 13 for those employees. According to the U.S. Department of Labor policy expressed in its Field Operations Handbook, if an employer claims Section 13(h) for certain employees in an establishment, he may still use Sections 13(a)(1), 13(i), or other provisions for non-Section 13(h) activities by other employees.

The exemption for the employees engaged to provide services necessary and incidental to cotton ginning above may be claimed by the employer for 14 weeks during any calendar year. The 14 exempt weeks do not have to be claimed consecutively. The employer may declare that the workweek is an exempt week at any time before the writing and dispensing of the paychecks. The employer must designate the exempt workweeks in its payroll records. According to the Field Operations Handbook, “Employers whose employees are engaged in occupations ‘necessary and incidental’ to work performed” pursuant to Section 13(i), “who work exclusively in such operations and who work solely in those portions of the premises devoted by the employer to such operations, may claim exemption(s) provided by” Section 13(h). Again according to the Field Operations Handbook, Section 13(h) requires that employees be “exclusively” involved in specified activities that are necessary and incidental to the ginning of cotton, thus permitting no tolerances for other activities.

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<sup>2</sup> Note that many states have minimum wage and overtime requirements that exceed FLSA requirements.

After 14 weeks of the exemption are used in any calendar year and in the dormant season, these employees must be paid time and one-half of their regular rate for all hours worked in excess of 40 hours in any workweek.

#### Section 13(i) Partial Overtime Exemption for Employees Engaged in Ginning

The Section 13(i) employees are employees who are actively and exclusively engaged in the ginning of cotton for market in a county where cotton is grown in commercial quantities. The 14 workweeks in the aggregate may be claimed in any period of 52 consecutive weeks. This group includes employees engaged in the following operations according to the Field Operations Handbook, “when performed during the period or periods when cotton is being received for ginning: the receiving of cotton at the gin, the handling, cleaning, ginning, and baling of the cotton, the handling of the baled cotton and cotton seed, and any operations or services necessary or incidental to the foregoing, including the placing of the cotton and cottonseed in storage or transportation facilities on or near the premises” of the gin.

#### **Sample Section 13(i) Jobs**

#### **Ginner, Ginner Helpers, Suction and Module Feeder Hands, Press Hands, Gin Yard Hands, Gin Clean Up Hands, and Any Others Directly Engaged in the Ginning of Cotton**

These are employees who are engaged exclusively in the ginning operations. These employees work solely in and around the gin plant, and they are necessary to the operation of the gin plant. These include employees who remove bales from the press to holding areas on or near the gin’s premises. This exemption also includes employees who make operational gin repairs as part of their regular duties during the active season. This use exemption cannot be used for gin repairs made before or after the ginning season; except during the ginning season, overtime must be paid after 40 hours in the workweek.

#### **Weigher or Scale Clerk**

The weigher or scale clerk operates the scales, records the weight of seed cotton, and writes in any information on the gin ticker that properly identifies the cotton being ginned. *Be careful*; if this employee

performs any other bookkeeping or recordkeeping duties, this employee is not engaged exclusively in the ginning of cotton.

### **WAGE INFORMATION FOR SECTION 13(i) EMPLOYEES<sup>3</sup>**

All individuals listed above must be paid the current minimum wage rate of \$6.55 per hour as of July 24, 2008, or any increases that are made effective, including the rate of \$7.25 per hour effective July 24, 2009. When claiming one of the weeks for partial overtime exemption, these employees must be paid time and one-half their regular rate for hours worked in excess of 10 hours in any workday or in excess of 48 hours in any workweek, whichever is greater, if the worker works more than 40 hours in the workweek. Said another way, daily overtime or weekly overtime must be paid if the worker works more than 40 hours in the workweek. The exempt workweeks apply to all employees in the employee group or category, and the exemption cannot apply to individual employees. This means that a gin may not claim an exemption for only part of a group of employees to avoid the daily overtime requirements.

The Section 13(i) exemption for the employees listed above may be claimed by the employer for any 14 workweeks during any consecutive 52 week period. The 14 exempt weeks do not have to be claimed consecutively. The employer may declare that the workweek is an exempt week at any time preceding the writing and dispensing of the paychecks. The employer must designate exempt weeks in its payroll records, however.

After 14 weeks of the exemption are used in any consecutive 52 week period and in the dormant season, these employees must be paid time and one-half of their regular rate for all hours worked in excess of 40 hours in any workweek.

### **Examples of FLSA Payroll Exemption Calculations**

Active Season when cotton being received for ginning (one of the 14 claimed partial overtime-exempt weeks when 1½ times regular rate is due if either more than 10 hours worked in a workday (assuming more than 40 hours are worked in the workweek) or more than 48 hours worked in a workweek:

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<sup>3</sup> Note that many states have minimum wage and overtime requirements that exceed FLSA requirements.

1. Employee works  $12 + 12 + 12 = 36$  total hours; no overtime is due.
2. Employee works  $12 + 12 + 12 + 5 = 41$  total hours; 6 hours of daily overtime are due.
3. Employee works  $10 + 10 + 10 + 10 + 5 = 45$  total hours; no overtime is due.
4. Employee works  $12 + 12 + 12 + 12 = 48$  total hours; 8 hours of daily overtime are due.
5. Employee works  $10 + 10 + 10 + 10 + 8 = 48$  total hours; no overtime is due.
6. Employee works  $12 + 12 + 12 + 12 + 12 + 12 + 12 = 84$  total hours; 36 hours of weekly overtime are due.

Dormant Season or a non-claimed partial exemption workweek when overtime is due for all hours worked in excess of 40 in a workweek:

1. Employee works  $12 + 12 + 12 = 36$  total hours; no overtime is due.
2. Employee works  $12 + 12 + 12 + 5 = 41$  total hours; 1 hour of overtime is due.
3. Employee works  $10 + 10 + 10 + 10 + 5 = 45$  total hours; 5 hours of overtime are due.
4. Employee works  $12 + 12 + 12 + 12 = 48$  total hours; 8 hours of overtime are due.
5. Employee works  $10 + 10 + 10 + 10 + 8 = 48$  total hours; 8 hours of overtime are due.
6. Employee works  $12 + 12 + 12 + 12 + 12 + 12 + 12 = 84$  total hours; 44 hours of overtime are due.



## **Bonuses**

Promised or non-discretionary bonuses, i.e., a bonus to be paid if the employee stays for the entire season or bonuses based on production, are wages. The bonuses must be included in the regular rate (and the overtime rate is calculated based on the “regular rate” for each workweek), and the extra half-time must be paid, regardless of when the bonus is paid.

For example, a 50 cents per hour bonus for each hour worked “during the season” becomes 75 cents for the overtime hours.

## **Transportation**

*‘Advanced money for transportation’*: In non-overtime money, money that is advanced for transportation cannot be deducted from an employee’s wages if the deduction reduces the employee’s hourly rate below the FLSA or state legal minimum wage for the hours worked according to several recent court cases, including *Arriaga v. Florida Pacific Farms, LLC*, 305 F.3d 1228, 1242 (11<sup>th</sup> Cir. 2002); *De Luna-Guerrero v. The North Carolina Grower’s Association, Inc.*, 338 F. Supp. 2d 649, 656-662 (E.D.N.C. 2004) (liability found under FLSA) and 370 F. Supp. 386 (E.D.N.C. 2005) (liquidated damages awarded); *Martinez-Bautista v. D&S Produce*, 447 F. Supp. 2d 954 (E.D. Ark. 2006). The matter is currently in dispute in other federal courts, and the Court of Appeals for the Fifth Circuit is presently considering this issue on appeal from a district court finding that *Arriaga*, mentioned above, provides the “roadmap” for assessing employee costs in such matters. *Castellanos-Contreras v. Decatur Hotels L.L.C.*, 488 F. Supp. 2d 565, 572, n.5 (E.D. La. 2007). In some of these cases, the courts have agreed that if enough money is not advanced to workers and they pay for the transportation costs on their own, the money that would cause their wages in the first week of employment to be reduced below the minimum wage for all hours worked must be supplemented, that is, increased, by the amount transportation costs cut into that minimum wage entitlement. *Be careful*; care must also be taken so that a MSPA violation does not occur because workers are not informed in writing at the time they are recruited that their wages may be subject to a deduction. Migrant workers and day haul workers must be notified at the time of recruitment of all deductions to which they are subject, including potential deductions for transportation. (See the MSPA portion of this guide.) Note that some states have additional specific restrictions on wage deductions.

In overtime weeks, in addition to the above, no deductions are permitted unless an agreement regarding the deduction is in place. Where there is an agreement as to the deductions for any transportation advance, deductions are permitted in the same manner as in non-overtime weeks, except that no deduction may be taken from the wages due for overtime hours worked — either the regular wages or the extra one-half rate overtime premium. The U.S. Department of Labor WH-516 notice required by the MSPA can be used for this purpose of disclosing deductions.

*‘Out of pocket’ transportation costs’*: The current enforcement policy of the U.S. Department of Labor may still be a “no enforcement policy,” i.e., that the Department of Labor, Wage and Hour Division, takes no position and that it will not attempt to assert violations for ‘out of pocket’ transportation expenses incurred by workers who relocate to accept employment. In light of the above cases, the position of the Department of Labor must be monitored, and worker advocate law firms are vigorously suing employers, and as noted above, have won a number of suits on this issue. *Be careful*; this policy of non-enforcement by the U.S. Department of Labor, Wage and Hour Division, assuming it is not changed, does not affect an employee’s private right of action, and as noted above, there have been a number of private FLSA lawsuits brought because of out-of-pocket transportation costs that workers have incurred.

### **Deductions**

*Be careful*; under the MSPA, no deductions, other than those required by law, i.e., FICA and tax withholdings, are allowed unless the migrant agricultural worker or day haul worker was notified in writing, at the time of recruitment, of the deduction. Optional Form WH-516 can be used for the purpose of informing workers of deductions. The reason for and amount of all deductions must be provided in writing when the worker is paid. The Department of Labor Wage-Hour Form WH-501 provides a template for providing this information.

### **Example Payroll Deduction Calculations**

In the following examples, assume that the employee is a migrant agricultural worker or a day haul worker and that a notice of deduction (Optional Form WH-516 that can be used for this notice) was given. The employee’s rate of pay is \$7.55/hour, and the minimum wage is \$6.55/hour.

$\$7.55/\text{hour} - \$6.55/\text{hour} = \$1.00/\text{hour}$  paid above the minimum wage.

## Migrant and Seasonal Agricultural Worker Protection Act

Active Season (one of the claimed partial overtime weeks):

1. Employee works  $12 + 12 + 12 = 36$  total hours; no overtime is due ( $36 \times \$1.00/\text{hour} = \$36.00$  total deduction is allowed).
2. Employee works  $12 + 12 + 12 + 5 = 41$  total hours; 6 hours of daily overtime are due ( $35 \times \$1.00/\text{hour} = \$35.00$  total deduction is allowed).
3. Employee works  $10 + 10 + 10 + 10 + 5 = 45$  total hours; no day when more than 10 hours worked; no overtime is due ( $45 \times \$1.00/\text{hour} = \$45.00$  total deduction is allowed).
4. Employee works  $12 + 12 + 12 + 12 = 48$  total hours; 8 hours of daily overtime are due ( $40 \times \$1.00/\text{hour} = \$40.00$  total deduction is allowed).
5. Employee works  $10 + 10 + 10 + 10 + 8 = 48$  total hours; no overtime is due ( $48 \times \$1.00/\text{hour} = \$48.00$  total deduction is allowed).
6. Employee works  $12 + 12 + 12 + 12 + 12 + 12 + 12 = 84$  total hours; 36 hours of weekly overtime are due ( $48 \times \$1.00/\text{hour} = \$48.00$  total deduction is allowed).

Dormant Season or a non-claimed partial exemption workweek:

7. Employee works  $12 + 12 + 12 = 36$  total hours; no overtime is due ( $36 \times \$1.00/\text{hour} = \$36.00$  total deduction is allowed).
8. Employee works  $12 + 12 + 12 + 5 = 41$  total hours; 1 hour of overtime is due ( $40 \times \$1.00 = \$40.00$  total deduction is allowed).

9. Employee works  $10 + 10 + 10 + 10 + 5 = 45$  total hours; 5 hours of overtime are due ( $40 \times \$1.00/\text{hour} = \$40.00$  total deduction is allowed).

In the following examples, assume that the employee is a migrant agricultural worker or a day haul worker – and that no notice of deduction was given. The employee's rate of pay is \$7.55/hour and the minimum wage is \$6.55/hour.

$\$7.55/\text{hour} - \$6.55/\text{hour} = \$1.00/\text{hour}$  paid above the minimum wage.

Active Season (one of the claimed partial overtime weeks):

1. Employee works  $12 + 12 + 12 = 36$  total hours; no overtime is due (no deduction is allowed).
2. Employee works  $12 + 12 + 12 + 5 = 41$  total hours; 6 hours of daily overtime are due (no deduction is allowed).
3. Employee works  $10 + 10 + 10 + 10 + 5 = 45$  total hours; no overtime is due (no deduction is allowed).
4. Employee works  $12 + 12 + 12 + 12 = 48$  total hours; 8 hours of daily overtime are due (no deduction is allowed).
5. Employee works  $10 + 10 + 10 + 10 + 8 = 48$  total hours; no overtime is due (no deduction is allowed).
6. Employee works  $12 + 12 + 12 + 12 + 12 + 12 + 12 = 84$  total hours; 36 hours of weekly overtime are due (no deduction is allowed).

Dormant Season or a non-claimed partial exemption workweek:

7. Employee works  $12 + 12 + 12 = 36$  total hours; no overtime is due (no deduction is allowed).

8. Employee works  $12 + 12 + 12 + 5 = 41$  total hours; 1 hour of overtime is due (no deduction is allowed).
9. Employee works  $10 + 10 + 10 + 10 + 5 = 45$  total hours; 5 hours of overtime are due (no deduction is allowed).

## **THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA)<sup>4</sup>**

This guide is intended to be a practical guide rather than an exhaustive discussion of the provisions of the MSPA. For a complete discussion of the MSPA, refer to 29 CFR 500. If you have specific questions, refer to: <http://www.dol.gov/compliance/laws/comp-msawpa.htm>, contact your gin association, or seek the advice of an attorney.

When a cotton gin employs a migrant agricultural worker or a day haul worker, the gin is required to comply with the requirements of the MSPA. Only those employees who come within the meaning of a migrant agricultural worker or day haul worker are covered by the MSPA in cotton gins.

***MIGRANT AGRICULTURAL WORKER*** means an individual who is employed in agricultural employment of a seasonal or other temporary nature who is required to be absent overnight from his permanent place of residence. (*MSPA Sec. 3(8)*) Some case law holds that workers who reside in employer-owned or controlled housing are “migrants” even if such housing is the worker’s permanent residence. The applicable U.S. Department of Labor regulations also take this position.

***DAY HAUL WORKER*** means that an individual is employed in a day haul operation. A day haul operation means that the assembly of workers at a pick-up point is waiting to be hired and employed, transportation of such workers to agricultural employment, and the return of such workers to a drop-off point on the same day. (*MSPA Sec. 3(4)*) This term does not include workers whose transportation is provided by an employer if the employees are already employed at the time they are picked up.

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<sup>4</sup> Note that some states have special farm labor contractor registration laws and agricultural worker protection laws that have requirements that are stricter than the MSPA requirements.

## RECRUITMENT OF MIGRANT AGRICULTURAL WORKERS

The MSPA provides an exemption from registration as a farm labor contractor for cotton gins and their regular full-time employees when performing farm labor contracting activities exclusively for the gin. (*MSPA Sec. 4(b)*; *29 CFR 500.30(k)*) However, the gin is required to provide all other protections required by the MSPA.

If a cotton gin utilizes any person to perform farm labor contracting activities who is not a regular employee, and some have claimed full-time employee, that person must register with the U.S. Department of Labor (“DOL”) as a farm labor contractor (“FLC”) before he engages in those activities, and he must obtain special additional registration if the FLC will provide transportation, drive, or own or control housing used by the workers. (*29 CFR 500.40*) The gin is required to utilize only registered farm labor contractors who are registered to perform the services provided. (*29 CFR 500.71*) *Be careful*, a farm labor contractor may be “registered” to perform certain functions but not authorized to transport, drive, or house workers. Check the farm labor contractor’s registration closely. Also check the official DOL debarment website. For gins in Georgia, Alabama, and Florida, a recent decision by the Court of Appeals for the Eleventh Circuit held that only persons who own or control workers’ housing are “responsible for ensuring that the facility or real property complies with substantive Federal or State safety and health standards.” Earlier decisions by courts in Texas and South Carolina took a broader view of what “own” or “control” means than did the Court of Appeals for the Eleventh Circuit in *Renteria-Marin v. Ag-Mart*. The *Ag-Mart* case is still pending in litigation as of September 9, 2008, and the final Order has not been entered. The safer course is to make sure that housing used by migrant and seasonal workers is in compliance with the applicable Federal and State regulations. Furthermore, even the *Ag-Mart* court held that the agricultural employer was in violation of MSPA for having failed to ensure that the terms and conditions of housing occupancy, which may be provided in a government form known as a WH-521, were posted in the housing.

***FARM LABOR CONTRACTING ACTIVITY*** means recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant agricultural worker.

In situations of joint employment or joint responsibility by more than one employer, each employer is responsible for the protections provided by the MSPA; however, unnecessary duplication of effort is not required.

At the time of recruitment, each migrant agricultural worker and each day haul worker must be notified, in writing, in a language in which he is fluent, of specific terms and conditions of employment. *Be careful*, no deductions, other than those required by law, i.e., FICA and tax withholdings, are allowed unless the migrant agricultural workers or day haul workers were notified in writing, at the time of recruitment of the deduction. Optional Form WH-516 (attached) may be used to provide the required notification. The terms and conditions of employment cannot be changed or violated without justification. Further, if the employer wants to be able to enforce work rules, terminate covered workers for failure to follow instructions, etc., these terms also should be disclosed in writing at the time of recruitment.

A poster, which sets out the rights and protections of the migrant agricultural worker, must be posted at the place of employment. This poster, which is yellow, is provided by the U.S. Department of Labor (attached).

## **WAGES AND PAYROLL STANDARDS**

The gin must keep specific payroll records for each migrant agricultural worker or day haul worker who is employed and, if a farm labor contractor makes the gin's payroll, the farm labor contractor must furnish a copy of his payroll records to the gin. The gin must maintain these records for a period of three years after the end of the season covered by the records. *Be careful*; some courts have allowed private lawsuits to be filed within the same typically long statute of limitations within which contract lawsuits may be filed.

The following payroll records must be maintained for each migrant agricultural worker or day haul worker, including the name, permanent address, and social security number:

- (1) the basis on which wages are paid;



- (2) the number of piecework units earned, if paid on a piecework basis;
- (3) the number of hours worked;
- (4) the total pay period earnings;
- (5) the specific sums withheld and the purpose of each sum withheld; and
- (6) the net pay.

An itemized written statement of the above payroll information plus the employer's name, address, and employer identification number assigned by the Internal Revenue Service must be given to the migrant agricultural worker or day haul worker at the time of payment. A U.S. Department of Labor form, WH-501, provides a template for providing this required information.

All wages owed must be paid when due. The migrant agricultural workers must be paid no less often than every two weeks or semi-monthly. No wages may be withheld unless the migrant agricultural worker or day haul worker was notified that he was subject to the deduction. The purpose of each deduction must be itemized and provided to the worker no later than when he is paid. These deductions must be in accordance with the FLSA and MSPA requirements.

## TRANSPORTATION

*Be careful*; a farm labor contractor may be “registered” as a farm labor contractor but not “registered” or authorized to transport or drive workers or to own or control housing used by workers. Check the farm labor contractor’s registration closely to ensure that he is transportation-authorized (“TA”) and that any person who drives workers is driving-authorized (“DA”). Housing is designated as “HA.” The license must list the particular vehicles for which the contractor is “TA” and all of the particular housing facilities for which the farm labor contractor is “HA.”

Each gin that uses or causes to be used any vehicle to transport migrant agricultural workers or day haul workers must ensure that the vehicle conforms to specific safety and insurance standards. The Federal U.S. Department of Transportation vehicle inspection standards and driver licensing and operation requirements apply to most vehicles that are larger than station wagons.

Each vehicle utilized to transport migrant agricultural workers or day haul workers must have a minimum level of insurance, \$100,000 per seat, with a maximum of \$5,000,000 for any one vehicle. Under certain circumstances, no liability insurance is required if the migrant agricultural workers being transported are covered by the State’s worker compensation laws. If worker compensation insurance is used, a minimum level of \$50,000 for loss or damage of property of others must also be provided.

Vehicle safety and insurance requirements do not apply to carpooling arrangements made by the workers themselves, using one of the workers’ own vehicles. Carpooling does not include any transportation arrangements in which a farm labor contractor participates or is specifically directed or requested by a gin or its representative.

Any farm labor contractor who provides transportation must be authorized by the U.S. Department of Labor to transport migrant agricultural workers in the particular vehicle being used to transport the workers, and each such vehicle must be listed on the contractor’s license.

*Be careful*; if your gin crew travels together, more likely than not, there will be MSPA covered transportation. This includes the local transportation as well as transportation from the point of recruitment to the job site.

## HOUSING SAFETY AND HEALTH

Each person who owns or controls a facility or real property which is used as housing for any migrant agricultural worker must ensure that this housing complies with all substantive Federal and State standards.

If more than one person is involved in providing the housing, all parties are responsible for the housing.

A person who, in the ordinary course of that person's business, regularly provides housing on a commercial basis to the general public and provides housing to any migrant agricultural worker of the same character and on the same or comparable terms and conditions as provided to the general public, is not subject to the MSPA housing requirements. *Be careful*; migrant housing cannot be brought within this exemption simply by offering lodging to the general public.

A farm labor contractor who owns or controls housing used by workers must be authorized by the U.S. Department of Labor to provide the specific housing being furnished, and his license must list the housing he is authorized to provide.

Migrant housing may not be occupied by any migrant agricultural worker unless a Federal, State or local health agency has certified that the housing meets applicable safety and health standards unless a request for preoccupancy housing inspection was made to DOL or the appropriate State or local agency at least 45 days prior to the date on which it is to be occupied. If a State or local health agency will not inspect the housing, the Federal DOL Wage and Hour Division (see attached list of contact persons) will conduct a preoccupancy housing inspection.

The certificate of occupancy must be posted at the housing site. Additionally, the terms and conditions of housing must be posted at the housing site, including but not limited to the name of the person in charge of the housing. U.S. Department of Labor form WH-521 may be used for these disclosures.

The housing must be maintained in compliance during all periods it is occupied.

## **MSPA COMPLIANCE CHECKLIST**

### **RECRUITMENT**

Recruit/Employ Any Migrant Agricultural Workers or Day Haul Workers	YES	NO
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If the answer to this question is 'NO,' you are not subject to the MSPA requirements and need to go no further.

Utilized Farm Labor Contractor	YES	NO
Farm Labor Contractor Utilized Registered with US DOL	YES	NO
Terms of Employment Disclosed at the Time of Recruitment	YES	NO
Terms of Employment Accurately Represented in Disclosure	YES	NO
Complied with Terms of Employment	YES	NO
MSPA Poster at Worksite	YES	NO
Consider Joint Employer Implications and Criteria	YES	NO

### **WAGE AND PAYROLL STANDARDS**

Payroll Records Maintained	YES	NO
Wage Statement Provided	YES	NO
Workers Paid by Farm Labor Contractor ( <i>Be careful</i> )	YES	NO
Maintained Payroll Records of Farm Labor Contractor	YES	NO
Paid Wages When Due	YES	NO

### **TRANSPORTATION**

Migrant Agricultural Workers to be Transported	YES	NO
Public Transportation Utilized ( <i>Exempt from MSPA</i> )	YES	NO
Voluntary Carpooling ( <i>Be Careful</i> )	YES	NO
Person Providing Transportation Registered with US DOL for Transportation	YES	NO

All Drivers Have a Valid Drivers License	YES	NO
Vehicles Meet Applicable Safety Standards	YES	NO
Insurance in Correct Amounts Provided on Vehicles	YES	NO
DOL or DOT Standards for Vehicles and Drivers Met	YES	NO

### **HOUSING**

Housing Provided	YES	NO
Preoccupancy Inspections	YES	NO
Housing Meets Substantive Safety Standards	YES	NO
Posted Housing Conditions	YES	NO
Housing Maintained in Compliance During All Occupancy	YES	NO

### **GENERAL PROVISIONS**

Discrimination Against Migrant Agricultural Worker	YES	NO
Interfering with US DOL Official	YES	NO

## QUESTIONS AND ANSWERS

Q. **What is a workweek?** *(29 CFR 778.105)*

A. A workweek is a fixed and regularly recurring period of 168 hours.

Q. **I have a full-time employee that I limit to 40 hours a week during the dormant season, and I pay that employee a salary. Due to the increase in the number of hours worked during the ginning season, I pay this employee on an hourly basis plus overtime. Is this legal?**

A. Yes, as long as you do not alternate between the two payment systems during the same season to avoid a higher regular rate.

Q. **Can an employee waive his right to overtime?**

A. No.

Q. **I have year round employees that I pay overtime after 40 hours in the workweek throughout the year. Am I required to put these employees on the 10/48 hours overtime schedule?**

A. No, unless you alternate these employees from the 10/48 hours overtime schedule to the 40 hours overtime schedule to avoid daily overtime.

Q. **Does paying an employee a salary exempt this employee from overtime?** *(29 CFR 541)*

A. No. It is a combination of a salary and duties that exempt an employee from overtime. Generally, to be exempt from overtime, an employee must be primarily engaged – more than 50% - in the exempt activities. For details, call your contact person.

Q. **Can I pay a salary that covers the minimum wage plus overtime?** (29 CFR 778.308-778.310)

A. No, a fixed salary for the workweek longer than 40 hours does not compensate the employee for overtime.

Q. **How do I pay overtime on a salary?** (29 CFR 778.113-778.115)

A. If, under the employment agreement, a salary sufficient to meet the minimum wages is paid as straight time for whatever number of hours are worked in the workweek, the regular rate is obtained by dividing the salary by the number of hours worked each workweek. Under this agreement, the regular rate will vary in overtime weeks. To compute the extra overtime due, divide the regular rate by two, then multiply the overtime hours by this amount. Be sure that the regular salary covers and is understood to cover the non-overtime or straight-time pay for all hours worked in a workweek.

Formula: Weekly salary divided by total hours worked equals regular rate of pay. Regular rate divided by two times overtime hours equals extra overtime due.

Example:

In a 50 hour workweek:

\$420.00 divided by 50 hours equals a regular rate of \$8.40 per hour.

\$8.40 divided by 2 equals \$4.20/hour.

\$4.20/hour times 10 overtime hours equals \$42.00 overtime.

Total wage due equals \$462.00.

In a 60 hour workweek:

\$420.00 divided by 60 hours equals a regular rate of \$7.00 per hour.

\$7.00 divided by 2 equals \$3.50.

\$3.50/hour times 20 overtime hours equals \$70.00 overtime.

Total wages due equals \$490.00

The calculation is the same in a 10/48 hour week; you just substitute the number of overtime hours over the 10 or 48 standard for the 40 hour standard.

**Q. What is the regular rate?** (29 CFR 778.110-778.110)

A. The regular rate is a rate per hour that includes all remuneration for straight time hours of employment. This is the rate used to calculate overtime.

Example: Hourly rate \$8.00 – this is the regular rate – overtime is computed at 1-1/2 times this rate -- \$12.00.

Example: Hourly rate \$8.00 – bonus \$0.10/hour – the regular rate is \$8.10/hour – overtime is computed at 1-1/2 times the regular rate -- \$12.15/hour.

**Q. Do I have to pay overtime on bonuses?** (29 CFR 778.208-778.212)

A. Generally, yes. Some of the exceptions to this are discretionary bonuses, gifts, and payments in the nature of gifts on special occasions. A bonus or other extra pay is not discretionary if it is promised, tied to hours worked, or tied to production.

**Q. How do I pay overtime on a bonus?** (29 CFR 778.210)

A. There are numerous ways of paying overtime on a bonus. The easiest and simplest way is to take a percentage of an employee's gross wages. This will automatically compute the extra overtime due.



Q. **Do I have to pay overtime on a safety bonus?**

A. Yes.

Q. **My gin only hires local workers. Do I have to comply with the MSPA provisions?** (*MSPA Sec. 3(8); Sec. 3(10)*)

A. No, the MSPA provisions only apply to migrant agricultural workers and “day haul” workers. *Be careful* that you can establish that the worker has told you, preferably in a written record, that he can return each day to his permanent place of residence and that such permanent residence is not an agricultural employer or FLC-provided residence.

Q. **Does the gin have to register as a farm labor contractor?** (*MSPA Sec. 4(b)*)

A. No, but all MSPA protections must be provided to the migrant agricultural workers and the day haul workers.

Q. **Does the person who does the hiring at the gin have to register as a farm labor contractor?** (*MSPA Sec. 4(b)*)

A. No, if the person is an employee of the gin, but all MSPA protections must be provided to migrant agricultural workers and day haul workers.

Q. **My gin is in Mississippi. I employ a ginner who lives in the Texas Valley, and he works for me on a seasonal basis each year. Each year this ginner recruits a few hands to work at my gin, and they travel to my gin. Does this ginner have to register as a farm labor contractor?**

A. There may be a question as to whether the person was an employee of the gin at the time he recruited workers. An employee of an agricultural employer or agricultural association is not required to register as a farm labor contractor; however, all MSPA protections must be provided to the migrant agricultural employees. (*MSPA Sec. 4(b)*)

- Q. **My gin is in Mississippi. Each year a person from the Texas Valley recruits a few hands to work at my gin. This person transports these hands to my gin. I do not pay for the workers, but I suspect that the workers themselves pay this person for finding them a job and transporting them to my gin. Does this person have to register as a farm labor contractor?**
- A. Yes, this person must register with the Department of Labor and must be authorized to transport the workers. There may also be a minimum wage problem to the extent the payment for finding the job cuts into workers' minimum wages for the first week on the job, as discussed in this "Guide" on page 9 where *Arriaga* and other case decisions are discussed.
- Q. **My gin is in Mississippi. Each year a person from the Texas Valley recruits a few hands to work at my gin. This person transports these hands to my gin. I advance wages to the workers to pay this person for finding them a job and transporting them to my gin. Can I deduct these advanced wages from the workers' wages? (29 CFR 531.31; see page 10 of Guide)** There is a potential FLSA minimum wage problem regarding payment by workers to individuals who helped them find a job based on the case law discussed on page 9, including the *Arriaga* decision. This is an area in which case decisions are rapidly developing.
- A. Only under the terms stated on page 10 of this Guide. *Be careful*; if the person is not registered as a farm labor contractor authorized to transport the workers, no deduction may be made as this is in violation of Federal Law. The same can be said for wage advances for illegal aliens to pay for their transportation.
- Q. **If the workers arrange among themselves to carpool to my gin, am I responsible for the transportation under the MSPA? (29 CFR 500.100( c); 500.103( c))**
- A. Carpooling arrangements made by the workers themselves, using one of the workers' own vehicles, are not subject to the MSPA transportation requirements. However, carpooling does not include any arrangements in which a farm labor contractor participates or transportation arrangements that are specifically directed or requested by the gin or its representative.

Q. **If I send money to the individual workers for transportation, am I causing MSPA transportation?** (*Preamble to Adams Fruit Final Rule*)

A. If the gin provides the individual worker with a travel advance to cover travel to the worksite and the worker is free to choose how to use that travel advance, the gin will not be deemed to have caused the transportation of the individual worker. Caution, you may not be able to recover this travel advance from the worker's wages. (*See page 10*)

Q. **If I send the money to one worker who then gives it to other workers, am I causing MSPA transportation?**

A. Possibly, because you are involved in the transportation arrangements and carpooling does not apply. At the least, the envelope should be directed to specific individuals.

Q. **If the drivers and/or owner of the vehicle charge any of the workers for the transportation, do the driver and/or owner have to register as a farm labor contractor and meet the MSPA transportation requirements?** (*Preamble to Adams Fruit Final Rule*)

A. If the driver and/or owner charges more than the reasonable cost of the transportation divided among them, the driver and/or owner becomes a farm labor contractor and must meet all MSPA requirements, and the gin cannot utilize this farm labor contractor unless he is registered for the services provided. Reasonable cost can be computed in a number of ways, the best and easiest is to charge the mileage rate set by the U.S. Government for the use of a personal vehicle. At the current time, this rate is \$0.585 per mile. This cost can be divided among the workers being transported.

**Q. Does the migrant agricultural worker have to have a copy of the wage statement or is it sufficient to put the required information on the check?**

A. The migrant agricultural worker must have a copy of the wage statement to keep. Once a check is cashed, the worker has no proof of payment.

## TEMPORARY LABOR CAMP STANDARDS (29 CFR 1910.142)

### **Introduction**

OSHA regulates labor camps of agricultural employers provided to agricultural workers. OSHA governs migrant agricultural worker housing *unless* the construction was completed or under construction before April 3, 1980, or *unless* before March 4, 1980, a contract for the construction of the specific housing was signed. OSHA standards may also be applicable if there were major modifications made after April 3, 1980.

The OSHA standards are published at 29 CFR 1910.142. Housing that was completed or that was under construction before April 3, 1980, or that was under a signed contract to be built before March 3, 1980, may instead be governed by regulations promulgated by the Employment and Training Administration (“ETA”) of the U.S. Department of Labor (20 CFR Part 654). Because most housing must meet the OSHA standards, only those are covered here, but detailed check sheets and descriptions of the ETA housing are available.

Employers must meet applicable standards developed for site; shelter; water supply; toilet facilities; lighting; sewage and refuse disposal; laundry, handwashing and bathing facilities; construction and operation of kitchens; dining halls and feeding facilities; insect and rodent control; first aid; fire; and reporting of communicable diseases.

### **Compliance with Federal and State Housing Safety, Health and Inspection Requirements adopted under MSPA (29 CFR 500.130-.135)**

1. The owner or person who controls property used to house migrant workers must ensure that housing complies with all federal and state laws applicable to such housing.
2. If an agricultural employer owns housing but a contractor operates or controls it, both are responsible for meeting safety and health requirements.

3. A person is in control of housing if he or she has authority to oversee, manage, or administer the housing directly or through an agent, with or without compensation, according to the U.S. Department of Labor. One Federal Court of Appeals has recently disagreed with the position of the Department of Labor in a case that is not fully resolved as of September 9, 2008, and that is discussed at page 12, above.
4. Standards include fire prevention, and adequate and sanitary water supply, plumbing maintenance, sound construction of buildings, adequate heat, and pest and insect protection.
5. OSHA standards govern housing that was built after April 3, 1980, or for which a contract was signed before March 3, 1980; in general, housing built before those dates may meet either ETA or OSHA standards.
6. Compliance with federal standards does not excuse compliance with state standards.
7. Excluded from these regulations are persons who own or control property provided on a commercial basis to the public as long as housing is provided to migrants on the same basis as the general public. The Court of Appeals for the Eleventh Circuit in Atlanta has ruled that housing in which agricultural workers permanently reside are subject to MSPA housing compliance requirements.

### **Certificate of Housing Inspection**

1. Covered housing may not be occupied by migrant agricultural workers until a state, local, or federal agency has certified that it meets applicable safety and health standards.
2. Occupancy may not occur until the owner or person who controls the housing posts the certificate of occupancy from the state, local, or federal agency. The certificate must be kept for three years after the last day of use and must be available for inspection and review. Also, the person who provides such housing must post in the housing a statement of the terms and conditions of the occupancy. The U.S. Department of Labor provides a form for this purpose called a WH-521.

3. Obligation to maintain housing in compliance with health and safety standards continues beyond receipt of certificate of occupancy. Once occupied, housing must continue to comply with standards.

## **TEMPORARY LABOR CAMP REQUIREMENTS**

### **OSHA Standard 29 CFR 1910.142**

All sites used for camps shall be adequately drained. They may not be subject to periodic flooding nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp must be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites must be graded, ditched, and rendered free from depressions in which water can become a nuisance.

All sites must be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located must be at least 500 feet from any area in which livestock is kept.

The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.

Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.

Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.

The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.



All wooden floors shall be elevated not less than 1 foot above the ground level at all points to prevent dampness and to permit free circulation of air beneath.

Nothing in this section shall be construed to prohibit "banking" with earth or other suitable material around the outside walls in areas subject to extreme low temperatures.

All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.

All exterior openings shall be effectively screened with 16-mesh material. All screen doors shall be equipped with self-closing devices.

In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.

In camps where cooking facilities are used in common, stoves (in ratio of one stove to 10 persons or one stove to two families) shall be provided in an enclosed and screened shelter. Sanitary facilities shall be provided for storing and preparing food.

All heating, cooking, and water heating equipment shall be installed in accordance with State and local ordinances, codes, and regulations governing such installations. If a camp is used during cold weather, adequate heating equipment shall be provided.

An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes.

A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2 1/2 times the average hourly demand.

The distribution lines shall be capable of supplying water at normal operating pressures to all fixtures for simultaneous operation. Water outlets shall be distributed throughout the camp in such a manner that no shelter is more than 100 feet from a yard hydrant if water is not piped to the shelters.

Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.

Toilet facilities adequate for the capacity of the camp shall be provided.

Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes.

A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.

Where the toilet rooms are shared, such as in multifamily shelters and in barracks type facilities, separate toilet rooms shall be provided for each sex. These rooms shall be distinctly marked "for men" and "for women" by signs printed in English and in the native language of the persons occupying the camp, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling.

Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.

Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture. Where water under pressure is available,

urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.

Every water closet installed on or after August 31, 1971, shall be located in a toilet room.

Each toilet room shall be lighted naturally, or artificially by a safe type of lighting at all hours of the day and night.

An adequate supply of toilet paper shall be provided in each privy, water closet, or chemical toilet compartment.

Privies and toilet rooms shall be kept in a sanitary condition. They shall be cleaned at least daily.

In camps where public sewers are available, all sewer lines and floor drains from buildings shall be connected thereto.

Handwash basin per family shelter or per six persons in shared facilities.

Shower head for every 10 persons.

Laundry tray or tub for every 30 persons.

Slop sink in each building used for laundry, hand washing, and bathing.

Floors shall be of smooth finish but not slippery materials; they shall be impervious to moisture. Floor drains shall be provided in all shower baths, shower rooms, or laundry rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor shall be coved. The walls and partitions of shower rooms shall be smooth and impervious to the height of splash.

An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water shall be provided.

Every service building shall be provided with equipment capable of maintaining a temperature of at least 70 deg. F. during cold weather.

Facilities for drying clothes shall be provided.

All service buildings shall be kept clean.

Where electric service is available, each habitable room in a camp shall be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling- or wall-type fixture. Light levels in toilet and storage rooms shall be at least 20 foot-candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot-candles 30 inches from the floor.

Fly-tight, rodent-tight, impervious, cleanable or single service containers, approved by the appropriate health authority shall be provided for the storage of garbage. At least one such container shall be provided for each family shelter and shall be located within 100 feet of each shelter on a wooden, metal, or concrete stand.

Garbage containers shall be emptied when full, but not less than twice a week.

In all camps where central dining or multiple family feeding operations are permitted or provided, the food handling facilities shall comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965), which is incorporated by reference as specified in Sec.

A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.

No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for the emergency treatment of injured persons.

Such facilities shall be in charge of a person trained to administer first aid and shall be readily accessible for use at all times.

It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.

Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the outbreak to the health authority by telegram, telephone, electronic mail or any method that is equally fast.

**U.S. DEPARTMENT OF LABOR**  
**MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT**

**Housing Safety and Health Checklist**  
**Under OSHA Standard 1910.142**

The following checklist records all violations of the applicable standard (*29 CFR 1910.142*). Technical or procedural violations are classified as marginal. Substantive violations may either be substantive and aggravated, or substantive and serious.

1. Inadequate drainage.
2. Inactive water (swamp, sinkhole, etc.) within 200' of camp and untreated for mosquito control.
3. Site not graded, ditched, or rendered free from depressions in which water may become a nuisance.
4. Danger to domestic or public water supply from poor drainage.
5. Subject to periodic flooding.
6. Within 500' of livestock area.
7. Overcrowding of structures.
8. Grounds and open areas not maintained in a clean and sanitary condition. Areas not free from rubbish, debris, waste paper, garbage, or other refuse.
9. When closing camp for the season, failure to collect and dispose of refuse.
10. Abandoned toilet pits not filled with dirt.
11. Toilet buildings not locked when camp closing for season.
12. Shelters do not provide protection against elements.
13. Less than 50 sq. ft. per person in sleeping rooms.
14. Ceiling not 7' high.
15. No wall lockers for clothing and personal articles provided in sleeping rooms.
16. No beds, cots, or bunks provided for each occupant.
17. Beds, cots, or bunks less than 3' apart, and/or less than 12" from floor.

18. Double Deckers: Less than 4' between bunks, side to sides and end to end; and less than 27" between bunks.
19. Triple bunks may not be used at all.
20. Floors in structures made of other than wood, asphalt, or concrete.
21. Wooden floors not of smooth and tight construction.
22. Floors in disrepair.
23. Wooden floors elevated less than 1' above ground level.
24. Windows and doors in living quarters total less than 1/10 of floor area.
25. Window cannot be opened one-half to allow for ventilation.
26. Broken windows.
27. Openings in shelter not screened with 16-mesh material.
28. Door not equipped with self-closing device.
29. Less than 100 sq. ft. per person in a room where workers cook, live, and sleep.
30. Sanitary facilities not provided for storing and preparing food in rooms where workers cook, live, and sleep.
31. At least one stove for each 10 people or two families must be provided where cooking facilities are used in common.
32. Cooking facilities used in common not provided in an enclosed and screened shelter.
33. Heating, cooking, and water heating equipment not installed in accordance with applicable codes and regulations.
34. Adequate heating not provided in every shelter used during cold weather to maintain a comfortable temperature.

**Pertains to Water Supply:**

35. Water supply inadequate and/or inconvenient for drinking, cooking, bathing, and laundry.
36. Water supply less than 35 gallons per person per day.
37. Water not approved by health department for drinking, cooking, bathing, and laundry purposes.
38. Water unfit for human use.
39. Shelters more than 100' from available water outlet when no indoor water facilities are provided.
40. Drinking fountains (at ratio of 1 per 100 occupants) not provided where water under pressure is available.

41. Common drinking cups may not be used.

**Pertains to Toilet Facilities:**

- 42. Toilet room accessible only through sleeping rooms not permitted.
- 43. Toilet rooms not adequately ventilated and/or do not have a 6 sq. ft. opening to the outside.
- 44. Privies within 100' of any sleeping room, dining room, lunch area, or kitchen.
- 45. Toilet room(s) located more than 200' away from every sleeping room.
- 46. Separate toilet facilities not provided for each sex.
- 47. Facilities for each sex not separated by solid walls or partitions extending from floor to ceiling.
- 48. Toilet facilities not provided in the required ratio of one unit for each 15 persons and urinals of at least 2 feet of trough for every 25 men.
- 49. Construction of pit or vault does not keep out flies and rodents.
- 50. Water closets installed after August 31, 1971, not located in toilet room.
- 51. Toilet rooms, commodes, and urinals not kept lighted all hours of the night and day.
- 52. Outside openings not screened.
- 53. Toilet paper not provided in adequate supply.
- 54. Toilets in an unsanitary condition.
- 55. Toilet rooms not cleaned daily.

**Pertains to Sewage Disposal Facilities:**

- 56. Sewer lines and drains not connected to available public sewers.
- 57. Laundry facilities not provided.
- 58. Handwashing facilities not provided.
- 59. Bathing facilities not provided.
- 60. Handwash basins at ratio of one per family shelter or one per every 6 persons in shared facility not provided.
- 61. At least one shower head for every 10 persons.
- 62. Laundry tray or tub at ratio of one for every 30 persons not provided.
- 63. Slop sinks in buildings used for laundry, washing, and bathing not provided.
- 64. Waterproof, smooth, non-slip floors not provided in laundry and bathing facilities.
- 65. No floor drains or adequate drainage.
- 66. Walls and partitions not of waterproof material up to splash line.



**Inadequate supply of hot and/or cold running water for bathing and laundry purposes:**

- 67. No hot water available.
- 68. No facilities available for heating, bathing, and laundry water.
- 70. Service building not equipped with heating facilities to maintain a temperature of 70 degrees F. during cold weather.
- 71. No facilities provided for drying clothes.
- 72. Service buildings not kept clean.

**Pertains to Lighting:**

- 73. Electrical service available but not supplied to each habitable room, laundry rooms, toilet rooms, kitchens, dining rooms, and storage rooms.
- 74. Each room not supplied with at least one ceiling-type light fixture.
- 75. Electrical outlets not provided in each room.
- 76. Lighting of an adequate level not provided in each room.

**Pertains to Refuse Disposal:**

- 77. No refuse containers (insect and rodent-proof) provided.
- 78. Failed to have at least one refuse container for each family unit.
- 79. Refuse containers not kept clean.
- 80. Refuse containers not on a wooden, metal, or concrete stand.
- 81. Refuse containers not within 100' of shelters.
- 82. Refuse containers not emptied when full.
- 83. Refuse containers emptied less than twice a week.

**Pertains to Construction and Operation of Kitchen, Dining Halls, and Central Feeding Facilities:**

- 84. Food not free from vermin, rodents, flies, etc.
- 85. Food not free from spoilage.
- 86. Poisonous or toxic materials stored with food or in food preparation area.
- 87. Person(s) with communicable disease working in preparation, cooking, or handling of food.
- 88. Equipment and utensils not clean.
- 89. Kitchen area unclean.
- 90. Hot and cold running water not provided.
- 91. Garbage containers, leak-proof and with tight lids, not provided in kitchen area.
- 92. Central feed facilities separate from sleeping quarters not provided.

**Pertains to Insect and Rodent Control:**

- 93. Infestation by and harborage of insects and/or pests.

**Pertains to First Aid:**

- 94. No first aid supplies or equipment available in camp.
- 95. No person in camp trained to administer first aid.

**Pertains to Communicable Disease:**

- 96. Failure to report to local health authorities the identity of anyone in the camp suspected of having a communicable disease.
- 97. Failure to report immediately to local health authorities a case of food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is prominent.



Persons are not required to respond to this information unless it displays a currently valid OMB number.

OMB No.: 1215-0187  
Expires: 05/31/2011

### Worker Information — Terms and Conditions of Employment

1. Place of employment: \_\_\_\_\_

2. Period of employment: From \_\_\_\_\_ To \_\_\_\_\_

3. Wage rates to be paid: \$ \_\_\_\_\_ per Hour Piece Rate \$ \_\_\_\_\_ per \_\_\_\_\_

4. Crops and kinds of activities: \_\_\_\_\_

5. Transportation or other benefits, if any: \_\_\_\_\_

Charge(s) to workers, if any: \_\_\_\_\_

6. Workers' compensation insurance provided: Yes \_\_\_\_\_ No \_\_\_\_\_

Name of compensation carrier: \_\_\_\_\_

Name and address of policyholder(s) \_\_\_\_\_

Person(s) and phone number(s) of person(s) to be notified to file claim: \_\_\_\_\_

Deadline for filing claim: \_\_\_\_\_

7. Unemployment compensation insurance provided: Yes \_\_\_\_\_ No \_\_\_\_\_

8. Other benefits: \_\_\_\_\_ Charge(s) \_\_\_\_\_

9. For migrant workers who will be housed, the kind of housing available and cost, if any: \_\_\_\_\_

Charge(s) \_\_\_\_\_

10. List any strike, work stoppage, slowdown, or interruption of operation by employees at the place where the workers will be employed. *(If there are no strikes, etc., enter "None")*: \_\_\_\_\_

11. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. *(If there are no such arrangements, enter "None")*: \_\_\_\_\_

Name of Person(s) Providing This Information: \_\_\_\_\_

*Note:* The Department of Labor — Wage and Hour Division makes this form available in certain other languages to enable employers to satisfy the requirement that the terms and conditions of employment be disclosed in a language common to the workers. Contact the nearest office of the Wage and Hour Division to obtain such forms.

The Migrant and Seasonal Agricultural Worker Protection Act requires the disclosure in writing of the foregoing information to migrant and day-haul workers upon recruitment, and to seasonal workers other than day-haul workers upon request when an offer of employment is made. This optional form may be used to disclose the required information. Thereafter, any migrant or seasonal worker has the right to have, upon request, a written statement provided to him or her by the employer, of the information described above. This optional form may also be used for this purpose.

We estimate that it will take an average of 32 minutes to complete this collection of information, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. **Do NOT Send the Completed Form to This Office.**

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# Notice

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## Migrant and Seasonal Agricultural Worker Protection Act

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This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply. Further, farm labor contractors are required to register with the U.S. Department of Labor.

### Migrant and Seasonal Farmworkers Have These Rights

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment

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# Aviso

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## Ley de Protección de Trabajadores Migrantes y Temporales en la Agricultura

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Esta ley federal exige que los patrones agrícolas, las asociaciones agrícolas, los contratistas de mano de obra agrícola (o troqueros), y sus empleados cumplan con ciertas normas laborales cuando ocupan a los trabajadores migrantes y temporales en la agricultura, a menos que se apliquen excepciones específicas. Los contratistas, o troqueros, tienen además la obligación de registrarse con el Departamento del Trabajo.

### Los Trabajadores Migrantes y Temporales en la Agricultura Tienen los Derechos Siguietes

- Recibir detalles exactos sobre el salario y las condiciones de trabajo del empleo futuro
- Recibir estos datos por escrito en inglés, en español, o en otro idioma que sea apropiado
- Cumplimiento de todas las condiciones de trabajo como fueron presentadas cuando se les hizo la oferta de trabajo
- Al ser reclutados para un trabajo, ver una prueba de que el contratista se haya registrado con el Departamento del Trabajo

- To be paid wages when due
- To receive itemized, written statements of earnings for each pay period
- To purchase goods from the source of their choice
- To be transported in vehicles which are properly insured and operated by licensed drivers, and which meet federal and state safety standards
- For migrant farmworkers who are provided housing
  - \* To be housed in property which meets federal and state safety and health standards
  - \* To have the housing information presented to them in writing at the time of recruitment
  - \* To have posted in a conspicuous place at the housing site or presented to them a statement of the terms and conditions of occupancy, if any

Workers who believe their rights under the act have been violated may file complaints with the department's Wage and Hour Division or may file suit directly in federal district court. The law prohibits employers from discriminating against workers who file complaints, testify or in any way exercise their rights on their own behalf or on behalf of others. Complaints of such discrimination must be filed with the division within 180 days of the alleged event.

For further information, get in touch with the nearest office of the Wage and Hour Division, listed in most telephone directories under the U.S. Government, Department of Labor.

**U.S. Department of Labor**  
Employment Standards Administration  
Wage and Hour Division



The law requires employers to display this poster where employees can readily see it.

- Cobrar el salario en la fecha fijada
- Recibir cada día de pago un recibo indicando el salario y la razón de cualquier deducción
- Comprar mercancías al comerciante que ellos escojan
- Ser transportados en vehículos que tengan seguros adecuados y que hayan pasado las inspecciones federales y estatales de seguridad, y conducidos por choferes que tengan permisos de manejar
- Las garantías para los trabajadores migrantes a quienes se les proporcionen viviendas o alojamiento
  - \* Viviendas que satisfazcan los requisitos federales y estatales de seguridad y de sanidad
  - \* Al ser reclutados, recibir por escrito informes sobre las viviendas y su costo
  - \* Recibir de su patron un aviso escrito explicando las condiciones de ocupación de la vivienda, o que tal aviso esté colocado en un lugar visible de la vivienda

Los trabajadores que crean haber sufrido una violación de sus derechos pueden presentar sus quejas a la División de Salarios y Horas o pueden presentar una demanda directamente a los tribunales federales. La ley prohíbe cualquier discriminación o sanción hacia los trabajadores que presenten tales quejas, que hagan declaraciones, o que reclamen de cualquier manera sus derechos, sea a beneficio de sí mismos o a beneficio de otros. Hay que presentar las quejas de discriminación o de sanción a la división dentro de 180 días del suceso.

En caso de que necesite más información, comuníquense con la oficina de la División de Salarios y Horas más cercana, que aparece en la mayoría de los directorios telefónicos bajo el título U.S. Government, Department of Labor.

**Departamento del Trabajo de los EE. UU.**  
Administración de Normas de Empleo  
División de Salarios y Horas

La ley exige que los patrones fijen este aviso en un lugar donde puedan verlo fácilmente los trabajadores.

WH Publication 1376  
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