

Migrant & Seasonal Agricultural Workers Protection Act



Presented by the
U.S. Department of Labor
Wage & Hour Division



The Migrant & Seasonal Agricultural Workers Protection Act (MSPA)

MSPA Overview

- Coverage
- Joint Employment
- Registration
- Disclosure
- Records
- Wages
- Safe Transportation
- Safe Housing
- Exemptions

MSPA Coverage

- MSPA applies to:
 - Farm Labor Contractors (FLC)
 - Agricultural Employers (AGER)
 - Agricultural Associations (AGAS)
 - Housing Providers (HP)

MSPA Coverage - AGERs, and AGAS'

- AGERs, and AGAS' are subject to MSPA if they:
 - Furnish
 - Recruit
 - Employ
 - Solicit
 - Hire
 - Transport

MSPA Coverage - FLCs

- FLCs are subject to MSPA if they, for a fee or other consideration:
 - Furnish
 - Recruit
 - Employ
 - Solicit
 - Hire
 - Transport

MSPA Agricultural Workers

- Migrant Agricultural Worker
 - Required to be away overnight from permanent residence
- Seasonal Agricultural Worker
 - Not required to stay overnight away from permanent residence (local resident).

Joint Employment

- Employment of an individual by two or more employers (including AGERs, AGAS, & FLCs) who simultaneously benefit from the work of the employee.
- All joint employers are responsible for assuring workers are employed in compliance with all applicable laws, including MSPA.

Joint Employment Factors

- Which parties have the authority to direct, control or supervise the workers or work?
- Which parties can, directly or indirectly, hire, fire or modify employment conditions?
- Who determines pay rates and method of payment?

Joint Employment Factors

- How permanent is the relationship and how long has it been in existence?
- Are the workers doing repetitive or rote tasks taking little skill or training?
- To what extent are the activities performed by the workers integral to the overall business operation of the AGER?

Joint Employment Factors

- Who owns the property where the work is performed?
- Could FLC make payroll without the AGER?

Joint Employment Factors

- Who performs “typical” agricultural employer functions?
 - Preparing payroll
 - Issuing pay checks
 - Paying FICA and other taxes
 - Providing workers compensation
 - Providing housing/transportation
 - Providing tools, equipment for the job

Who Must Register

- Farm Labor Contractors (FLCs) and Farm Labor Contractor Employees (FLCE)
 - if they furnish, recruit, employ, solicit, hire, or transport for a fee or other valuable consideration
 - prior to performing work
- AGERs, AGAS' and employees of AGERs and AGAS' need not register

Registration Process

- Applicant must submit an Application for Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration (Form WH-530).
- There is no cost to applicant.
- Additional information is required before authorization will be issued for Driving, Housing, or Transporting.

Registration Offices

- Where to apply?
 - Wage and Hour Regional Offices
 - Philadelphia
 - Chicago
 - Dallas
 - San Francisco
 - Florida Department of Labor, Tallahassee
 - Some State Employment Service Offices

Registration Authorizations

HA - Housing Authorized

HU - Housing Unauthorized

TA - Transportation Authorized

TU - Transportation Unauthorized

DA - Driving Authorized

DU - Driving Unauthorized

Proof of Registration

- FLC / FLCE must carry the registration card at all times
- FLC / FLCE must present the card upon request
- All persons using the services of an FLC must ensure valid registration

Disclosure Required

- Every FLC, AGER, and AGAS must disclose information to migrant and seasonal workers.

Methods of Disclosure

- Employment conditions must be disclosed in the language of the worker and must be posted at the site of employment:
 - Migrant workers must receive written disclosure at time of recruitment
 - Seasonal workers must receive verbal disclosure at time of hire and must be provided written disclosure upon request.

Items to be Disclosed

- Rates of pay and other benefits
- Period of employment
- Place of employment
- Crops
- Worker's compensation
- Transportation arrangements
- Housing conditions

Payroll Records

- Information to be kept:
 - Name, permanent address and social security number
 - Method of payment
 - Number of hours and units (if piece rate)
 - Total pay period earnings
 - Deductions and purpose of sums withheld
 - Net pay

Wage Statement

- Every payday, the employer must provide wage statement that includes:
 - Complete employee wage and payroll information
 - Name and address of employer
 - EIN or Social Security number of employer

Wage Requirements

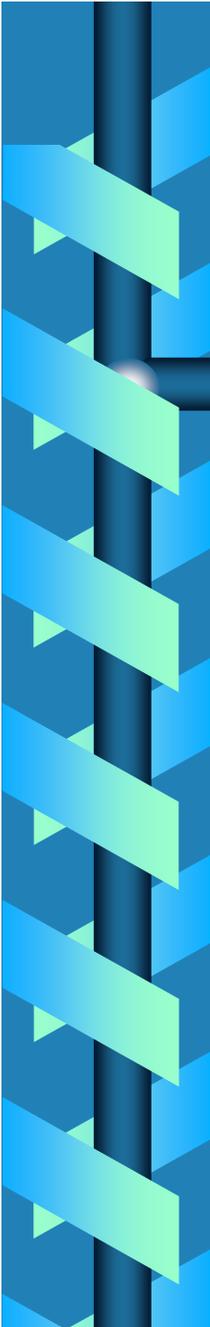
- Employers must:
 - Pay the rate disclosed, promised or contracted
 - Pay not less than minimum wage
 - Pay at least semi-monthly
 - Deposit and report taxes withheld

Deductions from Wages

- Employers may not take deductions:
 - Unless they are disclosed in writing to the workers
 - If the charges create a profit for the employer (even if disclosed in writing)
 - For cigarettes or alcohol (unless the employer is licensed to sell these)

MSPA Transportation

- When agricultural workers are transported, MSPA requires:
 - Safe and properly insured vehicles
 - Authorization to transport for FLC
 - Authorization to drive for FLC/FLCE
 - Separate authorization for driving and transporting



MSPA Transportation

Agricultural employers can be jointly responsible for transportation safety when they direct, request or cause the transportation.

Safe Vehicles Required

- U.S. Department of Labor standards apply to cars, vans and station wagons making intrastate trips less than 75 miles
- U.S. Department of Transportation (DOT) standards apply to all other vehicles
- Written proof of compliance with vehicle safety standards is required

Driver's License Required

- Every driver must be properly licensed in order to operate the vehicle used for transporting workers. To be properly licensed, the driver must have:
 - A valid, current driver's license
 - A commercial driver's license (CDL) if required for the vehicle
 - A doctor's certificate (WH-515)

Insurance Requirements

- All vehicles used for transporting agricultural workers must have proper insurance.
- The transporter must have either
 - Liability and property insurance
 - \$100,000 per seat
 - not to exceed \$5,000,000 per vehicle
 - or
 - Worker's compensation coverage in effect
 - with \$50,000 property damage

Carpooling

- The MSPA transportation requirements do not apply to bona fide carpooling arrangements.
- A bona fide carpooling situation CANNOT exist if the FLC, FLCE, AGER or AGAS directs, requests or participates in the arrangement of the carpool.

Common Problems

- No fixed seats on vehicles
- Insufficient insurance
- Improper or no license for driver
- Vehicle safety problems - broken windshield, brake lights not working, bald tires, etc.
- Overloaded vehicle

Housing Safety & Health

- MSPA housing standards only apply to migrant agricultural workers
- AGERs, FLCs, and AGAS' and housing providers are responsible for housing safety and health when they own or control the property

Housing Safety and Health

- Permit must be obtained and posted prior to occupancy
- Terms and conditions of the housing must be posted at the housing site
- Housing must meet safety and health standards

Housing Safety and Health

- Shelter
 - Protection from the elements
 - 50 square feet of sleeping space per occupant
 - Beds and storage for each occupant
 - Floors smooth and tight
 - Proper ventilation
 - Windows that open
 - All openings screened
 - Cooking facilities
 - Compliance with all state and local codes

Housing Safety and Health

- Site
 - Clear of debris & uncontrolled weeds on grounds
 - Adequate drainage
 - Adequate size to prevent overcrowding
- Water Supply
 - Safe drinking water
 - 35 gallons per person each day

Housing Safety and Health

- Toilet Facilities
 - Adequate for the capacity of the camp
 - Access without passing through sleeping rooms
 - Provided for each sex
 - Well ventilated
 - Lighted day and night
 - Adequate supply of toilet paper
 - Maintained in a sanitary condition

Housing Safety and Health

- Laundry, hand washing and bathing
 - One hand washing basin to 6 occupants
 - One shower head to 10 occupants
 - One laundry tub to 30 occupants
 - One slop sink
 - Floors non-slip, proper drainage
 - Hot and cold running water
 - Maintained in sanitary condition

Housing Safety and Health

- Lighting
 - At least one ceiling type light per room
 - One electrical outlet per room
 - In accordance with state and local codes
- Refuse Disposal
 - Fly-tight trash container
 - Garbage container kept clean
 - Emptied twice a week

Housing Safety and Health

- Kitchen and dining hall
 - Maintained according to state and local codes
 - Adequate to size of camp
 - Central mess facilities must be separate from sleeping quarters
 - Proper refrigeration of food
- Insect and rodent control
 - Prevent infestation of animals, insects, vermin or pests

Housing Safety and Health

- First Aid
 - Adequate first aid facilities
 - Readily accessible at all times
- Sewage disposal facilities
 - Connect to public sewers when available

Housing Safety and Health

- Communicable diseases must be reported to appropriate local health authorities:
 - Report any individual with communicable disease
 - Report any camp outbreak of illness

MSPA Exemptions

- Family Business Exemption
 - When the contracting activity is performed solely by the owner or another person who is an immediate family member of the owner
- Small Business Exemption
 - When the farm uses fewer than 500 man-days in every calendar quarter of the previous year
- Does NOT apply to FLCs.

MSPA Exemptions

- 25 mile / 13 weeks
 - Any person (FLC or AGER) who engages in contracting activities within a 25 mile intrastate radius of his permanent residence and for not more than 13 weeks per year
- Custom Poultry
 - Non-migrant poultry workers employed in operations involving catching, breeding, debeaking, desexing or health services

Compliance Assistance Materials

- Migrant and Seasonal Agricultural Workers Protection Act
- 29 C.F.R. Part 500
- Fact Sheet No. 035 Joint Employment and Independent Contractors Under the Migrant and Seasonal Agricultural Worker Protection Act
- Fact Sheet 040 Federal Child Labor Laws in Farm Jobs

ADDITIONAL INFORMATION

- Visit the WHD homepage at:
www.wagehour.dol.gov
- Call the WHD toll-free information and helpline at **1-866-487-9243**
- Use the DOL interactive advisor system - *ELAWS* (*E*mployment *L*aws *A*ssistance for *W*orkers and *S*mall Businesses) at:
www.dol.gov/elaws
- Call or visit the nearest Wage and Hour Division Office

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