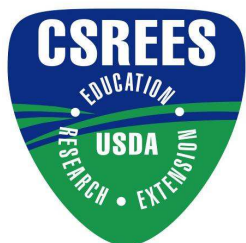




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April 2008



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# Immigration and Labor Handbook

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## TABLE OF CONTENTS

INTRODUCTION .....	1
A BRIEF HISTORY AND OVERVIEW OF US IMMIGRATION .....	2
GOVERNMENT AGENCIES PRINCIPALLY RESPONSIBLE FOR IMMIGRATION.....	3
A. Immigration Administration and Enforcement.....	3
1. Directorate of Border and Transportation Security (BTS) .....	3
2. United States Citizenship and Immigration Service (USCIS) .....	3
B. Additional Federal Agencies Having a Significant Role in the Immigration Process .....	4
1. Department of Labor (DOL).....	4
2. Department of State (DOS).....	4
3. Department of Justice (DOJ) .....	4
IMMIGRATION REFORM AND CONTROL ACT OF 1986.....	5
A. Who must comply? .....	5
1. DOs for complying with the IRCA.....	5
2. DO NOTs for complying with the IRCA.....	6
B. Documentation Process .....	6
C. Responsible Agencies .....	7
SOCIAL SECURITY NO-MATCH LETTERS.....	8
A. Introduction.....	8
B. Purpose.....	8
C. What Must an Employer Do?.....	8
D. E-Verify .....	9
E. Responsible Agencies.....	10
THE GREEN CARD PROCESS.....	11
A. Introduction.....	11
B. The Employment-Based Preference Categories.....	11
C. Steps in the Permanent Residence Process .....	12
1. Labor Certification Application.....	12
2. Petition for Immigration Worker .....	12
3. Adjustment of Status.....	13
4. Immigrant Visa Consular Processing.....	13
D. Priority Dates .....	13
E. Employment-Based Immigration without Labor Certification .....	13
1. EB1: Extraordinary Ability.....	13
2. EB1: Outstanding Professors and Researchers .....	14
3. EB1: Certain Multinational Executives and Managers.....	15
4. EB2: Request for National Interest Waiver of the Labor Certification Requirement.....	15
NONIMMIGRANT VISAS.....	16
A. Introduction.....	16
B. Non-immigrant Visa Processing .....	16

C. Admission at the Port Of Entry .....	16
D. Nonimmigrant Visitors and the Us-Visit Entry/Exit Program.....	17
E. Extension or Change of Status after Admission.....	17
F. Applications for Lawful Permanent Residence by Non-immigrants.....	17
G. Nonimmigrant Classifications for Business Purposes .....	17
H-2A PROGRAM.....	18
TEMPORARY ALIEN AGRICULTURAL WORKERS .....	18
A. Who May Apply?.....	18
B. Where to Apply? .....	18
C. What To Submit? .....	18
D. Conditions to Be Satisfied.....	18
E. Responsible Agencies.....	20
MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT – FEDERAL .....	21
A. Who Must Comply?.....	21
B. Who Is Covered?.....	21
C. Farm Labor Contractors Must:.....	22
D. Provisions for Seasonal Workers .....	23
E. Responsible Agency .....	24
MIGRANT LABOR HOUSING FACILITY ACT .....	25
A. Objective .....	25
B. Coverage.....	25
C. Employer Provisions .....	25
D. Employee Provisions.....	25
E. Responsible Agency .....	26
FARM LABOR CAMPS – TEMPORARY – FEDERAL .....	27
A. Introduction.....	27
B. Migrant Labor Housing Regulations.....	27
C. Who Must Comply.....	27
D. Inspections .....	27
E. Related Information.....	28
F. Responsible Agency .....	29
STANDARDS FOR SANITATION AT TEMPORARY PLACES OF EMPLOYMENT.....	30
A. Objective .....	30
B. Who must comply?.....	30
C. Penalties .....	31
D. Responsible Agency.....	31
EMPLOYMENT OF MINORS – FEDERAL.....	32
A. Coverage .....	32
B. Hazardous Occupations in Agriculture .....	33

C. Exemptions from Hazardous Occupations in Agriculture .....	33
D. Responsible Agency.....	35
EMPLOYMENT OF MINORS -- TEXAS .....	36
A. Responsible Agency.....	36
WORK OPPORTUNITY TAX CREDIT (WOTC) .....	37
A. Introduction.....	37
B. Who May Qualify?.....	37
C. Certification of Employee Eligibility.....	39
D. Limitations .....	39
E. Responsible Agency .....	40
FAIR LABOR STANDARDS ACT (MINIMUM WAGE) - FEDERAL.....	41
A. Who must comply? .....	41
B. Overtime Provision .....	42
C. Youth “Opportunity” Wage .....	42
D. Responsible Agency.....	44
TEXAS MINIMUM WAGE LAW .....	45
A. Introduction.....	45
B. Responsible agency.....	45
TEXAS PAYDAY LAW .....	46
A. Who Must Comply?.....	46
B. Related Information.....	46
C. Responsible Agency.....	47
FEDERAL INCOME TAX WITHHOLDING FOR FARM WORKERS .....	48
A. Objectives.....	48
B. Coverage.....	48
C. Employer Provisions .....	48
1. Withholding .....	48
2. Employment Taxes .....	48
3. Commodity Wages.....	49
4. Family Members .....	49
D. Exemptions.....	49
1. Share Farmers and Alien Workers.....	49
2. Social Security and Medicare Taxes, Tests, and Exceptions.....	49
E. Related Information.....	49
F. Responsible Agency .....	50
SOCIAL SECURITY – FEDERAL .....	51
A. Who Must Comply?.....	51
B. Summary of Deposit Rules for Social Security Taxes and Withheld Income Tax .....	51
1. Monthly Depositor .....	51

2. Semi-Weekly Wednesday/Friday Depositor.....	52
C. Wages Not Subject To Tax .....	52
D. Responsible Agencies .....	53
UNEMPLOYMENT COMPENSATION.....	54
A. Who Must Comply? .....	54
B. Responsible Employer.....	54
C. Farm Related Exempt Employment .....	54
D. Employee Eligibility .....	56
1. Weekly Benefits.....	56
2. Employee Claims .....	56
E. Responsible Agency .....	56
TEXAS WORKERS COMPENSATION LAW.....	57
A. Who Must Comply.....	57
B. Exemptions.....	57
1. Migrant Workers.....	57
2. Seasonal Workers.....	57
3. All Other Farm and Ranch Laborers.....	58
C. Rates .....	58
D. General Information for Employers Who Choose Not To Have Coverage.....	58
E. General Information for Employers Who Choose To Provide Insurance .....	59
F. Responsible Agency .....	59
ADVANCED EARNED INCOME CREDIT – FEDERAL.....	60
A. Who Must Comply? .....	60
B. Exemptions.....	60
C. Employee Eligibility .....	61
D. Additional Information .....	61
E. Responsible Agencies.....	62
WORKER PROTECTION STANDARDS ACT .....	63
A. Introduction.....	63
B. Duties of All Employers.....	63
1. Information at a Central Location.....	63
2. Decontamination Sites .....	64
3. Emergency Assistance .....	64
4. Pesticide Safety Training .....	64
5. Information Exchange.....	65
6. Additional Duties of Worker Employers .....	65
7. Additional Duties of Handler Employers .....	66
C. Responsible Agency .....	67
AGRICULTURAL HAZARD COMMUNICATION ACT OF TEXAS (Right-to-Know).....	68
A. Who Must Comply? .....	68
B. Responsibilities .....	68



1. Crop Sheets .....	69
2. Workplace Chemical List .....	69
3. Material Safety Data Sheets.....	70
4. Emergency Reporting Requirement.....	70
C. Agricultural Workers' Rights .....	70
1. Designated Representatives .....	70
2. Legal Ramifications .....	70
D. Responsible Agency.....	71
OCCUPATIONAL SAFETY AND HEALTH ACT – (OSHA) – FEDERAL .....	72
A. Objective .....	72
B. Who Must Comply? .....	72
C. Training .....	73
1. General:.....	73
2. Temporary Labor Camps .....	73
3. Tractor Roll-Over Protective Structures (ROPS) .....	73
4. Guarding the Farm Equipment.....	74
D. Inspections .....	74
E. Responsible Agency .....	75
MOTOR CARRIER REGULATIONS – FEDERAL.....	76
A. Objective .....	76
B. Drivers of Farm Trucks Exemptions.....	76
1. General Requirements.....	76
2. Related Information .....	76
C. Transportation of Migrant Farm Workers .....	77
D. Operator Qualifications.....	77
E. Operator Regulations.....	77
F. Vehicle Specifications .....	78
G. Related Information .....	79
H. Responsible Agency.....	79
MOTOR CARRIER REGULATIONS – TEXAS.....	80
A. Coverage .....	80
B. Provisions.....	80
C. Responsible Agency.....	80
EQUAL EMPLOYMENT LEGISLATION– FEDERAL.....	81
A. Introduction.....	81
B. Civil Rights Act of 1964 .....	81
C. Equal Pay Act Of 1963.....	82
1. Related Information .....	82
D. Age Discrimination in Employment Act of 1967 .....	82
E. Civil Rights Acts of 1991 .....	83
F. Americans with Disabilities Act.....	83
1. Remedies.....	83

2. Enforcement .....	83
3. Related Information .....	84
G. Family and Medical Leave Act of 1993.....	84
1. Coverage .....	84
2. Reasons for Taking Leave .....	84
3. Advance Notice and Medical Certification.....	84
4. Job Benefits and Protection .....	85
5. Unlawful Acts by Employers .....	85
6. Enforcement.....	85
H. Sexual Harassment.....	85
1. Employer Liability for Acts of Supervisors.....	86
2. Handling Employee Complaints .....	86
I. Responsible Agency .....	86

## **INTRODUCTION**

The purpose of this handbook is to provide employers with a summary of many immigration and labor regulations and laws associated to agricultural labor. As you browse each section, you will find summaries for important laws related to agriculture with details on compliance, regulations, and the agencies responsible to administer the regulations. For more detailed information you can contact those agencies directly by obtaining their contact information and in most cases their world wide web (internet) addresses from each section of the handbook.

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## **A BRIEF HISTORY AND OVERVIEW OF US IMMIGRATION**

America's rich immigration history has been a central source of the nation's achievement and economic growth. Foreign nationals striving for better lives have looked to our shores for opportunity and have, in turn, helped build our nation's economic and technological progress.

For the first hundred years, immigration laws were virtually unrestrictive, but as economic, social, and cultural conditions changed, so did immigration law. In the Nineteenth Century, Europe was experiencing the end of its Industrial Revolution, and foreign nationals who faced depression, persecution, and war at home were lured by the flourishing labor markets in America. This large pool of competing labor caused unrest in the domestic labor force and Congress responded by enacting qualitative restrictions on immigration.

By 1905, as the number of new immigrants grew to exceed one million annually, the Dillingham Commission was created to make a full inquiry and examination of immigration to the US. The Commission's findings were partially embodied in the Immigration Act of 1917, which reflected the Congressional opposition to unrestricted immigration and the nation's increased reluctance towards unregulated immigration. Numerical quotas were implemented establishing the centrality of national origin in the imposition of strict annual limitations on immigration.

The Immigration and Nationality Act eliminated race as a complete barrier to immigration and established the foundation of current employment-based preference system. It also gave new attention to the importance of family-unit. By the 1970's the national origin quota system was eliminated, and an annual worldwide quota of 290,000 visas was established.

To protect the US labor markets from foreign competition, foreign nationals seeking work in US had to obtain a "labor certification" stating that US workers were unavailable to fill those particular positions.

As the Twentieth Century ended, immigration law came to strongly reflect the US political climate. The Antiterrorism and Effective Death Penalty Act of 1996 aimed to control domestic and international terrorism by expanding deportation grounds for foreign nationals with criminal convictions and strengthening border controls. Again, the attacks of September 11, 2001 impacted the issuance of visas at US consulates abroad.

## **GOVERNMENT AGENCIES PRINCIPALLY RESPONSIBLE FOR IMMIGRATION**

### **A. Immigration Administration and Enforcement.**

Like immigration law itself, principal authorities for its enforcement shifted from one organization of the government to another. At its inception immigration laws were handled by state boards but later the function was transferred to the newly-created Department of Labor.

Before the U.S. entry into World War II, immigration was recognized as a matter of national security. The Immigration and Naturalization Service (INS) was then transferred from the Department of Labor to the Department of Justice and remained until 2003.

The Homeland Security Act of 2002 merged and reorganized the functions of 22 agencies, the INS ceased to exist and its functions were transferred to the Department of Homeland Security (DHS). The transfer included separation of conflicting functions previously performed by the INS into the following agencies within DHS.

#### *1. Directorate of Border and Transportation Security (BTS)*

BTS is responsible for preventing the entry of terrorists into the US, securing its borders, immigration enforcement formerly performed by INS, and establishing and administering rules governing the granting of visas or others forms of permission to entry into the U.S. The Bureau of Border Security was established under BTS to perform these functions, but the structure was reconfigured and mission responsibilities were divided into two enforcement bureaus:

##### *a. United States Customs and Border Protection (CBP)*

CBP is made up of former INS inspectors, agents of US customs, Agricultural Quarantine Inspections, and Border Patrol. It focuses on the movement of people and goods across borders ensuring inspection procedures and border enforcement.

##### *b. United States Immigration and Customs Enforcement (ICE)*

A significant function of ICE is the detection and removal of unauthorized foreign nationals. It includes former INS, US customs, and the Federal Protective Service officials.

#### *2. United States Citizenship and Immigration Service (USCIS)*

On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service (INS) transitioned into the Department of Homeland Security (DHS) as the US Citizenship and Immigration Services (USCIS). USCIS is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. These functions include:

- Adjudication of immigrant visa petitions;
- Adjudication of naturalization petitions;
- Adjudication of asylum and refugee applications;
- Adjudications performed at the service centers, and
- All other adjudications performed by the INS.

## **B. Additional Federal Agencies Having a Significant Role in the Immigration Process**

The Department of Labor, the Department of State, and the Department of Justice play a significant supporting role in the administration of US immigration laws.

### *1. Department of Labor (DOL)*

The DOL is in charge of the administration and enforcement of federal labor laws and enforcing and administering provisions of the Immigration and Nationality Act. The DOL's Division of Foreign Labor Certification ensures that the admission of foreign workers to the US will not adversely affect the job opportunities, wages and working conditions of US workers.

### *2. Department of State (DOS)*

The DOS has authority over consulates and embassies abroad through its Bureau of Consular Affairs. The HSA removed and revised some of duties held by DOS and transferred ultimate visa issuance responsibility to the DHS. The DOS and DHS work together to grant or deny applications for immigrant and nonimmigrant visas at US consular posts. The DOS processes visa applications and the Secretary of State retains the authority to direct a consular officer to deny a visa to a foreign national in the interest of national security. The DHS is ultimately responsible for assuring that security concerns are sufficiently addressed, therefore consular officers receive visa issuance training from DHS.

### *3. Department of Justice (DOJ)*

Within the DOJ, the Executive Office of Immigration Review (EOIR) administers and interprets federal immigration laws and regulations through immigration court proceedings, appellate reviews, and administrative hearings in individual cases. EOIR has three main components: the Board of Immigration Appeals (BIA), which hears appeals of decisions made by Immigration Judges, DHS District Directors, or other immigration officials; the Office of Chief Immigration Judge, which oversees all Immigration Courts and their proceedings; and the Office of the Chief Administrative Hearing Officer, which adjudicates cases concerning employer sanctions, document fraud, and immigration-related employment discrimination.

## IMMIGRATION REFORM AND CONTROL ACT OF 1986

In November 1986, Congress passed the Immigration Reform and Control Act (IRCA). The law requires employers to document that their workers have a legal right to work in this country. In practice, the documentation requirement is satisfied by maintaining properly completed Immigration and Naturalization Service (INS) I-9 Forms for all employees. The employer and employee both must complete a portion of the form.

During the first five years, the INS outreach efforts focused on completing the I-9 Forms and on imposing sanctions if the records were not correctly maintained. However, an important part of IRCA is the anti-discrimination provision, which provided the assurance that employers will not discriminate against foreign-looking or foreign-sounding applicants.

Since the passage of IRCA, studies have shown that discrimination based on national origin or citizenship status continues at an alarming rate. Researchers believe this is due to employers' fear of the documentation process, i.e., lack of knowledge about specific details of IRCA.

Because of amendments to the original IRCA, the I-9 Form has been revised. The revision is partly directed at ensuring that employers comply with anti-discrimination provisions and addresses behavior that could be construed as discriminatory.

### **A. Who must comply?**

All persons or businesses who have one or more employees must comply with the law, except for the following exceptions:

*You DO NOT need to complete a Form I-9 for:*

- 1) Persons hired before November 6, 1986, who have continued their employment. However, an employee who was on the payroll prior to November 6, 1986, and whose employment was terminated, is subject to the Act upon re-employment.
- 2) Persons you employ for casual domestic work in a private home on a sporadic, irregular or intermittent basis.
- 3) Persons who are independent contractors.
- 4) Persons who provide labor to you and are employed by a contractor providing contract services (e.g., employee leasing).

NOTE: You cannot contract for the labor of an alien if you know the alien is not authorized to work in the United States.

The following guidelines are offered to aid in complying with the anti-discrimination provisions.

#### *1. DOs for complying with the IRCA*

DO hire applicants before requesting they show work authorization and identity document(s). If you require a completed I-9 as part of the application, you should ensure that all applicants complete I-9 forms at that time.

DO allow employees to choose which document they wish to use for establishing their employment eligibility and identity. Never specify a particular document or demand to see immigration papers. Do not request more documents if those provided meet the requirements of IRCA.

DO verify that you have seen the documents offered by the employee. You need not photocopy documents. If one looks genuine and the name corresponds to the applicant, accept it.

DO keep all I-9 Forms in a separate file apart from personnel files.

## *2. DO NOTs for complying with the IRCA*

DO NOT treat applicants differently because they look or sound like foreigners. From initial contact to termination, employees should be judged on their qualifications for the job.

DO NOT require specific documents for verification. Allow applicants to choose documents that verify work authorization and identity. A policy of accepting only a specific document is illegal.

DO NOT refuse to accept valid work authorization with a future expiration date. An expiration date does not imply the applicant will be deported after that time. Many immigrants are simply awaiting issuance of resident alien cards or extension of work authorization.

DO NOT refuse to accept valid work authorization because you are unfamiliar with the type of document. There are numerous types of documents that are acceptable.

DO NOT have a “U.S. citizens only” hiring policy unless it is required by law.

DO NOT demand that applicants speak only English on the job.

## **B. Documentation Process**

All employees must show their employer proof of identity and employment authorization within 72 hours of being hired. If employment is for less than 72 hours, then the verification must be established by the end of the first day. Verification of the presentation of acceptable documents is attested to by completing an I-9 Form. A copy of an I-9 Form and a list of acceptable documents that employees may submit to establish identity and the legal right to work in the can be downloaded from the USCIS website at <http://www.uscis.gov/i-9> in both English and Spanish versions. The employer must complete and sign the I-9 Form. The employee must also sign the form.

This form is to be retained after 3 years after the date of employment or 1 year after employment is terminated, whichever period is longer.

Copies of documents are not required by law. If you choose to make copies, be sure to make copies of all employees’ documents and maintain these along with the corresponding I-9 Forms.



What all employers should know:

- 1) Agents of the Immigration and Naturalization Service and the Department of Labor are allowed under this law to arrive unannounced and ask to examine I-9 Forms.
- 2) Record maintenance violations carry fines between \$100 and \$1,000 per employee whose I-9 Form is not complete, retained or presented.
- 3) For discriminatory practices, hiring and continuing to hire unauthorized employees, the fines are:
  - First violation: \$250 to \$2,000 per employee
  - Second violation: \$2,000 to \$5,000 per employee
  - Subsequent violations: \$3,000 to \$10,000 per employee
- 4) Remedies for an employee who has been discriminated against may include hiring, reinstatement and back pay.
- 5) Those found engaging in a continuing practice of hiring unauthorized employees may be fined \$3,000 per employee and/or imprisoned for 6 months.
- 6) Those found engaging in fraud or making false statements about visas, permits and identification documents may be imprisoned up to 5 years and fined.

### **C. Responsible Agencies**

US Citizenship and Immigration Services  
District Office  
8940 Fourwinds  
San Antonio, Texas 78239  
Customer Service Phone number: 1-800-375-5283.

To obtain additional information you can visit USCIS website at <http://www.uscis.gov/> and click on the “For Employers” tab on the left hand side.

U.S. Equal Employment Opportunity Commission  
1801 L Street, N.W.  
Washington, D.C. 20507  
<http://www.eeoc.gov/>  
Public Information Hotline  
1-800-669-4000  
(English & Spanish)

## **SOCIAL SECURITY NO-MATCH LETTERS**

### **A. Introduction**

A No-Match letter is a letter issued by the Social Security Administration (SSA) that notifies of a “no-match” of the names or Social Security Numbers (SSNs) listed on an employer’s form W-2 and the SSA ‘s records. SSA sends three types of no match letters:

1. A letter sent directly to workers at their home address;
2. A letter sent to an employer about an individual worker when SSA does not have the worker’s correct address; and
3. A letter to an employer about multiple employees when at least 10 employees during the year, or one half of one percent (1 out of 200) of the employer’s workforce, are the subject of a no-match.

In June 2006, the Department of Homeland Security (DHS) issued a regulation requiring employers to take certain actions with respect to employment eligibility upon receipt of a Social Security No-Match letter. After providing a period for comments, a final rule was issued on August, 2007. This proposed rule was challenged in a federal court prior to it taking place in September 2007. A new proposed rule, with very little changes, addressing some procedural questions was released in March 2008. For additional information on the status of this law, please visit the Department of Homeland Security website.

Employers who fail to comply with the new rule could be considered as knowingly hiring an illegal worker and could face fines of up to \$10,000 per worker and incident.

### **B. Purpose**

The purpose of the no-match letter is to gather information to enable SSA to reconcile inconsistencies between its records and the information provided by the employer on the W-2. It will also alert workers that they are not receiving proper credit for their earnings, which can affect future retirement or disability benefits administered by SSA.

There are several reasons why information submitted for a worker does not match SSA records; the most common causes include:

1. A typographical or clerical error was made on a form W-4 or W-2.
2. The worker’s name has changed due to marriage or divorce.
3. Information provided on the W-2 or W-4 is incomplete.
4. Individuals present false social security numbers or use another person’s social security number.

### **C. What Must an Employer Do?**

The rule does not create any additional obligations for employers. It outlines the steps an employer may take in response to receiving a letter from the Social Security Administration indicating that an employee’s name does not match the social security number on file. If employers follow the guidelines in the No-Match rule, comprising various actions to rectify the

no-match within 90 days of receiving the letter, they will have a safe harbor for the no-match letter being used against them in an enforcement action.

Upon receiving a No-Match Letter from SSA, an employer must:

- The employer must check its records within 30 days of the receipt of the letter to determine whether the discrepancy is the result of the employer's typographical, transcription, or similar clerical error. If it is, the employer should correct the records; inform the relevant agencies; verify that the corrected information matches agency records; and make a record of the manner, date, and time of the verification to be kept with the employee's I-9 form.
- If the discrepancy is not the result of the employer's error, the employer must ask the employee to confirm that the employer's records are correct. If the employee is able to correct the records, the employer should make the correction; inform the relevant agencies; verify that the corrected information matches agency records; and make a record of the manner, date, and time of the verification to be kept with the employee's I-9.
- If the discrepancy cannot be resolved, the employer must ask the employee to correct the situation by bringing the necessary documents to the appropriate agency in order to resolve the discrepancy. The discrepancy will only be resolved upon the employer's verification with the SSA that the employee's name matches the social security number in SSA's records or that DHS verifies that their records indicate that the immigration status or employment authorization document was assigned to that employee. The employer should make a record of the manner, date, and time of the verification to be kept with the employee's I-9.

The discrepancy must be resolved within 90 days.

- If the discrepancy cannot be resolved within 90 days, the employer must complete a new I-9 form for the employee by the 93rd day. In completing this new I-9, the employer may not accept any document containing the social security number that could not be reconciled, nor may the employer accept any DHS-issued document that was in question. The employer may not accept any identity document unless it has a photograph.
- If the discrepancy cannot be resolved, and the employer is unable to verify the identity and employment authorization of the employee on a new I-9 using different documents, the employer must terminate the employee. Failure to terminate at this point may well lead to a finding by DHS that the employer had constructive knowledge of the employee's lack of employment authorization.

#### **D. E-Verify**

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which required the SSA and the Immigrations and Naturalization Services (INS), now USCIS to initiate employment verification pilot programs. There are two programs that address this mandate: the Systematic Alien Verification for Entitlements (SAVE) program for government benefits and the Employment Eligibility Verification/Basic pilot program, recently renamed "E-Verify" for employment authorization for all newly hired employees.

E-Verify is a voluntary free internet-based system operated by USCIS in partnership with SSA. E-Verify electronically compares information contained on the Employment Eligibility Verification form I-9 with records contained in SSA and the DHS databases to help employers verify identity and employment eligibility of newly hired employees.

An employer who elects to participate in E-Verify is required to post the notice provided by DHS indicating your company's participation in the program, as well as the antidiscrimination notice issued by the Office of Special Council for Immigration related unfair employment practices, in an area that is clearly visible to prospective employees. In order to prevent discrimination employers must follow these E-Verify rules:

- Employers may not use the system to pre-screen applicants for employment
- The employee must be newly hired and the form I-9 completed before the employer initiates a verification query
- Employers may not verify selectively
- Employers must perform a verification query within 3 business days of hiring a new employee
- Employers may accept only those List B identity documents that contain a photograph
- Employers may not use the system to re-verify employment
- Employers must provide employees with an opportunity to challenge tentative non-confirmation responses
- Employers may not verify employees hired before the company signed the E-Verify agreement with DHS and SSA

If you need additional information, or help operating E-Verify please contact the Verification Division of the US Department of Homeland Security at (888) 464-4218 for policy or procedural questions or via email at [Employer.Pilots@dhs.gov](mailto:Employer.Pilots@dhs.gov).

## **E. Responsible Agencies**

Department of Homeland Security  
U.S. Immigration and Customs Enforcement,  
425 I Street, NW., Room 1000; division 3  
Washington, DC 20536.  
Tel. (202) 514-2844  
<http://www.ice.gov/>

Social Security Administration  
Office of Public Inquiries  
Windsor Park Building  
6401 Security Blvd.  
Baltimore, MD 21235  
Tel. 1-800-772-1213  
<http://www.ssa.gov/>

## THE GREEN CARD PROCESS

### A. Introduction

A lawful permanent resident referred to as a green card holder is a non-citizen who intends to permanently reside in the US and has obtained the authority to do so. This involves 2 basic steps: first the foreign national must establish a basis for the status; second the foreign national must show his/her eligibility.

A foreign national may seek permanent residency under a number of categories:

- Family-Based Immigration – Petition by a U.S citizen or lawful permanent resident for certain relatives;
- Employment-Based Immigration - Petition by a sponsoring employer, certain employees of international organizations or due to a major investment in the US;
- Diversity Lottery program – Application by a foreign national for enrollment in a computer-generated random lottery drawing for permanent residence. This program is only available in certain countries.

The foreign national may apply for permanent residence once the basis for it is established. To do so he/she must not be barred in the categories of criminal, health-related, financial, national security, public interest grounds and prior immigration violations.

This guide provides information only on employment-based immigration.

### B. The Employment-Based Preference Categories

The Immigration Act defines five preference categories for employment-based (EB) immigration, these are:

**First Preference (EB1):** foreign nationals with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers.

**Second Preference (EB2):** foreign nationals holding advanced degrees and foreign nationals who with their exceptional ability in arts, sciences or business will benefit the national economy, cultural, or educational interests or welfare of the U.S.

**Third Preference (EB3):** foreign nationals filling skilled worker positions requiring at least two years of experience; professional positions requiring at least a Bachelor's Degree; and unskilled workers,

**Fourth Preference (EB4):** “special immigrants” mainly certain religious workers and employees of international organizations.

**Fifth Preference (EB5):** foreign nationals who invests \$ 1,000,000 (or in some cases \$ 500,000) in a new commercial enterprise that employs ten U.S citizens or authorized immigrants working full-time and engaging in day to day business.

Employers typically use EB1, EB2, and EB3 preference categories to sponsor foreign national employees for permanent residence, the EB4 and EB5 categories do not require employer sponsorship.

## C. Steps in the Permanent Residence Process

The steps required in an employer-sponsored permanent residence process depend on the position offered/held by the foreign national. The process entails three steps – labor certification, petition for the immigrant worker and application for permanent residence status.

In some cases the initial labor certification can be avoided. Eliminating this process is important to an employer because it is time consuming and costly. Therefore, an employer seeking a green card for an employee should assess whether the employee can fit in one of the EB categories shown below:

	<b>Category</b>	<b>Labor Certification</b>
EB1	Extraordinary Ability	Not required
EB1	Outstanding Professors and Researchers	Not required
EB1	Multinational Executives and Managers	Not required
EB2	Advanced Degree Professionals	Required, unless National Interest Waiver requested
EB2	Exceptional Ability	Required, unless National Interest Waiver requested
EB3	Professionals	Required
EB3	Skilled Workers	Required
EB3	Other/Lesser skilled workers	Required
Other	Schedule A: Group 1 (medical personnel, such as physical therapists and nurses)	Not required
Other	Schedule A: Group 2 ("exceptional ability" in science or arts Except for university teachers)	Not required
Other	Special Handling Cases: College/university teachers, Professional athletes, etc.	Required (Special Handling)

### 1. Labor Certification Application

The Labor certification process formally begins by filing the application with DOL, it specifies the position offered to the foreign national, terms of employment, work location, remuneration and work schedule. The DOL is charged with certifying that there are not sufficient US workers available to fill the position. The DOL must also determine that employment of foreign national will not adversely affect the wages and working conditions of similarly employed US workers. The labor certification is complete once the DOL certification is done.

### 2. Petition for Immigration Worker

This petition (Form I-140) is filed with USCIS by a sponsoring employer for its employee to obtain permanent resident status. It is a statement from the employer stating his intention to employ the foreign national when permanent residence is granted it must also give evidence of the employee's qualifications for the position. Once the petition is approved by the USCIS the

process may be completed by one of two methods for the final step: Adjustment of Status or Immigrant Visa Consular Processing.

### *3. Adjustment of Status*

The final step may be completed by giving an application to the USCIS requesting adjustment of immigration status from nonimmigrant to permanent resident. This application must be accompanied by evidence of eligibility. In some circumstances the employer's Petition for Immigrant Worker must be approved before adjustment is granted. Adjustment applicants are eligible for interim work.

### *4. Immigrant Visa Consular Processing*

Alternatively the final step may be completed at a US consular post in the home country or country of last residence. The application must be accompanied with evidence of eligibility. The employer's Petition for Immigrant Worker must be approved and the applicant must personally appear for a final interview at the US Consulate and maintain nonimmigrant status throughout the process.

## **D. Priority Dates**

Immigration law limits the number of green cards that may be issued each year in family and employment categories. Allocation is based on preference category and place of birth. Every country is given the same maximum percentage of allocation of the worldwide quota; therefore backlogs may develop when more foreign nationals apply for a green card in a category than are available for their country of birth. Therefore those from countries with larger populations may have longer wait times.

The individuals place in line for a green card is determined by his/her priority date which is assigned with the first step of the permanent residence process whether it be labor certification application or Petition for Immigrant Worker, is filed with the DOL or USCIS. The priority date must be current that is the green card must be available for the foreign national to complete the permanent residence process.

## **E. Employment-Based Immigration without Labor Certification**

The employment based categories discussed in this section do not require a labor certification by the DOL because the Congress believed that the interests of the US are served by admitting superlative foreign talent. The categories are:

### *1. EB1: Extraordinary Ability*

These individuals are those who possess a "level of expertise indicating that the individual is one of a small percentage who has risen to the very top of the field of endeavor." Employers petitioning for foreign nationals with extraordinary ability must present evidence that their achievements have been recognized in their field of expertise and that they have received national and international acclaim in their field. This category is restricted for a select group of foreign nationals.

The employer must also be able to demonstrate that the foreign national's contributions in the field will "substantially benefit" the US in the future. Unlike the other EB1 categories a foreign

national who qualifies as an individual of extraordinary ability may self petition and does not require sponsorship by an employer.

The petitioner must submit evidence of extraordinary ability by demonstrating either receipt of a major international prize or at least three of the following:

- Documentation of receipt of lesser-known prizes and awards for excellence in the field;
- Documentation of membership in associations which require outstanding achievements of their members;
- Published material written by others about the foreign national's work;
- Evidence of participation as a judge of the work of others in the same or an allied field;
- Evidence of original scientific, scholarly, artistic, athletic, or business-related contributions to the field;
- Evidence of authorship of books or articles in major publications or other media;
- Evidence of work been displayed at artistic exhibitions or showcases;
- Evidence of performance in a leading or critical role for organizations with a distinguished reputation;
- Evidence of commanding a high salary compared to others in the field; or
- Evidence of commercial success in performance arts.

The USCIS will assess the value and quality of the evidence submitted and makes a determination of the individual's qualifications based on whether the evidence shows extraordinary skills. International acclaim is not necessary; rather a record of national achievements may satisfy the requirements.

## *2. EB1: Outstanding Professors and Researchers*

In addition to outstanding ability, this category requires professors and researchers to have at least three years of experience in teaching or research in their field and have received international recognition for their work.

To be eligible for classification as an outstanding professor or researcher, the foreign national must be sponsored by an employer offering one of the following positions:

- 1) A permanent, tenured or tenure-track teaching position with a U.S institution of higher learning
- 2) A research position with a US institution of higher learning
- 3) A research position with a private employer that employs at least three full-time researchers and has documented achievements in an academic field.

The employment offered must be for an indefinite period of time.

To show that a foreign national is recognized internationally as an outstanding the foreign national must submit evidence of meeting at least two of the following six criteria:

- Documentation of major prizes or awards of outstanding achievements;
- Documentation of membership in associations which require outstanding achievements of their members;
- Published material written by others about the foreign national's work;
- Evidence of participation as a judge of the work of others in the same or an allied field;
- Evidence of original scientific, or scholarly, research contributions to the field; or
- Evidence of authorship of books or articles in scholarly journals with international circulation in the field.



### *3. EB1: Certain Multinational Executives and Managers*

The requirements for classification in this category are as follows:

- 1) Employment abroad with the same employer, or an affiliate;
- 2) For one year out of the previous three years, or the three years prior to the individual's transfer to the US;
- 3) In an executive or managerial capacity; and
- 4) An offer of employment in the U.S in an executive or managerial position.

The terms “manager” and “executive” are defined in the immigration regulations. The definition of manager includes those whose duties involve either the management of a function of the organization or the supervision of professional employees. Executive is defined as one who directs the management of the organization, establishes company goals and policies, and receives only general supervision from higher level executives.

### *4. EB2: Request for National Interest Waiver of the Labor Certification Requirement*

A foreign national qualifying under this category may request a waiver from the USCIS of a specific job offer, and thus a labor certification, if the waiver is in the “national interest” leaving interpretation of evidence sufficiency to USCIS officers.

A successful request for a national interest waiver should contain the following elements:

- Evidence of seeking employment in an area of substantial intrinsic merit, that is, one that benefits the national interest of the US. Areas including healthcare, housing, the environment and the US economy. This also includes situations which serve to improve wages and working conditions of US workers by employment of foreign nationals.
- Evidence that the proposed benefit will be national in scope; and
- Evidence that national interest would be adversely affected if labor certification were required.

The final point goes to the foreign national's contributions to the field of endeavor, and may be met through evidence demonstrating a track record of the individual's accomplishments. These include peer-reviewed publications in the field, conference or seminar presentations, publications about the individual, awards and prizes won by the individual as well as letters of reference by industry and academic experts in the field.

## **NONIMMIGRANT VISAS**

### **A. Introduction**

Domestic businesses and multinational companies with operations in the US routinely hire the best qualified candidates from around the world to remain competitive. US employers also hire foreign nationals who possess special skills to overcome shortages among American workers.

Businesses which employ foreign workers are required to employ only authorized individuals and are subject to pay fines for hiring unauthorized workers. Foreign workers are required to maintain authorized status or face removal or bar from entering the US. Therefore the knowledge of immigration laws has become crucial to the success of many US businesses.

There are two classes of foreign nationals living legally in the US: Immigrants and non-immigrants. Non-immigrants are allowed a temporary stay while immigrants may remain indefinitely. There are over 20 different non-immigrant categories in the US, ranging from ambassadors, tourists, and students to temporary workers. Each category is assigned a letter between A to V and has its own eligibility requirements. The US employer needs to assess the purpose of the visit or reason for hiring the foreign national to determine the appropriate visa category.

### **B. Non-immigrant Visa Processing**

A US business may hire a foreign national living either in the US or abroad. A foreign national outside the US obtains a visa from the US consulate. The visa allows the individual to travel and apply for admission at a designated port of entry; it does not allow entry into the US. It only permits the visa holder to present himself/herself before the Customs Border Protection (CBP) officer to apply for admission to the US.

A consular officer will check the visa applications to determine whether the individual classifies for the requested nonimmigrant classification. The officer must determine whether a foreign national has “nonimmigrant intent”, the intent to return back home after a temporary stay. The immigration law presumes all persons seeking entry are immigrants therefore a foreign national must prove that he/she intends to depart from the US after a temporary stay by showing ties to their home country. If the consular officer favorably adjudicates the application, the consulate will issue a visa stamp to the foreign national.

### **C. Admission at the Port Of Entry**

Once the foreign national has received a visa stamp, upon arrival at the U.S port of entry, the CBP inspects and admits the foreign national at the border. The CBP officer will endorse a foreign national's Arrival/Departure card, the I-94 (or the form I-94W for visa waiver applicants). This I-94 is attached to the foreign national's passport with details of date of entry, status of admission and duration of authorized stay in the U.S.

The date on the I-94 controls the duration of an individual's authorized stay in the U.S. For example, if a foreign national who traveled to this country under a visitor for business visa (B-1) that expires on September 1, 2009 is admitted to the U.S on January 1, 2009. If the I-94 indicates admission in status B-1 status until March 1, 2009, the foreign national must leave before that

date. If by March 2, 2009 the foreign national does nothing to extend his authorized stay, he has overstayed and it is irrelevant that his visa is valid until September 1, 2009.

#### **D. Nonimmigrant Visitors and the Us-Visit Entry/Exit Program**

All nonimmigrant visa holders at the U.S port of entry are subject to the newly designed entry/exit system known as the US Visitor and Immigrant Status Indicator Technology (US-VISIT). This system collects arrivals and departure information for non-immigrants traveling to the US to enhance security and decrease wait time for admission into the US. This involves scanning of their two index fingers and a digital photograph to match and authenticate their travel documents. In July 2005, DHS announced that first time visitors will have to have all 10 fingers scanned with continued index finger scans for departures and subsequent entries. Those failing to comply with these procedures may be denied subsequent entry to the US.

#### **E. Extension or Change of Status after Admission**

Once a foreign national has entered the US, and wishes to extend his/her stay, or change his/her immigrant status, he/ she may apply to a USCIS Service Center. The application must be made within the period of authorized stay. Approval of extension or change of status request is reflected on the USCIS Form I-797A, which contains a new, updated I-94.

#### **F. Applications for Lawful Permanent Residence by Non-immigrants**

All non-immigrants have to demonstrate a genuine intent to only remain in the US temporarily. These individuals may not seek lawful permanent residence in the US. An exception to this rule applies to workers classified as “H”, “L”, and “O”, non-immigrants. Foreign nationals in these classifications may seek lawful permanent residence in the US without jeopardizing their nonimmigrant status.

#### **G. Nonimmigrant Classifications for Business Purposes**

Nonimmigrant visa categories encountered by US businesses include those which have been created for temporary business activities, foreign nationals with authorization to work in the US, trainees and visitors on exchange programs. The B-1 visa and visa waiver program are used by foreign nationals traveling to the US to conduct business. Though foreign nationals traveling to the US for employment will most often enter in one of the following categories: E (treaty traders and investors); H-1B (specialty operation workers); H2-A (temporary agricultural workers); H-2B (temporary workers); L-1 (intra-company transferees); O (Aliens with extraordinary Ability and Essential Support Personnel); and TN (trade, NAFTA Professionals). Certain categories are allowed to work as a result of their primary status, but students and foreign exchange visitors might also be allowed employment. A US company may also sponsor a foreign national for training.

## **H-2A PROGRAM**

### **TEMPORARY ALIEN AGRICULTURAL WORKERS**

The Immigration Reform and Control Act of 1986 created the H-2A Program, under which employers may bring agricultural workers into the country on a temporary, non-immigrant basis. The purpose of the H-2A Program is to ensure agricultural employers have an adequate labor supply while protecting the jobs, wages and working conditions of domestic workers.

#### **A. Who May Apply?**

An agricultural employer who anticipates a shortage of domestic workers needed to perform agricultural labor of a seasonal or temporary nature. “Temporary or season nature” means employment performed at certain times of the year for a limited time period of less than one year when the employer can show that the need is truly temporary.

The employer may be an individual, a partnership or a corporation. An association of agricultural employers may file as a sole employer, a joint employer with its members or as an agent for its members. An authorized agent may file an application on behalf of an employer. Associations may file master applications on behalf of their members.

#### **B. Where to Apply?**

A signed application should be sent to the U.S. Department of Labor (DOL), Certifying officer, Employment and Training Administration in the region of intended employment. At the same time, a copy must be filed with the State Employment Service Agency in the area of intended employment.

#### **C. What To Submit?**

- 1) Application for Alien Employment Certification (Form ETA 750), Part A, Offer of Employment.
- 2) Agricultural and Food Processing Order (Form ETA 790). This is the job offer portion of the application package. It must be comprehensive and precise as it will constitute a contract between the employer and the worker and can be the basis for enforcement.
- 3) Attachments, if needed, to supplement information of the above forms.
- 4) Statement of authorization of agent, if applicable.
- 5) Statement of association authorization and relationship, if applicable.

#### **D. Conditions to Be Satisfied**

- Positive Recruitment – The employer must make an active effort, including radio/newspaper advertising, in areas of expected labor supply. This must be independent of and in addition to the efforts of the State Employment Service. Job specifications must be only those which are essential to performing the work. The employer must not reject or terminate U.S. workers for other than job-related reasons.
- Wages – The wage rate must be the same for U.S. and H-2A workers. The rate of pay must be as high as the Adverse Effect Wage Rate, federal or state minimum wage or the local area prevailing wage rate, whichever is higher.

- Housing – The employer must provide free housing to all workers who are not reasonably able to return to their permanent residences the same day. Housing must meet DOL’s occupational Safety and Health Administration standards. Rental housing that meets local or state safety and health standards may also be provided.
- Meals – The employer must provide either three meals per day to each worker or furnish convenient cooking and kitchen facilities so workers can prepare their own meals.
- Workers’ Compensation Insurance – The employer must provide Workers’ Compensation Insurance where required by law. Where not required, the employer must provide at least the equivalent insurance for all workers.
- Tools and Supplies – The employer must provide at no cost to the worker all tools and equipment necessary to perform the job.
- Three-fourths Guarantee – The employer must guarantee each worker employment for at least three-fourths of the work contract period or pay the equivalent in wages for what the worker would have earned during that period.
- Fifty Percent Rule – The employer must hire any qualified and eligible U.S. worker who applies for the job until 50 percent of the work contract has elapsed.
- Transportation –
  - 1) The employer must provide reasonable transportation and subsistence costs from the place of recruitment to the place of work. These may be advanced or reimbursed after 50 percent of the contract period.
  - 2) The employer must provide transportation from the worker’s housing to/from the worksite if the employer provides housing.
  - 3) The employer must pay reasonable return transportation and subsistence costs to the place of recruitment of the next place of employment.
- Labor Dispute – The employer must assure that the job opportunity for which H-2A Certification is being requested is not vacant due to a labor dispute or strike.
- Certification Fee – Upon certification, the employer will be charged a fee of \$100 per certification, plus \$10 for each job opportunity, up to \$1,000 maximum.
- Other Conditions – A copy of the work contract must be provided by the employer to each worker. The worker must be provided with a complete statement of hours worked and related earnings each payday, which shall be no less than twice per month.
- Employers must file applications with the DOL and State Employment Service Agency at least 60 days before the date of need. Applications may be mailed, delivered in person or by commercial delivery service.

## **E. Responsible Agencies**

U.S. Department of Labor, ETA  
Certifying Officer  
525 Griffin Street, Room 317  
Dallas, TX 75202  
Phone: (214) 767-8263  
Fax: (214) 767-5113  
<http://www.dol.gov/>

Texas Workforce Commission  
Alien Labor Certification  
101 E. 15<sup>th</sup> Street, Room 424-T  
Austin, Texas 78778  
Phone :( 512) 475-2571  
<http://www.twc.state.tx.us/>

## MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT – FEDERAL

### **A. Who Must Comply?**

Any person engaged in any farm labor contracting activity must comply. Definitions make it clear that growers, processors and associations are not farm labor contractors and are no longer required to register as such. Only farm labor contractors and their employers are required to register. However, agricultural employers and associations are subject to the Act and must comply with all worker protection provisions.

In April of 1997, the Department of Labor's Wage and Hour Division amended its regulations in that farmers who use labor contractors are now, in most instances, defined as joint employers. This means that farmers and ranchers are now jointly liable for violations that occur on minimum wages, unemployment taxes, social security taxes, Workers' Compensation coverage, child labor laws and temporary workplace sanitation regulations.

### **B. Who Is Covered?**

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) safeguards most migrant and seasonal agricultural workers in their interactions with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing. However, some farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing are exempt from MSPA under limited circumstances

Exceptions:

- 1) Persons who engage in farm labor contracting on behalf of a farm, processing establishment, seed conditioning facility, cannery, gin, packing shed or nursery that is owned or operated exclusively by this person or an immediate family member.
- 2) Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor is applicable (see the section on Fair Labor Standards Act).
- 3) Any labor organization, non-profit charitable organization, or public or private non-profit educational institution.
- 4) Any person who engages in any farm labor contracting solely within a 25 mile intrastate radius of his permanent residence and for not more than 13 weeks per year.
- 5) Any common carrier that would be considered a farm labor contractor solely because the carrier is engaged in transporting any migrant or seasonal worker.
- 6) Any custom grain harvesting, cotton harvesting, hay harvesting or sheep shearing operation.

*NOTE: Cotton harvesting was not originally listed as an exempt activity. However, a subsequent ruling by the Department of Labor has exempted cotton harvesting from this law.*

- 7) Any custom poultry harvesting, breeding, debeaking, desexing or health service operation, provided the employees are not regularly required to be away from their permanent place of residence other than during their normal working hours.

- 8) Several situations involving persons recruiting full-time students working in various agricultural activities. (See Public Law 97-470 for specific details.)

**C. Farm Labor Contractors Must:**

- 1) Register with the U.S. Department of Labor and receive a Certificate of Registration annually;
- 2) Ensure that all full-time or regular employees of a certified labor contractor who engage in recruiting, soliciting, hiring, furnishing or transporting workers are also registered;
- 3) Carry Certificate of Registration at all times; and
- 4) Ensure that no individual who is an illegal alien be employed. Compliance demonstrates that the farm labor contractor relied in good faith on documentation prescribed by the Secretary of Labor and had no reason to believe the person did not have the legal right to be employed.

Each farm labor contractor, agricultural employer and agricultural association that recruits migrant workers must comply with the following:

- 1) At the time of recruitment, inform each worker in writing and in the language in which the worker is most fluent of the following:
  - a) where he/she will be working;
  - b) crops and operations on which he/she will be employed;
  - c) transportation, housing and other benefits to be provided, if any, and any costs to be charged for each item;
  - d) wage rates to be paid;
  - e) period of employment;
  - f) existence of strikes at place of employment; and
  - g) existence of any commission arrangements between the farm labor contractor and any local merchants dealing with workers;
- 2) At the place of employment, post the conditions of employment in the language in which the worker is most fluent and in a place where all workers can see them. Workers must be informed of all changes in the conditions of their employment.
- 3) If housing is provided, post the terms and conditions of occupancy.
- 4) For each worker, make, keep and preserve records for three years on the following information:
  - a) gross earnings;
  - b) itemization of the amount and
  - c) purpose of each deduction;
  - d) net earnings;
  - e) number of hours worked;
  - f) basis on which wages were paid; and
  - g) if paid on a piece work basis, the number of piece work units earned.
- 5) Provide to each worker for each pay period a written record of the items listed above in item 4.
- 6) Provide all required written documents in English, or as necessary and reasonable, in some other language common to the workers.
- 7) Pay the wages owed when due.
- 8) Do not require workers to purchase goods or services solely from the farm labor contractor.
- 9) Do not violate, without justification, the terms of the working arrangement.



- 10) If providing housing, ensure that the facility or real property complies with federal and state laws applicable to that housing.
- 11) Do not allow the housing facilities to be occupied unless it has been certified that they meet applicable safety and health standards and the certificate is posted at the site. If a request for inspection is made 45 days prior to the expected occupancy date and the inspection is not conducted by this date, the facility may be occupied.

To inquire about the validity of a labor contractor registration certificate contact the Department of Labor Wage and Hour Division at the number listed on the responsible agency section.

#### **D. Provisions for Seasonal Workers**

Previous Acts relating to agricultural workers contained language that made it unclear as to whether all workers in fields and processing plants were covered. This Act defines two classes of agricultural workers who are covered:

- Migrant workers are those persons employed on a seasonal or other temporary basis and who are required to be absent from their permanent residences overnight.
- Seasonal workers are those persons employed on a seasonal or other temporary basis and who are not required to be absent overnight when employed on a farm or ranch performing field work related to planting, cultivating or harvesting operations, or when employed in a canning, packing, ginning, seed conditioning or related research or processing operation, and who are transported to the place of employment by means of a day-haul operation. A day-haul operation is one that picks up workers waiting to be hired at an assembly point, transports these workers to the place of employment and returns them to the same point at the end of the work day.

This Act does not cover in-plant workers unless transported by the employer through a day-haul operation.

Additional information is available in Public Law 97-470-January 14, 1983, Migrant and Seasonal Agricultural Worker Protection Act. It is available from the U.S. Department of Labor-Employment Standards Administration, the agency responsible for enforcement of the law. For current labor contractor's registration validity or additional information please contact the US Department of Labor.

## **E. Responsible Agency**

U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Ave, NW  
Washington, DC, 20210  
Tel. 1-866-4-USWAGE (1-866-487-9243)  
[www.wagehour.dol.gov](http://www.wagehour.dol.gov)

### Local Offices in Texas

Dallas District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
The Offices @ Brookhollow  
1701 E. Lamar Blvd., Suite 270, Box 22  
Arlington, TX 76006-7303  
Tel. (817) 861-2150

Houston District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
8701 S.Gessner Drive, Suite 1164  
Houston, TX 77074-2944  
Tel. (713) 339-5525

San Antonio District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
Northchase 1 Office Building  
10127 Morocco, Suite 140  
San Antonio, TX 78216  
Tel. (713) 339-5500

## **MIGRANT LABOR HOUSING FACILITY ACT**

### **A. Objective**

The objective of this state regulation is to ensure that migrant farm workers have adequate, safe, sanitary and healthful housing facilities during the time they are employed in Texas.

### **B. Coverage**

Any agricultural employer who operates an agricultural labor camp in Texas is covered by state regulations. For practical purposes, a farm employer has an agricultural labor camp if he/she is providing free or rental housing to two or more seasonal, temporary or migrant workers and their accompanying dependents for more than 3 days. To illustrate, one family of four workers living in a building on the employer's farm would not constitute an agricultural labor camp. Four workers not in the same family living on the farm would constitute a camp. Two families of two workers each would also constitute a camp.

### **C. Employer Provisions**

Each agricultural employer must obtain a license to operate his labor camp. Application for the license shall be made to the State Commissioner of Health. This application shall be made to the department at least 45 days prior to but not more than 60 days before the intended operation of the facility. The application shall state the ownership and location of the proposed labor housing facility. The application shall be accompanied by a license fee not exceeding \$100. An inspection will be made within 30 days of the receipt of the application and fee. If the housing facility meets the reasonable minimum standards of construction, sanitation, equipment and operation required by the rules of this Act, a permanent license is issued. Unless otherwise revoked, the license is good for 1 year and it is not transferable. Renewal shall be made not less than 30 days prior to expiration.

If the migrant labor housing facility does not pass inspection, the department shall give notice to the applicant of the reason why the housing facility does not meet the standards. The applicant may request the department to re-inspect the housing facility within 60 days of the notice. However, if the facility does not meet the standards upon re-inspection, a new application must be filed with the department.

Licenses may be suspended or revoked by the department for violation of any of the provisions of this Act.

The regulations allow investigations of the housing facility by representatives of the Health Department, upon proper notice, to determine whether provisions of the Act have been or are being violated. Investigations are to be made at reasonable hours. Violations of this Act shall be subject to civil penalty of \$200 for each day of the violation. A district court injunction may be obtained to restrain any person from operating a housing facility found in violation of this Act.

### **D. Employee Provisions**

Employees who vandalize, misuse or violate applicable regulations are subject to a maximum fine of \$25 or a jail sentence not to exceed 10 days or both.

## **E. Responsible Agency**

The Texas Department of State Health Services is responsible for the administration of the agricultural labor camp provisions of the Texas Code. Permit applications must be filed with the Texas Department of Health. Facility inspections are performed by the department's regional offices in the respective areas of coverage.

Texas Department of State Health Services  
General Sanitation Division  
1100 West 49th Street  
Austin, Texas  
Tel. (512) 458-7111  
<http://www.dshs.state.tx.us>

## **FARM LABOR CAMPS – TEMPORARY – FEDERAL**

### **A. Introduction**

Typically, farm employers, food processors, or farm labor contractors who employ migrant workers will operate licensed agricultural labor camps. Because these workers are migrants, farm employers have recognized the need to construct, license, and operate a labor camp to ensure an adequate and timely labor supply.

There are currently two laws that could apply to farm labor camps. The older is the housing standards law administered by the U.S. Department of Labor, Employment and Training Administration (ETA) (20 CFR Part 654). The second federal law dealing with temporary farm labor housing was passed in 1970 and is administered by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) (29 CFR Part 1910.142).

### **B. Migrant Labor Housing Regulations**

Texas farm employers providing temporary housing for migrant farm workers potentially face three sets of housing regulations:

- Agricultural Labor Camp Regulations administered by the Texas Department of State Health Services.
- Federal regulations administered through the U.S. Department of Labor by the Texas Workforce Commission.
- Occupational Safety and Health Administration Temporary Labor Camp Regulations administered by the Occupational Safety and Health Administration (OSHA).

These regulations are similar, but there are some important variations in housing requirements and enforcement responsibilities. Therefore, farm employers and employees need to be familiar with the three sets of regulations and variations in inspection requirements.

### **C. Who Must Comply**

Employers who house one or more farm workers and use the Texas Workforce Commission to obtain workers from outside the local area must comply with either the ETA or OSHA standards, depending upon when the housing was constructed. Temporary farm labor housing constructed after April 3, 1980 must comply with OSHA standards. OSHA inspections of temporary farm worker housing are on a post-occupancy basis. There is no licensing procedure under OSHA regulations.

### **D. Inspections**

Agricultural employers using the Interstate Worker Recruitment Service of the Texas Workforce Commission must have their housing inspected and approved prior to the completion of the application for workers. It is possible for a job order to be conditionally processed without approval of the labor camp if the discrepancies are of a minor nature, the employer gives assurance that the camp will be in compliance 45 days before expected occupancy and the

employer was in compliance the previous year. If the camp is not in compliance by the deadline date, the order for workers is removed from Interstate Clearance and cannot be processed until the camp is in compliance. Inspections are generally made in response to employee complaints, following a report of a fatality or injury, and on a random basis. Considerable litigation has resulted from employers denying inspection officers access to their facilities without a search warrant. The courts have generally held that employers can deny access to the work place if the inspector does not have a search warrant. In a parallel vein, the courts have held that the Secretary of Labor or his agent can obtain a search warrant to inspect work places and in October 1980, regulations were issued that authorize the Secretary of Labor to seek search warrants without the knowledge of the employer.

The three U.S. Department of Labor agencies responsible for housing standards enforcement agreed on a plan for coordinating their inspections of migrant labor housing facilities. Under the agreement, ETA, through State Employment Service Agencies, will continue to conduct pre-occupancy inspections of facilities on farms that it supplies with workers. ESA (Employment Standards Administration) will inspect facilities owned or operated by crew leaders that have not already been inspected by ETA. OSHA will inspect those camps not covered by the other two agencies. OSHA will continue to inspect camps on a post-occupancy basis where injuries, deaths or complaints occur. The standards used (ETA or OSHA) by any of these agencies will depend on when the housing was constructed or whether it has been substantially modified. The U.S. Employment Service has promulgated lengthy rules to guide its personnel in determining what constitutes major modification and when “old” housing becomes “new” housing and comes under OSHA standards.

Employers must comply with the following:

Minimum federal, state and local housing standards. ETA and OSHA standards specify requirements for:

- 1) Housing site;
- 2) Shelter and housing;
- 3) Water supply;
- 4) Toilet facilities;
- 5) Sewage disposal;
- 6) Laundry, hand washing and bathing facilities;
- 7) Electrical lighting;
- 8) Refuse and garbage disposal;
- 9) Cooking and eating facilities;
- 10) Screening, insect and rodent control;
- 11) Fire, safety and first aid facilities; and
- 12) Reporting of communicable diseases.

## **E. Related Information**

- Part 620 – Housing for Agricultural Workers, Federal Register, October 31, 1968.
- Part 620 – Housing for Agricultural Workers, 3095, Federal Register January 21, 1976.

- General Industry, OSHA Safety and Health Standards (29 CFR 1910), OSHA 2206 (Rev. January 1976), U.S. Department of Labor, Occupational Safety and Health Administration, pages 248-251.
- Safety and Health Standards for Agriculture, U.S. Department of Labor, Occupational and Safety Health Administration, 1971.

## **F. Responsible Agency**

U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Ave, NW  
Washington, DC, 20210  
Tel. 1-866-4-USA-DOL (1-866-487-2365)  
[www.dol.gov](http://www.dol.gov)

Local offices can be found in the telephone directory under:

U.S. Government  
Department of Labor  
Occupational Safety and Health Administration (OSHA)  
<http://www.osha.gov/>

U.S. Government  
Department of Labor  
Employment and Training Administration (ETA)  
<http://www.doleta.gov/>

## **STANDARDS FOR SANITATION AT TEMPORARY PLACES OF EMPLOYMENT**

### **A. Objective**

The purpose of this Act is to set standards for the protection of the employee and the public welfare. This Act also provides for sanitary facilities at temporary places of employment. These facilities are for the dispensing of drinking water, washing hands, collecting refuse or eliminating body wastes.

### **B. Who must comply?**

Any employer who employs two or more persons directly or indirectly in work that is performed in the field away from a permanent structure must comply.

#### Employer's responsibility

- 1) Each employer shall provide and maintain sanitary facilities at any temporary work place.
- 2) Where employees of more than one employer work at a temporary place of employment, it is the responsibility of each employer to furnish sanitary facilities for these employees.
- 3) The sanitary facilities are provided at no cost to employees.
- 4) Employers are to inform employees of the location of the sanitary facilities.
- 5) Employers with six or fewer employees on any work day can arrange for transportation to toilet and hand washing facilities instead of providing temporary facilities. Nearby facilities must meet minimum sanitary standards and be accessible for employee use.
- 6) Potable drinking water, suitably cool and in sufficient amounts, must be readily accessible to all employees.
- 7) One toilet and a hand washing facility must be provided for every 20 employees. These facilities must be located within a 1/4-mile walk or at the closest point of vehicular access. Such facilities are not required for employees who do field work for 3 hours or less each day.
- 8) Maintenance of the toilet and hand washing facilities must be in accordance with public health sanitation practices. Water should be changed daily or as often as needed, toilets kept clean and potable drinking water kept sanitary.
- 9) The employer must inform the employee of the relevant health hazards in the field and the practices necessary to minimize exposure to them.

Employees are to make proper use of the sanitary facilities that are provided to them.

Each temporary work site should be kept clean and free of obstructions, have proper waste collection and disposal operations, along with proper lighting and ventilation in the sanitary facilities. Employers should also supply adequate amounts of drinking water for the employees and have it clearly marked as such.

This Act requires that employers supply toilet facilities or access to facilities for the employees. At the work site, the toilet facilities can be portable or fixed at a location. Where both sexes are employed, these shall be separate toilet facilities. At a work site with 15 or fewer



employees, there should be at least one toilet for both men and women. As the number of employees increases, the number of toilet facilities should increase to an adequate number. These facilities should always be kept sanitary.

At temporary work sites where employees are permitted to eat lunch, employers shall provide or designate an area for that purpose. At this site, an adequate number of containers shall be provided for the disposal of all waste products.

### **C. Penalties**

An offense under this Act can either be a misdemeanor or a civil penalty. A misdemeanor is punishable by a fine of not less than \$10 or more than \$200 for each violation and for each day the violation continues. If the defendant has previously violated these statutes, the fine shall not be less than \$10 and not more than \$1,000.

It should be noted that state standards DO NOT supersede federal or OSHA standards for temporary labor camps.

### **D. Responsible Agency**

Texas Department of State Health Services  
General Sanitation Division  
1100 West 49th Street  
Austin, Texas  
Tel. (512) 458-7111  
<http://www.dshs.state.tx.us>

## EMPLOYMENT OF MINORS – FEDERAL

### A. Coverage

Persons age 18 and over are not included under the child labor provisions of the Fair Labor Standards Act (FLSA). With a few exceptions all others under age 18 are covered by the child labor provisions of FLSA. Farm employers who are not covered under other provisions of FLSA (minimum wage, overtime) for the most part must comply with the law if they employ minors under 16 years old.

Sixteen years old is the minimum age for working in agricultural jobs:

- 1) Declared hazardous by the Secretary of Labor; and
- 2) During school hours.

Fourteen years old is the minimum age for working in agricultural jobs:

- 1) Outside of school hours; and
- 2) Not declared hazardous by the Secretary of Labor.

Exceptions:

- 1) Twelve and 13 year olds may be employed with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed; and
- 2) Minors under 12 may be employed with written parental consent on farms whose employees are exempt from federal minimum wage provisions.

Upon application, waivers may be issued by the Department of Labor permitting 10 and 11 year old minors to work in hand-harvested, short-season crops provided the employer does not use certain restricted pesticides and complies with the minimum re-entry times for specified chemicals.

It should be noted that minors of any age may be employed by their parents at any time in any occupation on farms owned or operated by their parents or persons standing in place of their parents. School hours and hours worked.

With the possible exception of minors employed by their parents on their parents' farm, minors 14 and 15 years old may:

- 1) Only work during non-school hours and only between 7:00 a.m. and 7:00 p.m. except for those enrolled in certain work training programs (see Exemptions section);
- 2) Only work up to 9:00 p.m. from June 1 through Labor Day;
- 3) Only work three hours per day on school days and eight hours per day on non-school days; and
- 4) Only work 18 hours per week in weeks in which they attend school and 40 hours per week in non-school weeks.

## **B. Hazardous Occupations in Agriculture**

The Secretary of Labor has found and declared that certain occupations in agriculture are hazardous. Aside from certain exemptions, no minor under 16 years of age may be employed at any time in these occupations. Briefly, these hazardous occupations are:

- 1) Operating, driving or riding on a tractor with more than 20 PTO horsepower;
- 2) Operating or assisting to operate a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, pea viner, feed grinder, crop dryer, forage blower, auger conveyor, self-unloading wagon or trailer, power posthole digger, power post driver or non-walking type rotary tiller;
- 3) Operating or assisting to operate a trencher or earth moving equipment, fork lift, potato combine, power driven circular band saw or chain saw;
- 4) Working in a pen, yard or stall with a bull, boar, stud horse, sow with pig-lets or cow with calf;
- 5) Working around timber with a butt diameter of more than six inches;
- 6) Working from a ladder or scaffold more than 20 feet high;
- 7) Driving a bus, truck or automobile when transporting passengers;
- 8) Working inside a fruit, forage or grain bin or silo under certain specified conditions;
- 9) Handling or applying anhydrous ammonia or other specified chemicals, including those that bear the legend "Poison" or "Warning" on the label; and/or
- 10) Handling or using explosives.

## **C. Exemptions from Hazardous Occupations in Agriculture**

- As previously stated, minors under 16 years old working for their parents on their parents' farm are exempt.
- Student Learners – Student learners in a bona fide vocational agricultural program may work in the occupations listed on items 1 through 6 of the hazardous occupations order under a written agreement that provides that the student learner's work is incidental to training, intermittent, for short periods of time and under close supervision of a qualified person; that safety instructions are given by the school and correlated with the on-the-job training; and that a schedule of organized and progressive work processes have been prepared. The written agreement must contain the name of the student learner, and be signed by the employer and a school authority, each of whom must keep copies of the agreement.
- 4-H Federal Extension Service Training Program – Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program may work in the occupations for which they have been trained. Occupations for which these certificates are valid and covered by items 1 and 2 of the Hazardous Occupations Order. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records. Enrollment in this program is open to minors who are not members of 4-H as well as 4-H members. Information on this program is available from an Extension Agent of the Texas AgriLife Extension Service.
- Vocational Agricultural Training Program – Minors 14 and 15 years old who hold a certificate of completion of either the tractor operation or machine operation program of the US Office of Education Vocational Agriculture Training Program may work in the

occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the Hazardous Occupations Order. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records.

Employers of minors under 16 must comply with the following:

- 1) Preserve and maintain records containing the following data on each minor employee:
  - a) name in full
  - b) place where minor lives and his/her permanent address;
  - c) date of birth; and
  - d) evidence in writing of any required parental consent.
- 2) Keep a minor employee's age or employment certificate on file.
- 3) Observe wage and hour provisions of the FLSA.
- 4) Prohibit minors under 16 from performing jobs declared as hazardous.

Minor employees must:

Provide their employer with an employment or age certificate obtained from local school officials. Certificates issued under most state laws are acceptable.

Additional information (obtainable from the responsible agency)

- The agency responsible for enforcement of the Federal Child Labor Laws and Federal Hazardous Occupation Regulations is the U.S. Department of Labor, Wage and Hour Division.
- The Fair Labor Standards Act of 1938, as amended, Wage and Hour (WH) Publication 1318, February 1980.
- Regulation, Part 575, Waiver of Child Labor Provisions for Agricultural Employment of 10- and 11-Year-Old Minors in Hand Harvesting of Short-Season Crops, WH Publication 1438, October 1980.
- Child Labor Requirements in Agriculture Under the Fair Labor Standards Act, Wage and Hour Division, Child Labor Bulletin No. 102.
- Occupations in Agriculture Particularly Hazardous for the Employment of Children below the Age of 16, WH Publication 1283 (Rev. 12/72.)
- Regulations: Part 579 – Child Labor Violations, Part 580 – Civil Penalties – Rules of Practice for Administrative Proceedings, WH Publication 1415, September 1975.
- Young Farm Workers and the Fair Labor Standards Act, WH Publication 1338, May 1971.
- A Guide to Labor Provisions of the Fair Labor Standards Act, WH Publication 1236, 1976.

## **D. Responsible Agency**

U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Ave, NW  
Washington, DC, 20210  
Tel. 1-866-4-USWAGE (1-866-487-9243)  
[www.wagehour.dol.gov](http://www.wagehour.dol.gov)

### Local Offices in Texas

Dallas District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
The Offices @ Brookhollow  
1701 E. Lamar Blvd., Suite 270, Box 22  
Arlington, TX 76006-7303  
Tel. (817) 861-2150

Houston District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
8701 S.Gessner Drive, Suite 1164  
Houston, TX 77074-2944  
Tel. (713) 339-5525

San Antonio District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
Northchase 1 Office Building  
10127 Morocco, Suite 140  
San Antonio, TX 78216  
Tel. (713) 339-5500

## **EMPLOYMENT OF MINORS -- TEXAS**

The Texas Child Labor Law governs employment of children 14 to 17 years of age. With some exceptions, it is generally illegal to employ a child under the age of 14. The employment of children of any age outside of school hours is exempt from this law.

Children age 14 or 15 may not work more than eight hours a day or more than 48 hours a week, or between 10:00 p.m. and 5:00 a.m. on a day that is followed by a school day or between the hours of midnight and 5:00 a.m. on a day not followed by a school day.

Children 14 through 17 cannot work in any occupation considered to be hazardous as defined by the U.S. Department of Labor.

### **A. Responsible Agency**

Texas Workforce Commission  
101 E. 15<sup>th</sup> Street, Room 424-T  
Austin, Texas 78778  
Phone :( 512) 475-2670  
<http://www.twc.state.tx.us/>

## WORK OPPORTUNITY TAX CREDIT (WOTC)

### **A. Introduction**

A tax credit is available to for-profit employers who hire new employees from certain targeted groups.

The maximum credit available is \$2,400 per eligible employee. The exact amount depends on the employer's tax bracket and the qualified wages paid.

There are also special provisions that apply to summer youth programs. Wages paid to qualified 16 and 17 year olds employed between May 1 and September 15 may also be eligible for the tax credit.

The credit is not applicable to certain relatives of the employer, or to rehired workers who were not certified during their previous employment.

### **B. Who May Qualify?**

Individuals who began work before September 1, 2011 and fall into the following groups may qualify:

1. A member of a family that is receiving or recently received Temporary Assistance to Needy Families (TANF) for at least 18 consecutive months ending on the hiring date;
2. A member of a family that is receiving or recently received TANF benefits for any 9-month period during the 18-month period ending on the hiring date;
3. An 18-39 year old member of a family that is receiving or recently received Food Stamps;
4. An 18-24 year old resident of one of the federally designated Empowerment Zones (EZs), Enterprise Communities (ECs), or Renewal Communities (RCs);  
**Note:** All Round I Enterprise Communities (ECs) including enhanced Enterprise Communities expired on December 31, 2004. Round II ECs are still in existence as are all the EZs;
5. A 16-17 year old EZ/EC or RC resident hired between May 1 and September 15 as a Summer Youth Employee  
**Note:** All Round I Enterprise Communities (ECs) including enhanced Enterprise Communities expired on December 31, 2004. Round II ECs are still in existence as are all the EZs;
6. A veteran who is a member of a family that is receiving or recently received Food Stamps;
7. A Vocational Rehabilitation Referral who completed or is completing rehabilitative services from a State certified agency, an Employment Network, or the U.S. Department of Veterans Affairs;
8. An ex-felon who has been convicted of a felony and has a hiring date which is not more than one year after the last date on which he was so convicted or released from prison; and/or
9. A recipient of Supplemental Security Income (SSI) benefits.

Disabled Veterans who began work after May 25, 2007 and before September 1, 2011, can earn Texas employers up to \$4,800 if they:

- Are entitled to compensation for a service-connected disability of at least 10% incurred after September 10, 2001, and
- Have a hiring date which is not more than 1 year after having been discharged or released from active duty in the Armed Forces of the United States, or
- Have aggregate periods of unemployment during the 1 year period ending on the hiring date which equal or exceed 6 months.

Long-Term Family Assistance Recipients who began work after December 31, 2006 and before September 1, 2011, can earn Texas employers up to \$9,000 if they are a member of a family:

- That received TANF for at least 18 consecutive months before the hire date; or
- Whose TANF eligibility under federal or state law expired after August 5, 1997 (for applicants hired within two years after their eligibility expired); or
- That received TANF for at least 18 months, beginning after August 5, 1997, and is hired not more than two years after that 18-month period.

Employers who hire welfare recipients, and provide and pay part of their major medical insurance costs, can receive the State of Texas Tax Refund. An employer may qualify for the state tax refund if the employer:

- pays certain taxes (state sales and use, franchise, boat and boat motor, inheritance and/or Public Utility Commission gross receipts, hotel and/or manufactured housing) to the Texas Comptroller of Public Accounts; and
- pays wages during the first year of employment to a Texas resident who received TANF or Medicaid benefits within six months of the employee's start date; and
- provides and pays part of a qualifying employee's HMO health plan costs, self-funded or self-insured plan, or other approved health plan. Note: An employer who requests a refund for wages paid must provide the same insurance coverage to that employee as the employer provides to other employees.

Employers can recover up to 20 percent of \$10,000 in wages paid during the first year of employment, a refund of up to \$2,000 per employee.

On December 20, 2006, the President signed into law the *Tax-Relief and Health Care Act of 2006 (P. L. 109-432)*. This legislation merges the Welfare-to-Work Tax Credit (WtWTC) into the WOTC and extends the WOTC program, with a number of significant changes and provisions, for a two-year period through December 31, 2007. The following statutory changes apply to new hires that begin work for an employer after December 31, 2006:

- the earnings test for ex-felons is eliminated;
- the maximum age for food stamp recipients is increased;
- the certification request filing deadline is increased;
- the welfare-to-work provisions are merged into the WOTC.

This reauthorization is retroactive to January 1, 2006 and the amendments apply to new hires that begin work for an employer on or after January 1, 2007.



### **C. Certification of Employee Eligibility**

To apply for a WOTC certification, the employer must mail all pertinent information to the WOTC Unit of the Texas Workforce Commission.

The process includes:

- 1) Mail within 28 days of the employee's start date:  
IRS Form 8850: *Work Opportunity Credit Pre-Screening Notice and Certification Request*, completed by the date of the job offer.
- 2) Mail as soon as possible:  
EITHER Form ETA-9061: *Individual Characteristics Form* (with all supporting documentation), if the new employee has not been conditionally certified; or  
Form ETA-9062: *Conditional Certification Form*, if provided to the job seeker by a participating agency.
- 3) Mail forms to:  
Texas Workforce Commission  
WOTC Unit  
101 E. 15<sup>th</sup> St., Room 420-T  
Austin, TX 78778-0001

### **D. Limitations**

If Employee works at least 400 hours:

Adult Target Group:  $\$6,000 \times 40\% = \$2,400$

Summer Youth:  $\$3,000 \times 40\% = \$1,200$

No WOTC credit can be claimed for an employee who is on an on-the-job training contract. However, credit can be claimed for wages paid after the contract expires. To claim credit for employees in this program, they must be WOTC certified prior to their initial starting date. Time spent in the on-the-job training programs does count toward the minimum eligibility requirements.

\*Employee works at least 120 hours but less than 400:

Adult Target Group:  $\$6,000 \times 25\% = \$1,500$

Summer Youth:  $\$3,000 \times 25\% = \$750$

## **E. Responsible Agency**

For more information about the State Tax Refund go to <http://www.twc.state.tx.us/svcs/wotc/tanf.html>

If you have questions about these tax credits, please call the Texas Workforce Commission's Work Opportunity Tax Credit Unit.

You also may access IRS Form 8850 at <http://www.irs.gov> or by calling 1-800-829-3676. The Internal Revenue Service publishes information on filing for the WOTC tax credit in its General Business Credit publication.

For more information see IRS Forms 3800, 5884, and 8861.

Texas Workforce Commission  
WOTC Unit  
101 E. 15<sup>th</sup>  
Austin, TX 78778  
1-800-695-6879.  
<http://www.twc.state.tx.us/>

## FAIR LABOR STANDARDS ACT (MINIMUM WAGE) - FEDERAL

### **A. Who must comply?**

Any farmer who hired 500 man-days of labor during any calendar quarter of the preceding calendar year; the equivalent of about eight full-time employees working five days a week.

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

The following employees are excluded from minimum wage requirements regardless of the 500-man-day test:

- 1) Employees who must be available at all hours to care for range livestock;
- 2) Migrant employees under 16 years who work with their parents in hand harvesting crops and are paid on the same piece rate basis as their parents;
- 3) Employer's immediate family;
- 4) Employees who:
  - a) are paid on a piece rate basis; and
  - b) were employed in agriculture as hand harvest laborers fewer than 13 weeks in the previous year; and
  - c) commute to work daily (non-migrants).
- 5) Employees engaged in fishing or seafood processing.

Employers must, if covered, comply with the following:

- 1) Pay at least minimum wage to all employees – currently \$5.85 per hour culminating into a minimum of \$7.25 by the summer of 2009.
- 2) Maintain payroll records for at least three years for each employee, including family members of employees. These records should include:
  - a) Full name of employee;
  - b) Complete home address;
  - c) Sex and occupation in which employed;
  - d) Identification of employees who are:
    - members of an employer's immediate family,
    - hand harvest workers paid on a piece rate basis, or
    - employees principally engaged in range livestock production;
  - e) the number of man-days worked each week or month (a man-day is any day during which an employee does agricultural work for one hour or more);
  - f) beginning day and time of employee's work week;
  - g) basis on which wages are paid, i.e., \$5.85 per hour, \$46.80 per day or piece work;
  - h) hours worked each workday and total hours worked each work-week;
  - i) total daily or weekly earnings;

- j) total additions to or deductions from wages with an explanation of each;
  - k) total wages paid each pay period together with proof of payment to individual workers including cash advances or other deductions; and
  - l) date of payment and pay period covered by payment.
- 3) Have on file a statement from each exempt piece rate employee showing the number of weeks employed in agriculture during the preceding year.
  - 4) Have on file the date of birth and the parent's name for each exempt minor paid on a piece rate basis.
  - 5) Maintain a file showing the full name, present and permanent address and date of birth of any minor under 19 who works when school is in session or works in a hazardous occupation.
  - 6) Display the official poster "Notice to Employees" where employees can see it. This poster contains basic information on minimum wages.

Employers may need to comply with the following:

Deduct the cost of certain items from the wages of farm workers; however, care should be exercised because the deduction of certain items may not reduce wages below the minimum wage.

Deductions that may not lawfully reduce the wage level below the minimum wage per hour are:

- 1) Transportation advances; and
- 2) Charges for contractors' (crew leader) services.

Deductions that may lawfully reduce the wage level below the minimum wage per hour are:

- 1) Deductions required by law – Social Security and Withholding Tax;
- 2) "Third Party" deductions authorized by the employee, such as union dues, United Funds or health insurance if it is paid to a "Third Party";
- 3) Salary advances exclusive of interest charges (receipts for cash advances must be obtained and retained); or
- 4) Housing and meals, provided it does not exceed the reasonable cost or fair value as determined by the Secretary of Labor and meets a number of specified conditions dealing with profit and rate of return on investment.

## **B. Overtime Provision**

All farm workers are exempt from overtime pay.

## **C. Youth "Opportunity" Wage**

The 1996 Amendments establish a separate, permanent minimum wage of not less than \$4.25 per hour for youths who are under 20 years of age and in the first 90 consecutive calendar days of initial employment with their employer.

- The law does not mandate a youth wage of only \$4.25 per hour-any rate that is not less than \$4.25, up to the applicable minimum wage, is permitted.
- Eligible youths may be paid the youth wage up to and including the day before their 20<sup>th</sup> birthday.
- All consecutive calendar days beginning with the first date of work for an employer count against the “90 consecutive calendar days” of eligibility, regardless of how many days during this period the youth actually performs any work.

In determining the eligibility period, the following principles are applied:

- An employee can be “initially employed” only once by an employer.
- An employee is “initially employed” by more than one employer for purposes of the youth wage.
- An eligible youth may be paid the youth wage for up to 90 calendar days after initial employment with any employer (that is, not just the first employer).
- The fact that an eligible youth may be employed simultaneously by a separate (but not joint) employer does not impact either employer’s right to pay the youth wage.
- The 90-day count does not start until the employee’s first day of performing work for the employer (and includes that first day of work), regardless of when the job offer or acceptance occurs or the fact that several days may have elapsed since the employee was “hired”.
- The 90 calendar day period continues to run even if the employee comes off the payroll during the 90 days. For example, if a student initially works for an employer 60 days in the summer and then quits to return to school, the 90-day period ends for this employee with this employer 30 days after he/she quits (i.e., 90 consecutive calendar days after initial employment). If this student returns the following summer to work again for this same employer, the period of eligibility for the youth wage has already expired.

Employers are not required to meet any training requirements in order to pay an eligible employee the youth wage.

The youth wage rate is “permanent” in the sense that it will not expire unless the law is changed again.

## **D. Responsible Agency**

U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Ave, NW  
Washington, DC, 20210  
Tel. 1-866-4-USWAGE (1-866-487-9243)  
[www.wagehour.dol.gov](http://www.wagehour.dol.gov)

### Local Offices in Texas

Dallas District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
The Offices @ Brookhollow  
1701 E. Lamar Blvd., Suite 270, Box 22  
Arlington, TX 76006-7303  
Tel. (817) 861-2150

Houston District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
8701 S.Gessner Drive, Suite 1164  
Houston, TX 77074-2944  
Tel. (713) 339-5525

San Antonio District Office  
US Dept. of Labor  
ESA Wage & Hour Division  
Northchase 1 Office Building  
10127 Morocco, Suite 140  
San Antonio, TX 78216  
Tel. (713) 339-5500

## TEXAS MINIMUM WAGE LAW

### **A. Introduction**

There is a Texas Minimum Wage Law that applies to agricultural labor. However, the Federal Fair Labor Standards Act supersedes the Texas Act when employers are covered by both laws. The only employees exempt from the Texas State Law are employees of producers engaged in dairy farming, and producers of livestock and any activity in support thereof.

Texas adopts the federal minimum wage rate by reference, thus any changes affecting the federal minimum wage automatically becomes the Texas minimum wage for all intended purposes. Based on federal legislation, the federal minimum wage will increase in three stages:

1. Effective July 24, 2007, the federal minimum wage will increase to \$5.85 an hour,
2. Effective July 24, 2008, the federal minimum wage will increase to \$6.55 an hour; and
3. Effective July 24, 2009, the federal minimum wage will increase to \$7.25 an hour.

The Commissioner of Agriculture is authorized to establish piece rates for agricultural commodities commercially produced in substantial quantities in Texas if sufficient productivity information is available. The piece rates are supposed to guarantee at least minimum wage for harvesters of average ability and diligence while allowing harvesters to earn more by producing more.

### **B. Responsible agency**

Texas Department of Agriculture  
Post Office Box 12847  
Austin, Texas 78711  
(Piece Rates for Commodities)  
Tel. (512) 463-7476  
Nationwide Toll Free Phone: (800) TELL-TDA (835-5832)  
Fax: (888) 223-8861  
[www.agr.state.tx.us](http://www.agr.state.tx.us)

## TEXAS PAYDAY LAW

The Texas Legislature amended the Texas Payday Law during the regular 1989 session and transferred enforcement responsibility to the Texas Workforce Commission. The law gives the Commission the authority to collect wages that have not been paid to workers.

### **A. Who Must Comply?**

All employers must comply.

#### Provisions under the law

- 1) Employers must pay their employees who are not subject to the overtime provisions of the Fair Labor Standards Act at least once a month and must pay all other employees at least twice monthly. Employers must designate paydays, and if they fail to do so, paydays shall be the 1<sup>st</sup> and 15<sup>th</sup> of each month.
- 2) Notices must be posted prominently in the workplace designating the official paydays. Sample notices can be obtained from any Texas Workforce Commission office. Notices in both English and Spanish must be posted.
- 3) An employer may not withhold or direct any part of an employee's wages unless the employer:
  - a) is authorized to do so by a court of law;
  - b) is authorized to do so by state or federal law; or
  - c) has written authorization from the employee to deduct a part of the wages for a lawful purpose.
- 4) Employers must pay a fired employee within six calendar days after dismissal.
- 5) Employers must pay an employee who quits by the next regularly scheduled payday.
- 6) Employers must not give a paycheck to a person other than the employee without the employee's written authorization.
- 7) The law does not allow wage claims to be filed for vacation pay, sick leave pay, parental leave pay or severance pay unless it is owed to an employee under a written agreement with the employer or under a written policy of the employer.

### **B. Related Information**

- *Survival Guide to the Texas Payday Law* – this guide explains the law in simple terms and includes a step-by-step guide for dealing with payday claims. To order the booklet, write to the Commissioner's office or fax a request to 512-834-3526. No orders will be taken by telephone.
- For more information on employer and employee rights, call the division's toll-free line at 1-800-832-9243.



### **C. Responsible Agency**

Texas Workforce Commission  
101 E. 15<sup>th</sup> Street, Room 424-T  
Austin, Texas 78778  
Phone :( 512) 475-2670  
<http://www.twc.state.tx.us/>

## **FEDERAL INCOME TAX WITHHOLDING FOR FARM WORKERS**

### **A. Objectives**

The objectives of federal income tax withholding are to collect income tax revenues on a current basis, reduce the need for employees to file and pay estimated taxes, and to reduce the amount of tax owed by a taxpayer at income tax filing time.

### **B. Coverage**

If the cash wages an employer pays farm workers are subject to Social Security and Medicare taxes, they are also subject to federal income tax withholding. Farm employers must withhold Social Security and Medicare Tax from any farm employee paid cash wages of \$150 or more in a year or from all employees if the wages paid to all employees total \$2,500 or more during the year. Farm employers may withhold income tax from any employee not meeting these guidelines.

In general, farm employees are farm workers if they do any of the following farm work:

- 1) Raise or harvest agricultural or horticultural products on a farm
- 2) Work in connection with the farm and its tools and equipment
- 3) Handle, process or package any agricultural or horticultural commodity if the employer produced more than half of the commodity.
- 4) Do housework in the taxpayer's private home if it is on a farm operated for profit.

An employee who performs both farm and non-farm work for an employer must be treated as a non-farm employee. For example, if a farm employer also operates a fertilizer business or retail store, employees who work in both the farm and non-farm business are taxable under general employment rules. Farm work does not include re-selling activities such as a retail store or a greenhouse used primarily for display or storage. There is a 20-factor test to use as a guide in determining whether a worker is an employee or independent contractor (see IRS Form SS-8).

### **C. Employer Provisions**

#### *1. Withholding*

Employees subject to income tax withholding must file a Form W-4 with employers. Otherwise, the employer must withhold federal income taxes from the employee's wages as if the employee claimed only one withholding allowance. The amount of tax to withhold is set out in current IRS circulars A and E. Withholding of income tax is not required if an employee certifies by filing Form W-4 that he or she had no income tax liability last year and anticipates no income tax liability for the current year.

#### *2. Employment Taxes*

Cash wages paid to employees for farm work is subject to social security and Medicare taxes. If the wages are subject to social security and Medicare taxes, they are also subject to income tax withholding.

Cash wages include checks, money orders, etc. Do not count the value of food, lodging, and other non-cash items.

### *3. Commodity Wages*

Commodity wages are not cash and are not subject to social security and Medicare taxes or income tax withholding. However, non-cash payments, including commodity wages, are treated as cash payments if the substance of the transaction is a cash payment. These payments are subject to social security and Medicare taxes and income tax withholding.

### *4. Family Members*

Generally, the wages paid to family members who are employees are subject to social security and Medicare, and income tax withholding, and FUTA tax. However, certain exemptions may apply for a child, spouse, or parent of the taxpayer.

## **D. Exemptions**

Wages to a child of a sole proprietor or to a person who is a child of all partners in a partnership or all members of an LLC are not subject to social security and Medicare. Report these wages of Form W-2 with no tax showing in the social security and Medicare boxes. Do not report them on a Form 1099.

### *1. Share Farmers and Alien Workers*

Social security and Medicare taxes do not apply to wages paid to share farmers or to alien workers admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act on a temporary basis to perform agricultural labor (H-2(A)workers).

### *2. Social Security and Medicare Taxes, Tests, and Exceptions*

Generally, farmers must withhold social security and Medicare taxes on all cash wage payments to employees.

## **E. Related Information**

Circular A, Agricultural Employer's Tax Guide, Publication No. 51, Internal Revenue Service.

## **F. Responsible Agency**

U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
Tel. (202) 622-2000  
Fax: (202) 622-6415  
<http://www.ustreas.gov/>

Internal Revenue Service  
<http://www.irs.gov>

To locate local offices please visit: <http://www.irs.gov/localcontacts/> or are consult your telephone directory under United States Government, Internal Revenue Service.

## SOCIAL SECURITY – FEDERAL

### **A. Who Must Comply?**

Farm employers must make Social Security deductions if they pay more than \$2,500 to all employees for agricultural labor during the year. If the more than \$2,500 total payroll test is not met, then individual wages will be subject to Federal Insurance Contributions Act (FICA) for any individual receiving more than \$150 during the year. This \$150 applies to each worker. For Social Security purposes, wages include only cash payments made to employees for farm labor and do not include food, lodging and other non-cash items.

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

- 1) a child under 18 years of age in the employ of his father or mother or
- 2) a parent in the employ of a son or daughter performing
  - a) domestic service in or about the private home of the son or daughter or
  - b) work not in the course of the son's or daughter's trade or business.

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

Employers must comply with the following:

1. The Federal Insurance Contributions Act (FICA) (codified in the Internal Revenue Code) imposes a Social Security withholding tax equal to 6.20% of the gross wage amount, up to but not exceeding the Social Security Wage Base (\$94,200 for the year 2006; \$97,500 for 2007; and \$102,000 for 2008). The same 6.20% tax is imposed on employers.
2. A separate payroll tax of 1.45% of an employee's income is paid directly by the employer, and an additional 1.45% deducted from the employee's paycheck, yielding a total tax rate of 2.90%. There is no maximum limit on this portion of the tax. This portion of the tax is used to fund the Medicare program, which is primarily responsible for providing health benefits to retirees.
3. The combined tax rate of these two federal programs is 15.30% (7.65% paid by the employee and 7.65% paid by the employer)
4. Deposit withheld Income Taxes and Social Security deductions in a Federal Reserve Bank or authorized commercial bank as indicated in the following schedule. Deposits must be accompanied by Form 511, Federal Tax Deposit.

### **B. Summary of Deposit Rules for Social Security Taxes and Withheld Income Tax**

#### *1. Monthly Depositor*

An employer that reported employment taxes of \$50,000 or less per year generally must make only monthly deposits. The deposit for a month must be made on or before the 15<sup>th</sup> day of the following month.

## 2. *Semi-Weekly Wednesday/Friday Depositor*

An employer that reported employment taxes of more than \$50,000 per year is a semi-weekly depositor for the entire year. Such employers must make deposits on or before Wednesdays or Fridays depending on the timing of their payrolls. Employment taxes for Wednesday, Thursday or Friday paydays must be deposited on or before the following Wednesday. Taxes from Saturday, Sunday, Monday or Tuesday paydays must be deposited by the following Friday.

Employers also must:

- 1) Provide each employee with a Form W-2, Wage and Tax Statement (showing the amount of earnings, income tax withheld and amount of Social Security deductions) by January 31;
- 2) File Form W-3, Transmittal of Income and Tax Statements, with the Social Security Administration, Office of Central Records Operations, Baltimore, MD 21290, by February 28<sup>th</sup> of each year. Attach a copy of each employee's Form W-2;
- 3) Prepare and file Form 943, Employer's Annual Tax Return for Agricultural Employees, with the Internal Revenue Service by January 31<sup>st</sup> of each year (February 10 if tax was paid in full with Form 511); and
- 4) Maintain payroll records for at least 4 years for each employee. These records should include:
  - a) Employee's name and social security number;
  - b) Cash payments to the employee for farm work;
  - c) Any amount deducted as employee Social Security tax;
  - d) The number of days the employee did farm work for cash wages on a time basis;
  - e) The amount, if any, of income tax withheld; and
  - f) The amount of non-cash wages paid (for income tax purposes only).

## **C. Wages Not Subject To Tax**

Workers are not required to pay Social Security taxes on wages from certain types of work, as follows:

- Wages received by certain state or local government workers participating in their employers' alternative retirement system.
- Net annual earnings from self-employment of less than \$400.
- Wages received for service as an election worker, if less than \$1,400 a year (in 2008).
- Wages received for working as a household employee, if less than \$1,600 per year (in 2008).
- Wages received by college students working under Federal Work Study programs, graduate students receiving stipends while working as teaching assistants, research assistants, or on fellowships, and most postdoctoral researchers.
- Earnings received for serving as a minister (or for similar religious service) if the person has a conscientious objection to public insurance because of personal religious considerations, but only for "qualified services" performed for a religious organization.
- Other minor exceptions.

There is also an exemption from all Social Security taxes for members of recognized religious sects, such as the Amish and Mennonites that are opposed to public insurance

#### **D. Responsible Agencies**

##### Benefits:

U.S. Department of Health and Human Services  
200 Independence Ave, SW  
Washington, DC. 20201  
Tel. 202-619-0257  
Toll Free: 1-877-696-6775  
<http://www.hhs.gov/>

Social Security Administration  
Office of Public Inquiries  
Windsor Park Building  
6401 Security Blvd.  
Baltimore, MD 21235  
Tel. 1-800-772-1213  
<http://www.ssa.gov/>

##### Enforcement and Tax Collection:

U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
Tel. (202) 622-2000  
Fax: (202) 622-6415  
<http://www.ustreas.gov/>

Internal Revenue Service  
<http://www.irs.gov>

To locate local offices please visit: <http://www.irs.gov/localcontacts/> or are consult your telephone directory under United States Government, Internal Revenue Service.

## UNEMPLOYMENT COMPENSATION

### **A. Who Must Comply?**

Any employer of farm workers who either has in the current calendar year or had in the preceding calendar year:

- 1) A payroll of at least \$6,250 in a calendar quarter, OR three or more employees for some portion of a day in twenty or more weeks during the year.
- 2) Employed migrant labor;
- 3) Employed seasonal workers on truck farms, orchards or vineyards; or
- 4) Employed seasonal workers and migrant workers at the same time and if the seasonal workers did the same work as the migrant workers at the same location.

### **B. Responsible Employer**

Depending upon the circumstances, either the farm operator or the crew leader may be the responsible employer.

The FARM OPERATOR is the employer under these circumstances:

- 1) The individual is an employee of the farm operator under common law rules of master and servant; or
- 2) The worker is furnished by the crew leader but is not treated as an employee of the crew leader; i.e., the crew leader is acting on behalf of the farm operator rather than as an employer; or
- 3) The crew leader has entered into a written agreement with the farm operator under which the crew leader is designated as an employee of the farm operator.

The CREW LEADER is the employer under these circumstances:

- 1) The crew leader holds valid certification of registration under the Migrant and Seasonal agricultural Worker Protection Act; or
- 2) Substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other
  - a) the STATE tax will vary depending on the experience rating of the individual farm employer. Farm employers without an experience rating will pay 2.7 percent of the first mechanized equipment provided by the crew leader; and
- 3) The employee is not an employee of any other person under common law rules of master and servant.

### **C. Farm Related Exempt Employment**

- Farm work for an exempt employer (See who must comply).
- Certain students working for credit on a program combining academic instruction with work experience (work-study program).
- Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of his father or mother.



- Service performed as part of an unemployment work-relief or work training program assisted or financed in whole or in part by any federal or state agency or political subdivision thereof, by an individual receiving such work relief or work training.
- Service performed on a fishing vessel normally having a crew of fewer than ten if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act.

Employers must comply with the following:

- 1) Pay unemployment compensation tax on the first \$9,000 of annual payroll earnings for each employee; there are two parts to the tax: federal and state. The effective FEDERAL tax is 0.8 percent of the first \$9,000 of the annual payroll of each employee. (The actual federal tax is 6.2 percent less a credit of 5.4 percent if the employer pays the state tax.) \$9,000 of the annual payroll of each employee for six calendar quarters. At the end of the sixth calendar quarter the rating process will be started and taxes paid in the seventh and subsequent quarters will be based on the experience rating. Experience ratings are recalculated annually thereafter. Annual rate notices are mailed to all employers in late January of the applicable year.
- 2) Submit tax and wage reports as required. The "Employer's Quarterly Tax and Wage Report" is due the first day of the first month following the end of the calendar quarter. Penalty and interest charges are due if the Tax and Wage Report is filed after the last day of the first month following the quarter. The employer's "Tax and Wage Report," which is sent to each liable employer at the end of each quarter, provides for listing each employee's name, social security number, number of weeks worked in the calendar quarter and the gross wages paid. The state reporting form is due during the month after the quarter ends. The state may impose a penalty for reports that are filed late and an additional penalty because of taxes being paid after the due date.
- 3) When a former employee submits an "Unemployment Benefit Claim," the most recent employer will be notified from the local office by a "Notice of Claim filed." The employer has 10 days to furnish the local office information about the job separation, which may be disqualifying (see list below). Other past employers will also be notified of the claim on a "Chargeback Notice" by the central office. The employer has 10 days to furnish the central office with information about the separation, which may be disqualifying. If the employer fails to reply within the prescribed period concerning a disqualifying separation, the claim may be charged against his experience rating and result in a higher tax rate in the future.
- 4) Display, in a place where all employees can see it, the poster "To Employees." This form is available in English and Spanish.
- 5) Have records available for inspection at any reasonable hour during the business day and maintain records for a period of five calendar years.
- 6) They are receiving or are seeking unemployment benefits under an unemployment compensation law of another state or the United States; or
- 7) They are illegal aliens.

## **D. Employee Eligibility**

To be eligible for Unemployment Compensation, an individual must be employed less than full time, able to work, available for work, actively seeking work and not subject to any disqualification or ineligibility. A claimant must have the necessary wage credits during the base period. The base period consists of the first four of the last five completed calendar quarters preceding the effective date of the worker's initial claim. Claims are effective the Sunday preceding the filing date. Employers wishing to obtain tax forms or information pertaining to taxes or coverage under the Texas Unemployment Compensation Act should contact their local TWC.

### *1. Weekly Benefits*

The weekly benefit amount to which a claimant is entitled is based on the claimant's earnings during the base period. The maximum benefit amount can only be changed by an act of the Legislature. It is subject to change on an annual basis.

### *2. Employee Claims*

Employees do not pay for Unemployment Insurance. This cost is borne by the employer. Unemployed farm workers who are eligible may file for benefits at the local office of the Texas Workforce Commission.

Farm workers may not be eligible for benefits if it is found that:

- 1) They voluntarily quit their job without good cause attributable to the employer;
- 2) They were discharged for misconduct connected with their work;
- 3) They fail to apply for or accept suitable work;
- 4) Their unemployment is due to participation in a labor dispute;
- 5) They have willfully misrepresented their case. (This is also cause for fine and imprisonment);
- 6) They are receiving or are eligible to receive a retirement income—other than disability—from a base period employer;

## **E. Responsible Agency**

Texas Workforce Commission  
101 E. 15<sup>th</sup> Street, Room 424-T  
Austin, Texas 78778  
Tel. (512) 475-2670  
<http://www.twc.state.tx.us/>

## TEXAS WORKERS COMPENSATION LAW

Workers' Compensation laws covering agricultural laborers took effect January 1, 1985. These laws address on-the-job injuries and the corresponding insurance benefits provided to those injured or disabled while performing these work-related functions.

### **A. Who Must Comply**

While the law does not require employers to purchase Workers' Compensation Insurance all employers must comply with specific provisions within the law.

### **B. Exemptions**

Some agricultural workers are still exempted from coverage under the Workers' Compensation Law. An employer may, however, elect to obtain coverage for exempt employees. If an employer does not obtain coverage for exempt employees the employee is not deprived of his/her common law defenses.

The law covers three classes of agricultural employees: migrant, seasonal and other.

#### *1. Migrant Workers*

There are no exemptions under the law with regard to migrant workers regardless of the number employed or the gross annual payroll. For the purpose of this law, migrant workers are those persons employed in seasonal or temporary jobs and required to be away from their permanent residences overnight.

If migrant labor is provided by a labor agent, the labor agent is responsible under this law as the employee of the migrant labor agent. The law mandates that labor agents who do have coverage present evidence of insurance to those with whom they contract. When the agent purchases the insurance, the person with whom the labor agent contracts are not responsible in a separate action should injury or death occurs, except as provided by the law.

If the agent does not subscribe, however, the person with whom he has contracted is responsible, along with the labor agent, in any action to recover damages for injury or disability. The law does allow an employer to purchase workers' compensation insurance when faced with a situation in which the agent has not subscribed.

#### *2. Seasonal Workers*

These are employees working in seasonal or temporary position but are not required to be gone from their permanent residences overnight. Seasonal workers employed on a truck farm, orchard or vineyard are not exempt by this law. A truck farm is a farm on which fruits, garden vegetables, potatoes, sugar beets or vegetable seeds are produced for market. There are no exemptions or exclusions for seasonal labor working in these three operations.

If a seasonal worker is working for an employer or labor agent who employs migrant workers and the seasonal worker is doing the same work at the same time at the same place as migrant workers, then the seasonal worker is considered to be a migrant worker. In these circumstances, there is no exemption from coverage.

Seasonal workers who do not fall into the above categories are exempt from the law if their employer's gross annual payroll was less than \$37,871 in 1998. For exemptions in subsequent

years, the preceding year's payroll must be less than the prior year's required payroll amount adjusted for inflation. The Comptroller will provide an annual inflation multiplier before October of each year.

### *3. All Other Farm and Ranch Laborers*

To be exempt, their agricultural employer must employ fewer than three persons who are not seasonal or migrant workers and had a payroll during the preceding year that was less than the payroll exemption threshold outlined under the seasonal worker provision. Threshold figures are determined by the state and released in October of each year. For current threshold figures, employers should contact their insurance agent.

The gross annual payroll, referred to in the latter two sections, includes amounts paid directly to farm and ranch laborers, seasonal and migrant workers and to labor agents for their services and the services of migrant or seasonal workers. It does not include wages paid to the employer or his family (if a sole proprietorship), a partner or partner's family (if a partnership), a shareholder or member of his family (if a corporation and all shareholders are family members).

Employers who subscribe to the insurance to cover their workers may also cover themselves, a partner, a corporate officer or a family member. When these individuals are to be covered, they must be specifically named and the coverage continues as long as the policy is in effect and the named individual(s) is endorsed on the policy.

## **C. Rates**

The cost of Workers' Compensation Insurance is set by the State Insurance board. It is stated in dollars per \$100 of gross payroll. There are currently several classifications in effect that include persons working in agricultural jobs.

Rates are established through an experience factor system, which tends to equate the claims made in each classification with income generated through the rate structure. Each year the rate is subject to change if the claims and income are not on a somewhat equal basis. Those who wish to purchase insurance should contact an insurance carrier to determine the exact classification of their employees and the cost of coverage.

## **D. General Information for Employers Who Choose Not To Have Coverage**

Workers' Compensation Insurance is not mandatory. If you choose not to purchase Workers' Compensation Insurance, there are certain things you still must do to comply with the law. They are:

- 1) Display posters in both English and Spanish stating that workers are not covered by any Workers' Compensation Insurance;
- 2) Provide a written statement to all new employees at the time of hiring that they will not be covered by a Workers' compensation Policy; and
- 3) File notice with the Texas workers' Compensation Commission each year that you do not have Workers Compensation Insurance. This notice must be filed by May 15<sup>th</sup> of each year.

## **E. General Information for Employers Who Choose To Provide Insurance**

Employers who provide Workers' Compensation Insurance have additional responsibilities with regard to providing information about the program. Employers must:

- 1) Display posters in both English and Spanish informing employees that they are covered by Workers' Compensation Insurance.
- 2) Allow new employees who do not wish to be covered under the employer's insurance company to sign a waiver indicating so;
- 3) Display posters in both English and Spanish informing employees of the Ombudsman program;
- 4) File an injury report within 8 days of an accident that leads to at least 1 day of lost time, or of notification of an occupational disease; and
- 5) Have a "drug free work place" policy in force if 15 or more persons are employed.

More detailed information and examples of all signs needed can be found in the booklets "Guide to Workers' Compensation" and "Drug Free Workplace resource Guide," which are available from the Texas Workers' Compensation Commission.

## **F. Responsible Agency**

The Texas Department of Insurance  
Division of Workers Compensation  
333 Guadalupe  
Austin, TX 78701  
Tel. 800-252-7031  
<http://www.tdi.state.tx.us>

## **ADVANCED EARNED INCOME CREDIT – FEDERAL**

Certain qualifying individuals are entitled to a basic tax credit of up to \$1,750 for 2008 (Note: the amount of credit normally increases every year). Employees who qualify for this credit may choose to receive the basic portion of the tax credit in advance from their employers. Payment is made by using a specific table designed for this purpose and is reflected as a separate item on the employee's check. Employers, in turn, take credit for these payments against their liability for either Withholding Taxes or Social Security Taxes.

### **A. Who Must Comply?**

All employers, including farmers, must pay Advance Earned Income Credit if the employee is eligible and requests payment.

### **B. Exemptions**

Employers who pay agricultural workers on a daily basis are not required to pay Advanced Earned Income Credit.

Employers must comply with the following:

- 1) Inform employees whose wages are not subject to Income Tax Withholding that they may be eligible for the refundable Earned Income Credit.
- 2) Provide the Form W-5, Earned Income Credit, Advanced Payment Certificate, to the employee upon request (available at the nearest IRS office or post office).
- 3) When a Form W-5 is filed:
  - a) compute the employee's gross pay (for agricultural employees gross pay is interpreted to mean those wages subject to Social Security Taxes);
  - b) compute the employee's Social Security and Withholding Tax (Withholding Tax is not applicable to agricultural employees unless the worker has voluntarily asked the employer to withhold Income Tax);
  - c) refer to tables in IRS Circular E (Supplement), Employer's Payment Guide, and compute the Advanced Earned Income Credit payment based on the employee's gross pay for the pay period;
  - d) add the Advanced Earned Income Credit to the worker's net pay for the pay period; and
  - e) retain all records of Advanced Earned Income Credit payments for 4 years. These records should include the following information:
    - copy of employee's Form W-5;
    - amount and date of employer's earnings;
    - dates of each employee's employment;
    - dates and amount of tax deposits made; and
    - copies of returns filed.
- 4) File the appropriate forms with the Internal Revenue Service: Form 941, Employer's Quarterly Tax Return (for non-farm packinghouses, canners and processors) on Form 943, Annual Tax Return for Agricultural Employers (for farm employers).

- 5) File Form 2-3, Transmittal of Income and Tax Statement, to the Social Security Administration in Baltimore annually by February 28<sup>th</sup>, accompanied by a W-2 Form for each individual employee (see section on Social Security).

Employers are reimbursed by the federal government for Advanced Earned Income Credit payments as follows:

- The employer deducts the amount of the Advanced Earned Income Credit payment from his/her total liability for Withholding Taxes (non-farm employers only) as he/she periodically remits funds to the Internal Revenue Service.
- If the taxes withheld are not sufficient to cover the amount of the Advanced Earned Income Credit payments to his/her employees, the employer may deduct the excess from the employee contribution to Social Security.
- If there is still an excess of Advanced Income Credit payments, the employer may deduct the excess from the employer's contribution to Social Security.

### **C. Employee Eligibility**

An employee is eligible to receive advance earned income credit, if:

- 1) The employee's expected earned income and adjusted gross income for 2008 must each be less than \$12,880 with no children or \$33,995 with one qualifying child and \$38,646 with two or more children. There are no age restrictions on the latter two categories.
- 2) If married, the employee must not file as married filing separately. The employee must file a joint return or qualify to file as head of household. If married filing jointly, then adjusted gross income for 2008 must be less than \$15,880 with no children, or \$36,995 with one qualifying child and \$41,646 with two or more children.
- 3) The employee must not claim the foreign earned income or housing expense exclusion, or the foreign housing expense deduction.
- 4) The employee cannot be a qualifying child of another person.
- 5) The employee must have a qualifying child as defined in Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit.
- 6) A child generally must be claimed as a dependent by the employee. However, there are special rules that may apply if the child is the child of divorced or separated parents.

### **D. Additional Information**

(obtainable from the responsible agencies)

- Circular E (Supplement), Publication 15, Employer's Tax Guide
- Federal Register, Vol. 46, No. 21, February 2, 1981, page 10148.

## **E. Responsible Agencies**

U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
Tel. (202) 622-2000  
Fax: (202) 622-6415  
<http://www.ustreas.gov/>

Internal Revenue Service  
<http://www.irs.gov>

To locate local offices please visit: <http://www.irs.gov/localcontacts/> or are consult your telephone directory under United States Government, Internal Revenue Service.



## **WORKER PROTECTION STANDARDS ACT**

### **A. Introduction**

The Worker Protection Standard for Agricultural Pesticides (WPS) is a regulation issued by the U.S. Environmental Protection Agency (EPA) to protect persons who use pesticides in the production of agricultural plants on farms, and in forests, nurseries and greenhouses. The WPS requires employers to take steps to reduce the risk of pesticide-related illness and injury for themselves and the people they employ.

The WPS covers:

- Agricultural workers – perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries or forests;
- Pesticide handlers – mix, load or apply agricultural pesticides; clean or repair equipment; act as flaggers or perform any task involving direct contact with pesticides.

Employers are responsible for making sure workers and handlers receive the protections required by the pesticide label and the WPS.

There are two types of employers:

- Agricultural employers – employ or contract for the services of workers or own or operate an establishment that employs workers;
- Handler employers – hire pesticide handlers or are self-employed as handlers. This definition includes commercial applicators and companies that supply crop advisory services on agricultural establishments.

However, whether or not you employ workers and handlers, at a minimum, you will be required to comply with new personal protective equipment and restricted entry statements on the pesticide labels.

### **B. Duties of All Employers**

Some WPS protections that employers must provide to their employees are nearly the same whether the employees are workers or handlers.

#### *1. Information at a Central Location*

For the benefit of all employees, information must be posted at an easily seen, central location on each agricultural establishment. That information includes:

- Facts about each pesticide application, the product name, EPA registration number and active ingredient(s); location and description of treated area(s); the time and date of the application and the restricted-entry interval (REI);
- The name, address and telephone number of the nearest emergency medical facility; and
- An EPA WPS safety poster.

Employers must tell workers and handlers where the information is posted and allow them access to the information. Be sure that the information remains legible and notify your employees of any changes to the emergency medical facility information.

## *2. Decontamination Sites*

Employers must provide sites so that workers and handlers can wash pesticides and residues from their hands and bodies.

Decontamination supplies must include:

- Enough water for routine and emergency whole-body washing and for eye-flushing;
- Soap;
- Single-use towels; and
- A clean coverall for use by handlers.

Decontamination materials must be within 1/4 mile of the employees' worksite. If the work place is more than 1/4 mile from the nearest point of vehicular access, the decontamination materials may be located at the nearest access point. Handler employers must also provide decontamination materials:

- Where handlers remove their personal protective equipment (PPE) at the end of a task; and
- At each mixing/loading site.

Emergency eye flush water must be immediately available if the pesticide label calls for protective eye wear.

The decontamination materials may not be located in an area under restricted entry unless they serve handlers working in that area. In this case, all materials must be protected from contamination.

## *3. Emergency Assistance*

If there is reason to believe that a handler or worker may have been poisoned or injured by pesticides, an employer must promptly make transportation to an appropriate medical facility available to that person. Be prepared to provide the victim and medical personnel with:

- The product name, EPA registration number and active ingredient(s);
- All first aid and medical information from the label;
- A description of how the pesticide was used; and
- Information about the victim's exposure.

## *4. Pesticide Safety Training*

Handlers and workers must be trained every five (5) years unless they are certified applicators. Handlers must be trained before they do any handling activity.

Workers must receive complete WPS training by the fifth day of entering into an area on an agricultural establishment that has been treated or under a restricted entry interval (REI) in the last 30 days. They must receive basic pesticide safety information before entering a treated area. Training may be conducted by a licensed applicator or by someone who has completed a train-the-trainer program. Training may be given orally and/or audio visually, but must be in a manner

and language that employees can understand, using easily understood terms, and if necessary, an interpreter.

### *5. Information Exchange*

An agricultural employer must be informed when a pesticide is to be applied on his/her agricultural establishment by a commercial handler (commercial applicator or custom applicator). The commercial handler employer must provide the agricultural employer with all the information needed to be posted at the central location, plus:

- Whether both oral warnings and treated area
- At least 14" x 16" in size;
- Posting are required; and
- Any other protection requirements on the label for workers or other people.

The agricultural employer, on the other hand, must make sure the commercial handler employer is aware of all areas on the agricultural establishment where pesticides will be applied or where an REI will be in effect while the commercial handler is on the establishment and entry restrictions for those areas. It is the responsibility of each employer to provide his/her employees with the protections required under WPS.

### *6. Additional Duties of Worker Employers*

Agricultural employers must provide some additional protections specifically for their workers.

#### *a. Restrictions during Applications*

An employer must keep all workers out of areas being treated with pesticides. Only properly trained and properly equipped handlers are allowed in areas being treated. Under some conditions, nursery and greenhouse workers must also be kept a certain distance from the treated area.

#### *b. Restricted-Entry Intervals (Reis)*

The restricted entry interval is the time immediately after a pesticide application when entry into the treated area is limited. During an REI, do not allow workers (including owner and family members) to enter a treated area or contact anything treated with the pesticide to which the REI applies. REIs are located on the pesticide label. When two (or more) pesticides are applied at the same time and have different REIs, you must follow the longer interval.

#### *c. Notice about Applications*

Employers must notify workers about pesticide applications on the establishment. In most cases, employers may choose between oral warnings or posted warning signs, but they must tell workers which warning method is in effect. For some pesticides, however, employers have to do both. Posted signs must be:

- In the language commonly spoken and read by workers;
- Posted 24 hours or less before application; during the REI and not removed before workers enter but within 3 days after the REI ends;
- Posted so they can be seen at all normal entrances to treated areas, including entrances from labor camps.

Oral warnings must be delivered in a manner understood by workers, using an interpreter if necessary. Oral warnings must include:

- Location and description of treated area,
- The REI,
- Specific directions not to enter during the REI.

### *7. Additional Duties of Handler Employers*

Employers are required to provide additional protections to their handlers.

#### *a. Application Restrictions*

Do not allow handlers to apply a pesticide so that it contacts, directly or through drift, anyone other than trained and PPE handlers.

#### *b. Monitoring*

Sight or voice contact (radio, etc.) must be made at least every two hours with anyone handling pesticides labeled with a skull and crossbones (signal word: DANGER-POISON). When using a fumigant in an enclosed area, monitoring must be constant with access to PPE necessary for rescue.

#### *c. Specific Instructions for Handlers*

Handler employers must ensure that before any handling task, handlers:

- Are given information from the pesticide label regarding safe use;
- Have access to the label during the entire handling task; and
- Are instructed in the safe operation of the equipment they will be using.

Commercial handler employers must make sure their employees are aware of areas on an establishment where pesticides have been applied or where an REI is in effect and are aware of Pesticide labels reflect the Worker Protection Standards requirements under the “Agriculture Use” restrictions on entering those areas.

#### *d. Personal Protective Equipment (PPE)*

Employers must provide handlers with the PPE as listed on the pesticide label. The employer must:

- Maintain PPE in a clean and operational condition;
- Make sure it fits correctly;
- Make sure handler wears and uses the PPE correctly;
- Provide a clean place to put on and remove PPE and store personal clothing;
- Not allow workers to wear or take home PPE;
- Take action to prevent heat-related illness while PPE is worn.

#### *e. Cleaning and Maintaining PPE*

Employers must make sure:

- PPE is cleaned according to manufacturer’s instructions, inspected and repaired before each use;
- PPE that is non-reusable or cannot be cleaned, must be disposed of properly;

- Clothing drenched with pesticide labeled DANGER or WARNING are discarded;
- PPE is washed and dried properly, and stored separately from personal clothing;
- Respirator filters, cartridges and canisters are replaced as often as required.

The handler employer must make sure anyone cleaning PPE is informed of possible pesticide residues on PPE, of the potentially harmful effects of pesticides, and of the correct ways to handle and clean PPE.

*f. Equipment Safety*

Handler employers must make sure that equipment used for mixing, loading, transferring or applying pesticides is inspected and repaired or replaced as needed. Only appropriately trained and equipped handlers may repair, clean or adjust pesticide handling equipment that contains pesticides or pesticide residues.

*g. Directions*

When you use a pesticide product with labeling that refers to the Worker Protection Standards, you must comply with the WPS.

**C. Responsible Agency**

Texas Department of Agriculture  
Post Office Box 12847  
Austin, Texas 78711  
(Piece Rates for Commodities)  
Tel. (512) 463-7476  
Nationwide Toll Free Phone: (800) TELL-TDA (835-5832)  
Fax: (888) 223-8861  
[www.agr.state.tx.us](http://www.agr.state.tx.us)

## **AGRICULTURAL HAZARD COMMUNICATION ACT OF TEXAS (Right-to-Know)**

The Agricultural Hazard Communication (Right to Know) Act of 1987 was enacted to provide farm operators and agricultural workers with information about hazardous chemicals that they will work with. The main purpose is to provide better information about working safely with agricultural chemicals.

### **A. Who Must Comply?**

The following employers are subject to the Act:

1. Agricultural employers who themselves, or through labor agents, hire migrant or seasonal workers and whose gross annual payroll for those workers is \$15,000 or more and who annually use or store 55 gallons or 500 pounds of any pesticide;
2. Agricultural employers who themselves, or through labor agents, hire permanent agricultural workers (other than migrant or seasonal workers) whose gross annual payroll is \$50,000 or more and who annually use or store 55 gallons or 500 pounds of any pesticide; and
3. Other entities that normally store pesticides in an amount in excess of 55 gallons or 500 pounds and are subject to the Emergency Reporting Requirement.

An agricultural laborer is a person who plants, cultivates, harvests or handles an agricultural commodity. This includes a laborer who handles chemicals covered by this Act. With regard to payroll, thresholds for seasonal, migrant, permanent workers and all such employees, regardless of their duties, are to be included in the gross payroll calculation.

### **B. Responsibilities**

Covered agricultural employers will be responsible for collecting, storing and making available to agricultural workers information about pesticide use. The law requires agricultural employers to:

- 1) Provide workers with relevant crop sheets, space for the name and phone number of the employer to be contacted for more and ensure that they are read aloud to workers at least once each work season;
- 2) Inform workers about relevant pesticide re-entry intervals;
- 3) Maintain Workplace Chemical Lists and Material Safety Data Sheets and make these accessible to workers, treating medical personnel or a member of the community upon request;
- 4) Provide other basic health and safety information, approved by the Texas Department of Agriculture, to their workers on the first pay day of each work season; and
- 5) Provide emergency information to their workers, local fire chiefs, medical personnel and designated farm worker representatives, upon request.

### *1. Crop Sheets*

The Texas Department of Agriculture (TDA), in coordination with the Texas AgriLife Extension Service develops crop sheets for most major Texas crops. The crop sheets are in Spanish and English and contain:

- 1) A list of the most commonly used pesticides;
- 2) Months of pesticide application;
- 3) Re-entry interval or length of time that farmers are required to wait before allowing workers to enter a pesticide-treated field;
- 4) Acute or short-term symptoms of pesticide exposures, as well as their chronic or long-term health effects;
- 5) Summary of agricultural workers' rights under the law;
- 6) Emergency procedures for pesticide poisoning;
- 7) Summary of basic safety measures to prevent pesticide poisoning;
- 8) Information about the availability of Material Safety Data Sheets and Workplace Chemical lists;
- 9) Information about training programs to be provided statewide by TDA and Texas AgriLife Extension Service;

Copies of the crop sheets will be provided on request by TDA or Texas AgriLife Extension Service to agricultural employers for reproduction and distribution to workers in their employment. The sheets will be updated periodically to reflect changes in use patterns and health information.

### *2. Workplace Chemical List*

The Workplace Chemical List is a form provided to agricultural employers by TDA and is to be used for recording information about the pesticides used or stored in the workplace. The employer shall maintain one form for each crop, workplace or work area, whichever is most practical, and keep these records annually for chemicals in excess of 55 gallons or 500 pounds used or stored in the workplace. The following information is to be included on the Workplace Chemical List.

- 1) Employer's name, address and other means of identification;
- 2) Name of crop;
- 3) Date of each pesticide application or storage;
- 4) Product name of pesticide;
- 5) Environmental Protection Agency (EPA) registration number from the label;
- 6) Location(s) or site(s) treated or where stored;
- 7) Number of acres treated;
- 8) An estimate of the total quantity of pesticide used; and
- 9) Location of pesticide storage area.

The law requires that the lists be updated as pesticides are applied or stored and shall be maintained by the employer for 30 years. Or, employers may file these lists with TDA annually by January 31.

### *3. Material Safety Data Sheets*

A Material Safety Data Sheet (MSDS) is a document that specifically identifies the chemical and its ingredients and gives health, safety and emergency information about the pesticide. MSDS are provided by chemical manufacturers and distributors to purchasers in the state. Dealers are required to provide MSDSs, if available, upon request. The employer must keep the most current MSDS available on file for each pesticide listed on Member of the community the Workplace Chemical List.

### *4. Emergency Reporting Requirement*

This clause applies to operations that normally store more than 55 gallons or 500 pounds of pesticides at a location within 1/4 of a mile of a residential area with three or more private dwellings. Those covered by this clause are required to notify their local fire chief of the name(s) and phone number(s) of responsible person(s) who can be contacted for further information. Upon request by the fire chief, they must:

- 1) Provide copies of the Workplace Chemical Lists and Material Safety Data Sheets; and
- 2) Allow inspection of the storage area.

## **C. Agricultural Workers' Rights**

Agricultural workers are entitled to:

- 1) Receive copies of crop sheets and to have this information read to them by the covered agricultural employers or their representatives;
- 2) Have access to Material Safety Data Sheets and Workplace Chemical Lists, upon request;
- 3) Be informed of the last and future dates of pesticide applications and applicable re-entry periods;
- 4) Be provided with other basic health and safety information on the first pay day of the work season, as approved by TDA;
- 5) Contact TDA to report suspected violations of this law without fear of retaliation or any disciplinary action, and to request anonymity when necessary; and
- 6) Designate a representative to act on their behalf.

### *1. Designated Representatives*

A designated representative is an individual or an organization to which an agricultural worker gives written authorization to exercise the worker's rights under this law. A certified union representative is not required to have written authorization.

Anyone who lives, works or attends school, is treated in a hospital or is in a nursing home within a 1/4 mile radius of a covered workplace.

### *2. Legal Ramifications*

Upon receiving a complaint, the Texas Department of Agriculture will complete an investigation within 90 days.

- Employers who knowingly disclose false information or negligently fail to disclose a hazard are subject to a civil penalty of not more than \$5,000 per violation.



- Employers who cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than \$25,000.

In case of pesticide exposure, call the National Pesticide Information Center at (800) 858-7378 or the National Poison Control Center at (800) 222-1222.

#### **D. Responsible Agency**

Texas Department of Agriculture  
Post Office Box 12847  
Austin, Texas 78711  
(Piece Rates for Commodities)  
Tel. (512) 463-7476  
Nationwide Toll Free Phone: (800) TELL-TDA (835-5832)  
Fax: (888) 223-8861  
[www.agr.state.tx.us](http://www.agr.state.tx.us)

## **OCCUPATIONAL SAFETY AND HEALTH ACT – (OSHA) – FEDERAL**

### **A. Objective**

The general purpose of the Occupational Safety and Health Act is to ensure, as far as possible, that every working man and woman in the nation has safe and healthful working conditions and to preserve our human resources.

### **B. Who Must Comply?**

Aside from the exemptions discussed below, any employer of one or more workers engaged in a business that affects interstate commerce must comply with OSHA regulations. This Act, however, does not apply to members of a farmer's family who work for him/her. Annual exemptions from all rules, regulations, orders or standards issued or prescribed under the Occupational Safety and Health Act of 1970 have been provided for certain farmers since 1976.

Farming operations employing 10 or fewer employees during the previous 12 months are exempted if they do not maintain a migrant labor camp. This exemption is not a part of the OSHA law but has been renewed annually as part of the OSHA funding authorization by Congress. Employers should check with the area OSHA office to determine if the exemption is in force for the current year.

Farm employers with 11 or more employees are generally exempt from civil penalties for non-serious, first-instance violations unless 10 or more violations are found on any single inspection.

An employer of 10 or fewer employees will not be assessed penalties for non-serious violations if the employer has:

- a. Voluntarily requested consultation under an approved program or by an approved private consultant;
- b. Had the consultant examine the condition cited; and
- c. Made or is making a good faith effort to eliminate the hazard.

All employers must comply with the following:

- 1) Inform employees of safety regulations and display prescribed posters in a place where employees will see them.
- 2) Report any accident that results in one or more deaths or in hospitalization of five or more employees. This report must be made within 48 hours. (Also see reporting requirements under Worker's Compensation section.)
- 3) Maintain a log of occupational injuries and illnesses and make reports if selected to participate in an OSHA survey of injuries and illnesses.

Employers of 11 or more workers must:

- 1) Keep required records of occupational injuries and illnesses.
- 2) Display in a prominent place the Log and Summary of Occupational Injuries and Illnesses, OSHA Form No. 200, during February each year.

- 3) Comply with the general duty clause on providing a work place free from recognized hazards and comply with the specific agricultural stands for:
  - Slow moving vehicle emblems.
  - Logging and pulpwood operations.
  - Roll-over protection structures (ROPS) and seatbelts on certain tractors.
  - Temporary labor camps.
  - Storing and handling anhydrous ammonia.
  - Guarding of farm machinery.
  - Retaining all records for a period of 5 years.
  - Hazard communications.

Employees must comply with the following:

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

### **C. Training**

Employee training is required under certain standards applicable to agriculture.

#### *1. General:*

- 1) The employer shall ensure the ready availability of medical persons for advice and consultation on matters of workplace health.
- 2) In the absence of a nearby infirmary, clinic or hospital which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

#### *2. Temporary Labor Camps*

- 1) Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for emergency treatment of injured persons.
- 2) Persons in charge of such facilities shall be trained to administer first aid and shall be readily accessible at all times.

#### *3. Tractor Roll-Over Protective Structures (ROPS)*

Every employee who operates an agricultural tractor shall be informed of the operating practices listed below:

- 1) Securely fasten your seat belt if the tractor has a ROPS;
- 2) Where possible, avoid operating the tractor near ditches, embankments and holes;
- 3) Reduce speed when turning and crossing slopes, and on rough, slick or muddy surfaces;
- 4) Stay off slopes too steep for safe operation;

- 5) Watch where you are going, especially at row ends, on roads and around trees;
- 6) Do not permit others to ride;
- 7) Operate the tractor smoothly – no jerky turns, starts or stops; and
- 8) Hitch only to the drawbar and hitch points recommended by tractor manufacturers.

#### *4. Guarding the Farm Equipment*

At the time of initial assignment and at least annually thereafter, the employer shall instruct every employee in the safe operation and servicing of all covered equipment with which he/she is or will be involved, including at least the following safe operating practices:

- 1) Keep all guards in place when the machine is in operation;
- 2) Permit no riders on farm field equipment other than persons required for instructions or assistance in machine operation;
- 3) Stop the engine, disconnect the power source and wait for all machine movement to stop before servicing, adjusting, cleaning or unclogging the equipment except where the machine must be running to be properly serviced or maintained, in which case the employer shall instruct employees as to all steps and procedures that are necessary to safely service or maintain the equipment;
- 4) Make sure everyone is clear of machinery before starting the engine, engaging power or operating the machine; and
- 5) Lock out electrical power before performing maintenance or service on farmstead equipment.

It is suggested that records be kept of all safety and health training. The records should include exactly what was covered, when the training was provided and the signature of the employee acknowledging that he/she has received the training.

#### **D. Inspections**

Ordinarily, OSHA Compliance Safety and Health Officers (CSHO) will be admitted to the workplace upon request. However, if for some reason the employer chooses to deny entry, the CSHO must obtain a search warrant showing due cause for the inspection in order to obtain entry. Regulations issued by the Secretary of Labor permit a CSHO to seek a search warrant prior to being denied access to the workplace and in some cases to seek ex parte warrants, i.e., without the knowledge of the employer. Employers are not required to pay employees for the time spent accompanying a CSHO on walk-around inspections.

## **E. Responsible Agency**

U.S. Department of Labor  
Frances Perkins Building  
200 Constitution Ave, NW  
Washington, DC, 20210  
Tel. 1-866-4-USA-DOL (1-866-487-2365)  
[www.dol.gov](http://www.dol.gov)

Local offices can be found in the telephone directory under:

U.S. Government  
Department of Labor  
Occupational Safety and Health Administration (OSHA)  
<http://www.osha.gov/>

## **MOTOR CARRIER REGULATIONS – FEDERAL**

### **A. Objective**

The Federal Motor Carrier Safety Regulations provide detailed safety regulations for motor vehicles and drivers of motor vehicles. There are two parts to the regulations that are relevant to agriculture. The first deals with drivers of farm trucks and the second deals with vehicles and drivers used in transporting migrant farm workers.

### **B. Drivers of Farm Trucks Exemptions**

In general, any person 18 years old or older who operates a farm vehicle within the state is exempt from the Commercial Driver's License provisions of the Federal Motor Carrier Safety Regulations if:

- 1) The vehicle is controlled or operated by a farmer;
- 2) The vehicle is operated within 150 miles of the farm;
- 3) The vehicle is used to transport agricultural products, farm machinery or farm supplies to or from a farm; and
- 4) The vehicle is not used in the operations of a common or contract motor carrier.

To receive this exemption, drivers must complete form CDL-2(4190).

The exemptions listed above are for Classes A and B of the Commercial Drivers License Code. The Class C License has no exemptions. A Class C License is required if:

- 1) The vehicle is designed to transport 16 or more passengers including the driver; or
- 2) The vehicle is used in the transportation of hazardous materials that require the vehicle to be placarded under 49 CFR, Part 172, Subpart F.

#### *1. General Requirements*

Aside from these exemptions, a driver of a farm must meet the physical requirements and comply with all other provisions of the Federal Motor Carrier Safety Regulations. For example, a person cannot drive a farm vehicle if he/she has lost a foot, a leg, a hand or an arm unless he/she has been granted a waiver. A person cannot have any impairment of a hand or finger that interferes with pretension or power grasping, or an arm, foot or leg that interferes with the ability to perform normal tasks associated with operating a motor vehicle. A driver of a farm vehicle cannot have diabetes, cardiovascular disease, respiratory dysfunction, high blood pressure, arthritis, rheumatism or epilepsy likely to interfere with the ability to control or drive a motor vehicle safely.

The driver of a farm vehicle must have visual acuity of at least 20/40 with corrective lenses and not be color blind. Hearing must not be significantly diminished and the person cannot be addicted to habit forming drugs or alcohol.

#### *2. Related Information*

- Federal Motor Carrier Safety Regulations, C.F.R., Title 49, Chapter III, Subchapter B, Part 390, 391, U.S. Department of Transportation Federal Highway Administration, Bureau of Motor Carrier Safety, October 31, 1979.

### **C. Transportation of Migrant Farm Workers**

Regulations governing the transportation of migrant farm workers apply to all vehicles except common carriers, passenger automobiles and station wagons. These regulations are applicable only in the case of transportation of any migrant farm worker for a total distance of more than 75 miles, and then only if such transportation is across a state line. A migrant worker transporting himself/herself and his/her immediately family is not affected.

These regulations are not oriented directly to employers of migrant farm workers. Rather, compliance is required of the person or business responsible for the transportation of the workers. This could include a crew chief that transports migrant workers, or an owner of a truck who transports a group of migrants. It does not apply to a farmer who will be the employer of migrant farm workers after their arrival in the state, if the employer is not responsible for transporting the workers. Simply sending money to migrants to finance their travel to the place of employment does not make an employer the transporter of the migrants for purposes of these regulations. The regulations contain provisions setting forth the qualifications of drivers or operators, the driving of motor vehicles, parts, and accessories necessary for safe operation, hours of service by drivers, maximum driving time and inspection and maintenance of motor vehicles.

### **D. Operator Qualifications**

The regulations on the qualifications of drivers provide that no person shall drive any motor vehicle carrying migrant farm workers unless he/she meets the following minimum qualifications:

- 1) Be 21 years of age or older;
- 2) Have no mental, nervous, organic or functional diseases likely to interfere with safe driving;
- 3) Have no loss of foot, leg, hand or arm;
- 4) Have no loss of fingers or impairment of the use of foot, leg, hand or arm likely to interfere with safe driving;
- 5) Have visual acuity of at least 20/40 corrected;
- 6) Have hearing of not less than 10/20 in one ear;
- 7) Not be addicted to the use of narcotics or habit forming drugs or the excess use of alcoholic beverages;
- 8) Have a physical examination by a licensed doctor of medicine or osteopathy at least every 36 months and carry a certificate of physical examination at all times;
- 9) Read and speak English; and
- 10) Possess a valid driving permit applicable to the type of vehicle being driven.

### **E. Operator Regulations**

Regulations governing the driving of motor vehicles carrying migrant farm workers include the following:

- 1) Driving rules to be obeyed;
- 2) Driving while ill or fatigued;
- 3) Alcoholic beverages;

- 4) Schedules to conform to speed limit;
- 5) Equipment and emergency devices;
- 6) Safe loading;
  - a) distribution and securing of load
  - b) doors, tarpaulins, tailgates and other equipment;
  - c) interference with driver;
  - d) property on motor vehicle;
  - e) maximum passengers on motor vehicles;
- 7) Rest and meal stops;
- 8) Kinds of motor vehicles in which workers may be transported;
- 9) Lighting devices and reflectors;
- 10) Ignition of fuel precautions;
- 11) Carrying reserve fuel;
- 12) Driving by unauthorized persons;
- 13) Unattended vehicle precautions;
- 14) Passenger protection from weather; and
- 15) Railroad grade crossings.

## **F. Vehicle Specifications**

The regulations also have requirements for certain parts and accessories, including the following:

- 1) Lighting devices;
- 2) Brakes;
- 3) Coupling devices – fifth wheel mounting and locking;
- 4) Tires;
- 5) Passenger compartment;
  - a) floors;
  - b) sides;
  - c) nails, screws, splinters;
  - d) seats;
  - e) protection from weather;
  - f) exit;
  - g) gate and doors;
  - h) ladders and steps;
  - i) hand holds;
  - j) emergency exits; and
  - k) communication with driver
- 6) Prohibited heaters, including:
  - a) exhaust heaters;
  - b) unenclosed flame heaters;
  - c) heaters permitting fuel leakage;
  - d) heaters not securely fastened; and
  - e) heaters permitting air contamination



### **G. Related Information**

Federal Motor Carrier Safety Regulations, C.F.R. Title 49, Chapter III, Subchapter B, Part 398.  
U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety

### **H. Responsible Agency**

US Department of Transportation  
Federal Motor Carrier Safety Administration  
1200 New Jersey Ave SE  
Washington, DC. 20590  
Tel. (800) 832-5660  
<http://www.fmcsa.dot.gov/>

## **MOTOR CARRIER REGULATIONS – TEXAS**

### **A. Coverage**

Any company or person who transports five or more migrant workers to or from a work place for a distance of more than 50 miles must comply with detailed safety rules. These regulations do not apply if transportation is in a passenger car or station wagon.

### **B. Provisions**

The regulations specify detailed driver and vehicle requirements. Briefly, the driver must:

- 1) Carry a medical statement certifying that he is in good physical condition;
- 2) Have a valid permit, have driving experience and knowledge of traffic rules; and
- 3) Follow safe driving practices, including limitations on hours of driving.

Vehicles must:

- 1) Have proper lighting and safety equipment;
- 2) Be in good, safe condition; and
- 3) Protect passengers from the cold and rain.

At least every 6 hours passengers should be given a meal stop of at least 30 minutes. There must be a minimum of one rest stop between meal stops.

### **C. Responsible Agency**

Texas Department of Public Safety  
5805 North Lamar  
Austin, Texas 78773  
(512) 424-2000  
<http://www.txdps.state.tx.us/>

## EQUAL EMPLOYMENT LEGISLATION– FEDERAL

### **A. Introduction**

It is increasingly important that agricultural employers be fully aware of state and federal laws dealing with all forms of discrimination. Laws have become more stringent and enforcement activities, both federal and state, have been stepped up. The amount of litigation in this area has increased dramatically in recent years. The following are brief summaries of some of the laws addressing this issue.

### **B. Civil Rights Act of 1964**

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color, religion, sex and national origin. Employers may never discriminate on the basis of race or color. Employers may discriminate on the basis of religion, sex or national origin if it is a bona fide occupational qualification. Use of this aspect of the law by employers is fraught with risks and should be used carefully. The employer has the burden of proof to show that this kind of job requirement is essential for the normal operation of the business. For example, a job requiring heavy lifting may be difficult for many women. But if some women can do it, it is not essential to make it a job for men only. Rather the job description should describe in detail what must be lifted, and all applicants or promotion candidates should be questioned about their ability to do the lifting.

The Civil Rights Act of 1964 applies only to employers with 15 or more employees in at least 20 calendar weeks of the current or preceding year. Under this law, when discrimination has been established, the courts are authorized to grant broad judicial relief. Intent (to discriminate) can be inferred from the totality of circumstances, i.e., employer may not have intended to discriminate but carelessness in personnel practices or lack of understanding of the law may have resulted in actual discrimination. Hence, lack of familiarity with the law may not be an adequate defense.

Employers should be careful about the questions asked on an employment application form and in the interview. Questions that have a "disparate" impact on minorities or women may not be asked. For example, certain pre-employment questions are illegal, regardless of whether they are verbal or on a written application form. As a general rule, what is not job related is likely to be illegal. Examples are as follows:

- 1) "Are you a U.S. citizen?" (Better to ask: "Do you have the legal right to work in this country?" Proof may be requested after hiring.)
- 2) "What is your age?" (Better to ask: "If hired, can you give proof of age or a work permit?")
- 3) "Do you have any physical disabilities?" (Better to ask: "Do you have any physical condition that may limit your ability to do this job?" The hiring may be contingent on the passing of a physical examination paid for by the employer.)
- 4) "Are you married?" "With whom do you live?" (Better to ask nothing. Minors may be asked parents' address.)

- 5) "Have you ever been arrested?" (Better to ask: "Have you ever been convicted of a crime, and what are the circumstances?")

### **C. Equal Pay Act Of 1963**

The Equal Pay Act of 1963, which amends the Fair Labor Standards Act of 1938, was enacted for the purpose of correcting "wage differentials based on sex". The Act requires equal pay for both sexes for jobs requiring substantially equal skill, effort and responsibility, and for jobs which have similar working conditions. The job or working condition comparisons usually only applies to one establishment or plant, even if an employer has several similar plants or establishments. Violations of this Act are cured by raising the wages of the lower paid employee to that of the higher paid. Criminal penalties may be imposed for willful and flagrant violations.

The Equal Pay Act of 1963 applies to farm workers and prohibits wage discrimination on the basis of sex against employees who are subject to the minimum wage provisions of the Act.

Exceptions are permitted when wages are based on:

- 1) A seniority system;
- 2) A merit system; or
- 3) A system that measures earnings by quantity or quality of production.

#### *1. Related Information*

- Section 6(d) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, et seq.
- Title 29 Code of Federal Regulations, Part 800.

### **D. Age Discrimination in Employment Act of 1967**

This Act prohibits employers with 20 or more workers during at least 20 calendar weeks of the current or preceding year from discriminating against individuals aged 40 to 70 because of age in matters of hiring, discharging, wages and terms, conditions or privileges of employment.

The law prohibits any statement in advertisements that indicates any preference, limitations, specifications or discrimination on the basis of age. For example, you are not permitted to use such phrases as "age 25 to 35", "young", "boy", "girl" or others of similar nature. Such phrases as "age 40 to 50", "age over 65", "retired" or "supplement your pension" are also prohibited since they discriminate against others in the 40-to-70-year-old-group. The phrase "state age" is not, in itself, a violation of the Act. However, since it is felt that such a phrase will tend to deter older applicants, its use will be carefully scrutinized to ensure that such a request is for a lawful purpose. The same reasoning should be followed when using similar phrases such as "give date of birth" on an employment application.

The Act does not prohibit specification of a minimum age below 40 in advertisements, i.e., "must be 18 or older".

Some exceptions to the rules are permitted, but they should be used with care. An exception is permitted where age is a bona fide occupational qualification and is reasonably necessary to the normal operation of the particular business. This exception is narrowly construed and the burden of proof in establishing that it applies is the responsibility of the employer.

The Act provides that it shall not be unlawful for an employer to take an action otherwise prohibited where the differentiation is based on reasonable factors other than age. No precise definition is made of these other factors and the burden of proof is on the employer.

If the results of a test are used as the basis for differentiation and the test cannot be related to job performance, it is unlawful. A vital factor in employee testing as it relates to the 40-to-70-age group is the "test-sophistication" or "test-wiseness" of the individual. Younger persons, because of increased use of tests in primary and secondary schools in recent years, may have an advantage over older applicants.

A differentiation based on the claim that it is more costly to employ older persons is unlawful except for employee benefit plans.

## **E. Civil Rights Acts of 1991**

This law clarifies several issues that were seemingly left unresolved or were not addressed in preceding Civil Rights Acts. One provision of this Act that should be of interest to agricultural employers is a clause that allows compensatory and punitive damages for intentional acts of discrimination and unlawful harassment. Such damages were not authorized in Title VII of the 1964 Civil Rights Act or the Americans with Disabilities Act.

## **F. Americans with Disabilities Act**

This Act addresses the special needs of persons who may have one or more physical or mental disabilities. With regard to employment, the Act requires the following:

- 1) Employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.
- 2) Employers can ask about one's ability to perform a job, but cannot inquire if someone has a disability or subject a person to tests that tend to screen out people with disabilities.
- 3) Employers will need to provide "reasonable accommodation" to individuals with disabilities. This includes steps such as job reconstructing and modification of equipment.
- 4) Employers do not need to provide accommodations that impose an "undue hardship" on business operations.
- 5) All employers with 15 or more employees must comply, effective July 26, 1994.

### *1. Remedies*

Individuals may seek legal assistance to remedy any perceived discrimination under this Act. Those seeking legal action may ask for monetary damages and penalties. Legal remedies apply to the Civil Rights Act of 1964, Title VII, in regards to discrimination rights.

### *2. Enforcement*

Enforcement is handled by the Equal Employment Opportunity Commission (EEOC). As part of the EEOC's enforcement apparatus, certain state and local agencies are designated as deferral agencies for discrimination complaints filed with EEOC. These agencies are generally known as "706 Agencies". As a general rule, discrimination complaints must be filed with a deferral agency if one is available.

### *3. Related Information*

- Eliminating Discrimination in Employment: A Compelling National Priority, The U.S. Equal Employment Opportunity Commission, July 1979.
- Laws Administered by EEOC, Equal Employment Opportunity Commission, Washington, DC, January, 1981.

## **G. Family and Medical Leave Act of 1993**

The Family and Medical Leave Act (FMLA) requires employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons during a 12 month period. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours during the previous 12 calendar months.

The rights apply equally to male and female employees.

### *1. Coverage*

Employers with 50 or more employees, within a 75 mile radius, for each working day during each of 20 or more calendar work-weeks in the current or preceding year must comply.

While the Act does not cover seasonal or part time employees working less than 1,250 hours per year they must be included when calculating the number of employees at a work site.

### *2. Reasons for Taking Leave*

Unpaid leave must be granted for any of the following reasons:

- 1) To care for the employee's child after birth, or placement for adoption or foster care;
- 2) To care for the employee's spouse, son, daughter or parent who has a serious health condition; or
- 3) For a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

### *3. Advance Notice and Medical Certification*

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- 1) The employee ordinarily must provide advance leave notice when the leave is "foreseeable".
- 2) An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

#### *4. Job Benefits and Protection*

- 1) For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan".
- 2) Upon return from the FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.
- 3) The use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of an employee's leave.

#### *5. Unlawful Acts by Employers*

FMLA makes it unlawful for any employer to:

- 1) Interfere with, restrain or deny the exercise of any right provided under the FMLA; or
- 2) Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

#### *6. Enforcement*

- 1) The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- 2) An eligible employee may bring a civil action suit against an employer for violations.

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

### **H. Sexual Harassment**

Sexual harassment is a form of discrimination which is illegal under Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission (EEOC) enforces the Civil Rights Act and according to EEOC guidelines, sexual harassment is "unwelcome sexual advances, requests for sexual favors, and other verbal or, physical conduct of a sexual nature when submission to the conduct enters into employment decisions and/or the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment". In effect, this definition points out two types of conduct which constitute legal sexual harassment. Employers should be sensitive to both as should all of an employer's managerial and supervisory personnel.

Classical sexual harassment involves basing hiring, firing, promoting and salary decisions on an employee's submission to sexual demands. If the demands are rejected and the employee suffers adverse job consequences as a result, the employer has engaged in illegal discrimination.

Sexual harassment is also, however, conduct which creates an intimidating, hostile or offensive working environment. This part of the definition is much broader and potentially much more troublesome for employers.

The most important thing to understand about sexual harassment is that employers will likely be held responsible for it even if they do not know that it is happening. Therefore, an employer must not only know what kind of behavior could be construed as sexual harassment, he or she must also do everything possible to prevent such behavior in the workplace.

### *1. Employer Liability for Acts of Supervisors*

The employer is responsible for the acts of its agents and supervisory employees regardless of whether the specific acts complained of were authorized or even forbidden by the supervisory employee, and regardless of whether the employer knew or should have known of their occurrence. In summary, the EEOC holds an employer automatically liable for sexual harassment by a supervisor. Because the majority of "hostile environment" cases involve allegations against a supervisor, a wise employer will provide a channel for grievance or complaint which does not require an employee to go first to his or her immediate supervisor.

### *2. Handling Employee Complaints*

Complaints of sexual harassment should be taken seriously. Even before a complaint is lodged, employers should institute a grievance procedure and give written notice to all employees. Every complaint should be handled with discretion, tact and compassion. Good judgment at the outset may help avoid lawsuits and future incidents of harassment in the end.

- 1) Act immediately. Employers should not assume that the problem will work itself out. Moreover, any delay in responding to a complaint might be construed as implicit approval of the offending conduct.
- 2) Do not disregard any complaint. Each complaint should be treated separately and seriously. Do not be fooled if a complaining employee minimizes the incident. Often, victims of sexual harassment are embarrassed about the incident and reluctant to talk about it. At the same time, employers should be careful not to risk claims of slander or libel.
- 3) Keep records of the investigation. Employers should document all phases of the investigation, from the initial complaint, through the interview of the witnesses to any action taken. These records may prove to be valuable evidence of remedial measures taken by the employer.
- 4) Maintain confidentiality and privacy. Employers should take care to keep the investigation confidential. Avoid investigating the complaint or holding interviews in public areas. Overheard conversations may lead to later claims of slander.
- 5) Get both sides of the story. The person accused of sexually harassing another should be advised of the allegations and given the chance to respond. Be sure to assess the credibility of the person complaining and character of the accused.

## **I. Responsible Agency**

US Equal Employment Opportunity Commission (EEOC)  
1801 L Street, N.W.  
Washington, D.C. 20507  
Tel. (202) 663-4900  
Tel. (800) 669-4000  
<http://www.eeoc.gov/>

Local offices can be found in the telephone directory under US Government, or by visiting the US EEOC website at <http://www.eeoc.gov/offices.html>