



# IMMIGRATION and LABOR — HANDBOOK —



# Immigration and Labor Handbook

**Marco A. Palma**, Assistant Professor and Extension Economist

**Abhishek Shingote**, Graduate Research Assistant

**Luis Ribera**, Assistant, Professor and Extension Economist

**Parr Rosson**, Professor and Extension Economist

**Lawrence Falconer**, Professor and Extension Economist

**Joe Pena**, Professor and Extension Economist

The Texas A&M System

To obtain a copy of this handbook or for more information or comments contact:

Dr. Marco A. Palma  
Assistant Professor and Extension Economist  
Texas AgriLife Extension Service  
The Texas A&M System  
2124 TAMU, College Station, Texas 77843-2124  
(979) 845-5284  
(979) 845-7444 (fax)  
mapalma@tamu.edu



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## Introduction

This handbook summarizes the many immigration and labor regulations and laws associated to agricultural labor and provides details on important agriculture-related laws, compliance, and the agencies responsible for administering the regulations. For more detailed information, contact those agencies directly; their contact information and Internet addresses are listed in each section of the handbook.

## A Brief History and Overview of U.S. Immigration

The history of the United States is woven throughout with the achievements and economic contributions of generations of immigrants. For the country's first 100 years, its immigration laws were virtually unrestrictive, but, as economic, social and cultural conditions changed, so did immigration law. In the 19<sup>th</sup> century, the end of Europe's Industrial Revolution caused citizens of those countries to leave the depression, persecution, and war at home for a better life in America with its flourishing labor markets. This large pool of competing labor caused unrest in the domestic labor force. Congress responded by enacting restrictions on immigration.

By 1905, as more than 1 million new immigrants entered the country each year, the Dillingham Commission was created to examine immigration to the United States. The Commission's findings were partially embodied in the Immigration Act of 1917, which reflected the Congressional opposition to—and the nation's increased reluctance toward—unregulated immigration. Quotas limited the nationality and the numbers of immigrants.

The Immigration and Nationality Act of 1952 eliminated race as a barrier to immigration, established the current employment-based preference system, and took the family unit into consideration. By the 1970s, the national origin quota system was eliminated, and an annual worldwide quota of 290,000 visas was established.

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

As the 20<sup>th</sup> century ended, immigration law reflected the U.S. political climate. The Antiterrorism and Effective Death Penalty Act of 1996 was designed to control terrorism by expanding the grounds for deportation of foreign nationals with criminal convictions and by strengthening border controls. The attacks of September 11, 2001, affected the issuance of visas at U.S. 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 government agency to another. Originally immigration laws were handled by state boards, but later the authority was transferred to the Department of Labor.

Before the United States entered World War II, immigration was considered a matter of national security. The Immigration and Naturalization Service was transferred from the Department of Labor to the Department of Justice, where it remained until 2003.

When the Homeland Security Act of 2002 merged and reorganized the functions of 22 agencies, the Immigration and Naturalization Service was dissolved and its functions transferred to the Department of Homeland Security and these agencies within that department:

## **1. Directorate of Border and Transportation Security**

This agency is responsible for preventing terrorists from entering into the United States, securing its borders, and establishing and administering the granting of visas or other forms of permission to enter the United States. The Bureau of Border Security was established under this agency to perform these functions, but the structure was reconfigured and responsibilities were divided into two bureaus:

### *a. United States Customs and Border Protection*

This unit is staffed by former immigration service inspectors and former agents of U.S. customs, Agricultural Quarantine Inspections and Border Patrol. It focuses on the movement of people and goods across borders, inspection procedures and border enforcement.

### *b. United States Immigration and Customs Enforcement*

This unit detects and removes unauthorized foreign nationals. Former immigration service officers, U.S. customs agents and the Federal Protective Service officials serve in this unit.

## **2. United States Citizenship and Immigration Service**

On March 1, 2003, service and benefit functions of the U.S. Immigration and Naturalization Service were transferred to the Department of Homeland Security as the U.S. Citizenship and Immigration Services. This agency administers immigration and naturalization adjudication functions and establishes immigration services policies and priorities, including:

- Adjudication of immigrant visa petitions
- Adjudication of naturalization petitions
- Adjudication of asylum and refugee applications
- Adjudications performed at the service centers
- All other adjudications formerly conducted by the Immigration and Naturalization Service

## **B. Other Federal Agencies with a Significant Role in the Immigration Process**

The Department of Labor, the Department of State, and the Department of Justice play significant supporting roles in administering U.S. immigration laws.

### **1. Department of Labor**

The Department of Labor administers and enforces federal labor laws and provisions of the Immigration and Nationality Act. The department's Division of Foreign Labor Certification ensures that the admission of foreign workers to the United States will not adversely affect the job opportunities, wages, and working conditions of U.S. workers.

### **2. Department of State**

The Department of State has authority over consulates and embassies abroad through its Bureau of Consular Affairs. The Homeland Security Act changed some of the duties of the state department and transferred ultimate responsibility for issuing visas to the Department of Homeland Security. The state department and the Department of Homeland Security together grant or deny applications for immigrant and nonimmigrant visas at U.S. consular posts. The State Department processes visa applications, and the Secretary of State retains the authority to deny a visa to a foreign national in the interest of national security. The Department of Homeland Security is responsible

for addressing security concerns; therefore, consular officers receive training in issuing visas from that agency.

### **3. Department of Justice**

Within the Department of Justice, the Executive Office of Immigration Review administers and interprets federal immigration laws and regulations through immigration court proceedings, appellate reviews, and administrative hearings. The review unit has three main components:

- The Board of Immigration Appeals, which hears appeals of decisions made by immigration judges, Department of Homeland Security district directors, or other immigration officials
- The Office of Chief Immigration Judge, which oversees all immigration courts
- 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. It requires employers to document their employees' legal right to work in this country. In practice, the documentation requirement is satisfied by maintaining properly completed Immigration and Naturalization Service I-9 forms for all employees; the responsible agency is now the U.S. Citizenship and Immigration Services. The employer and employee both must complete a portion of the form.

During the first 5 years, the immigration service focused on completing the I-9 forms and imposing sanctions if the records were not correctly maintained. However, an important part of the Immigration Reform and Control Act is the anti-discrimination provision, which forbids employers to discriminate against foreign-looking or foreign-sounding applicants.

Since the passage of the immigration reform act, studies have shown that discrimination based on national origin or citizenship continues. Researchers believe this is due to employers' fear of the documentation process or lack of knowledge about specific details of the law.

Because of amendments to the original immigration reform act, the I-9 form has been revised, partly to make sure that employers comply with anti-discrimination provisions and correct possible discrimination.

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

All people or businesses with one or more employees must comply with the law, except:

- Employees hired before November 6, 1986, who have continued their employment. (However, an employee on the payroll before November 6, 1986, whose employment was terminated is subject to the Act upon re-employment.)
- People employed for casual domestic work in a private home on an irregular basis
- Independent contractors
- People who are employed by a contractor providing contract services, such as those who work through employee leasing plans

**NOTE:** Aliens not authorized to work in the United States cannot be hired for contract labor.

The following guidelines will help in complying with the anti-discrimination provisions.

- DO hire applicants before requesting they show work authorization and identity document(s). Requiring a completed I-9 as part of the application ensures 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 the law.
- DO verify that you have seen the employee's documents. Do not photocopy documents. If the document looks genuine and the name corresponds to the applicant, accept it.
- DO keep all I-9 forms separate from personnel files.
- DO NOT treat applicants differently because they look or sound like foreigners. 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 awaiting resident alien cards or an extension of work authorization.
- DO NOT refuse to accept valid work authorization because you are unfamiliar with the type of document. Many types of documents 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, the verification must be established by the end of the first day. Acceptable documents are verified by completing an I-9 form. The I-9 and a list of documents acceptable for establishing identity and the legal right to work are available in English and Spanish at <http://www.uscis.gov/i-9>. The employer must complete and sign the I-9 form. The employee must also sign the form.

Retain this form for 3 years after the date of employment or 1 year after employment is terminated, whichever is longer.

Copies of documents are not required by law. If making copies, copy all employees' documents and keep them with the corresponding I-9 forms.

What all employers should know:

- Agents of the Immigration and Naturalization Service and the Department of Labor are allowed by law to arrive unannounced and ask to examine I-9 forms.
- Record maintenance violations carry fines of \$100 to \$1,000 per employee.
- For discriminatory practices or for 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

- An employee who has been discriminated against has the right to such remedies as employment, reinstatement and back pay.
- Employers who continue to hire unauthorized employees may be fined \$3,000 per employee and/or imprisoned for 6 months.
- 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 Agency**

U.S. Citizenship and Immigration Services  
District Office  
8940 Fourwinds  
San Antonio, Texas 78239  
(800) 375-5283

For more information visit the U.S. Citizenship and Immigration Services Web site at <http://www.uscis.gov/> and click on the “For Employers” tab.

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

## **Social Security No-Match Letters**

### **A. Introduction**

A no-match letter from the Social Security Administration indicates that the names or Social Security numbers listed on an employer’s form W-2 do not match the agency’s records. The Social Security Administration sends three types of no-match letters:

1. A letter sent directly to workers at their home addresses
2. A letter sent to an employer about an individual worker when the Social Security Administration does not have the worker’s correct address
3. A letter to an employer about multiple employees when at least 10 employees during the year or 0.5 percent of the employer’s workforce are subjects of a no-match

In June 2006, the Department of Homeland Security issued a regulation requiring certain actions upon receipt of a Social Security no-match letter. The final rule on these regulations was issued in August 2007. This proposed rule was challenged in a federal court prior to taking effect in September 2007. A new proposed rule, with very few changes, was released in March 2008. For more information on the status of this law, visit the Department of Homeland Security Web site.

Employers who fail to comply with the new rule could face fines of up to \$10,000 per worker and incident.

### **B. Purpose**

The purpose of the no-match letter is to enable the Social Security Administration to reconcile inconsistencies between its records and the information



provided by the employer on the W-2. It also alerts workers that they are not receiving proper credit for their earnings, which can affect future Social Security retirement or disability benefits.

The most common reasons information submitted for a worker does not match agency records are:

- A typographical or clerical error was made on a form W-4 or W-2.
- The worker's name has changed because of marriage or divorce.
- Information on the W-2 or W-4 is incomplete.
- Individuals presented false Social Security numbers or used someone else's number.

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

The rule outlines the steps an employer may take in response to receiving a no-match letter from the Social Security Administration. If employers follow the guidelines and begin to rectify the no-match within 90 days of receiving the letter, the no-match letter will not be used against them in an enforcement action.

Upon receiving a no-match letter from the Social Security Administration:

- The employer must check his or her records within 30 days to determine whether the discrepancy is the result of typographical, transcription or other clerical error. If that is the case, the employer should correct the records, inform the relevant agencies, verify that the corrected information matches agency records, and record the manner, date and time of the verification to be kept with the employee's I-9 form.
- If the discrepancy is not employer error, the employee must confirm that the employer's records are correct. If the employee can correct the records, the employer should make the correction, inform the relevant agencies, verify that the corrected information matches agency records, and record 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 take the necessary documents to the appropriate agency in order to resolve the discrepancy. The discrepancy will be resolved only upon the employer's verification with the Social Security Administration that the employee's name matches the Social Security Administration records or that the Department of Homeland Security's records show the immigration status or employment authorization document 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.
- 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 or any Department of Homeland Security document in question. Identity documents must have photographs.
- 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, the employer must terminate the employee. Failure to terminate at this point may lead to a finding by the Department of Homeland Security that the employer knew of the employee's lack of employment authorization.

## **D. E-Verify**

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which requires the Social Security Administration and the U.S. Citizenship and Immigration Services to initiate employment verification pilot programs. Two programs address this mandate: the Systematic Alien Verification for Entitlements program for government benefits and the Employment Eligibility Verification/Basic pilot program, recently renamed “E-Verify.”

E-Verify is a voluntary, free, Internet-based system operated by the U.S. Citizenship and Immigration Services in partnership with the Social Security Administration. It electronically compares information on the Employment Eligibility Verification form I-9 with records in Social Security Administration and the Department of Homeland Security databases.

An employer who participates in E-Verify must post, in a location clearly visible to prospective employees, the Department of Homeland Security notice of the company’s participation in the program, and the antidiscrimination notice issued by the Office of Special Council for Immigration related to unfair employment practices. To prevent discrimination:

- Employers may not use the system to pre-screen employment applicants.
- The newly hired employee’s I-9 form must be 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 List B identity documents that contain a photograph.
- Employers may not use the system to re-verify employment.
- Employers must give employees an opportunity to challenge tentative non-confirmations responses.
- Employers may not verify employees hired before the company signed the E-Verify agreement with the Department of Homeland Security and the Social Security Administration.

For more information or help operating E-Verify, contact the Verification Division of the U.S. Department of Homeland Security at (888) 464-4218 or [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, D.C. 20536.  
(202) 514-2844  
<http://www.ice.gov/>

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

## The Green Card Process

### A. Introduction

A green card holder is a noncitizen who intends to permanently reside in the United States and has obtained the legal right to do so. To do this, first the foreign national must establish a basis for the status; then he or she must show eligibility.

A foreign national may seek permanent residency under these 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 a group offering major investment opportunity in the United States.
- **Diversity Lottery program** — Application for enrollment in a computer-generated random lottery drawing for permanent residence. This program is available only in certain countries.

The foreign national may apply for permanent residence once the basis is established. He or she must not have criminal, health-related, financial, national security, public interest grounds or 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 immigration:

- **First Preference (EB1):** foreign nationals with extraordinary ability, outstanding professors and researchers, and certain multinational executives and managers
- **Second Preference (EB2):** foreign nationals with advanced degrees or exceptional ability in arts, sciences or business who will benefit the economy, the cultural or educational interests or welfare of the United States
- **Third Preference (EB3):** foreign nationals in skilled worker positions requiring at least 2 years of experience or in 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 invest \$1 million (or in some cases \$500,000) in a new commercial enterprise that employs 10 U.S citizens or authorized immigrants working full-time

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

### C. Steps in the Permanent Residence Process

The steps required for employer-sponsored permanent residence depend on the position offered to or filled by the foreign national. Three steps are required: labor certification, petition for the immigrant worker and application for permanent residence status.

In some cases the initial time-consuming and costly labor certification can be avoided. An employer seeking a green card for an employee should assess whether the employee can fit in one of these employment-based categories:

|       | Category  | Labor Certification                                 |
|-------|---|---|
| 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/less-skilled workers  | Required  |
| Other | Schedule A: Group 1<br>(medical personnel, such as physical therapists and nurses)              | Not required  |
| Other | Schedule A: Group 2<br>(exceptional ability in science or arts, except for university teachers) | Not required  |
| Other | Special handling cases:<br>College/university teachers,<br>professional athletes, etc.          | Required<br>(special handling)                      |

## 1. Labor Certification Application

The labor certification process begins by filing the application with the Department of Labor. Specify the position offered to the foreign national, the terms of employment, work location, remuneration and work schedule. The labor department must certify that insufficient numbers of U.S. workers are available to fill the position and that employment of foreign nationals will not adversely affect the wages and working conditions of similarly employed U.S. workers. The labor certification is complete once the department's certification is done.

## 2. Petition for Immigration Worker

A sponsoring employer files Form I-140 with U.S. Citizenship and Immigration Services to obtain permanent resident status for an employee. This petition includes a statement of the employer's intention to employ the foreign national and evidence of the prospective employee's qualifications. Once the petition is approved by the citizenship and immigration service the process may be completed by Adjustment of Status or Immigrant Visa Consular Processing.

## 3. Adjustment of Status

The request to adjust immigration status from nonimmigrant to permanent resident must be accompanied by evidence of eligibility. In some circumstances the employer's Petition for Immigrant Worker must be approved before an adjustment is granted. Adjustment applicants are eligible for interim work.

## 4. Immigrant Visa Consular Processing

The final step may be completed at a U.S. consular post in the applicant's home country or country of last residence. This step also requires 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 U.S. consulate and maintain nonimmigrant status throughout the process.

#### **D. Priority Dates**

Immigration law limits the number of green cards that may be issued annually 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 green cards in a category than are available for their country of birth. Applicants from countries with larger populations may have longer waiting times.

An applicant's place in line for a green card is determined by his or her priority date, which is assigned with the first step of the permanent residence process. The priority date must be current for the foreign national to complete the permanent residence process.

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

Some employment-based categories do not require labor certification by the Department of Labor because Congress believed that the country's interests are served by admitting superlative foreign talent. The categories are:

##### **1. EB1: Extraordinary Ability**

According to the U.S. Citizenship and Immigration Service, these individuals 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 and that they have received national and international acclaim.

The employer must also demonstrate that the applicant's contributions will "substantially benefit" the United States. A foreign national who qualifies as an individual of extraordinary ability does not require employer sponsorship.

Evidence of extraordinary ability can be shown by receiving a major international prize or at least three of the following:

- Documentation of lesser-known prizes and awards for excellence in the field
- Documentation of membership in associations that require outstanding achievements of members
- Published material written by others about the applicant'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 displayed at artistic exhibitions or showcases
- Evidence of performance in a leading or critical role for distinguished organizations
- Evidence of higher salary than others in the field
- Evidence of commercial success in performance arts

The U.S. Citizenship and Immigration Services assesses the value of the evidence submitted and determines the individual's qualifications based on evidence of extraordinary skills. International acclaim is not necessary; a record of national achievements may satisfy the requirements.

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

This category requires outstanding professors and researchers to have at least 3 years of experience in teaching or research in their fields and to have received international recognition for their work. To be eligible, 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 U.S. institution of higher learning
3. A research position with a private employer of at least three full-time researchers and documented achievements in an academic field

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

To show internationally outstanding recognition, the foreign national must submit evidence of meeting at least two of the following criteria:

- Documentation of major prizes or awards for outstanding achievements
- Documentation of membership in associations that require outstanding achievements of 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 or research contributions to the field
- 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 this category are employment abroad, in an executive or management capacity, with the same employer or an affiliate for 1 year out of the previous 3 or the 3 years prior to the individual's transfer to the United States. The person must have an offer of employment in the United States in an executive or managerial position.

A manager is involved in either the management of a function of the organization or the supervision of professional employees. An executive 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 U.S. Citizenship and Immigration Services waiver of a specific job offer, and thus a labor certification, if the waiver is in the "national interest" according to the judgment of the agency's officers. A successful request for a national interest waiver should contain:

- Evidence of seeking employment in an area that benefits U.S. national interest, such as health care, housing, the environment and the U.S. economy, including situations that improve wages and working conditions of U.S. workers by employment of foreign nationals



- Evidence that the proposed benefit will be national in scope
- Evidence that national interest would be adversely affected if labor certification were required

Evidence of the foreign national's contributions to the field of endeavor may be met through a record of the individual's accomplishments, such as peer-reviewed publications, conference or seminar presentations, publications about the individual, awards and prizes won by the individual, and letters of reference from industry and academic experts.

## **Nonimmigrant Visas**

### **A. Introduction**

Domestic and foreign companies operating in the United States remain competitive by hiring the best employees. U.S. employers also hire skilled foreign nationals to overcome shortages among American workers.

Businesses with foreign workers can employ only authorized individuals and are fined for hiring unauthorized workers. Foreign workers must maintain authorized status or face deportation. Therefore, many U.S. businesses must know immigration laws.

Both immigrants and nonimmigrants can legally live in the United States. Nonimmigrants can stay in this country on a temporary basis while immigrants can remain indefinitely. More than 20 nonimmigrant categories are listed, from ambassadors, tourists and students to temporary workers. Each category is assigned a letter and has its own requirements. The U.S. employer must assess the reason for hiring the foreign national to determine the appropriate visa category.

### **B. Nonimmigrant Visa Processing**

A U.S. business may hire a foreign national living in the United States or abroad. A foreign national outside the country can obtain a visa from the U.S. consulate. The visa does not allow entry into the United States, only permits the visa holder to apply to the customs border protection officer for admission to the United States.

A consular officer determines whether the applicant classifies as nonimmigrant who will return home after a temporary stay. Because immigration law presumes all applicants seeking entry to the country are immigrants, a foreign national must prove he or she intends to stay temporarily. If the application is approved, the consulate will issue a visa stamp to the foreign national.

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

When the foreign national arrives at the U.S. port of entry, a border protection officer endorses his or her Arrival/Departure card and the I-94 or I-94W form that shows date of entry, status of admission and duration of authorized stay in the United States.

### **D. Nonimmigrant Visitors and the U.S. Visit Entry/Exit Program**

At the U.S. port of entry, the U.S. Visitor and Immigrant Status Indicator Technology collects arrival and departure information about nonimmigrants to enhance security and decrease waiting time for admission into the country. This process includes scanning each nonimmigrant's index fingers and taking a digital photograph to match and authenticate travel documents. In July 2005, the homeland security department announced that first-time visitors must have all 10 fingers scanned with continued index finger scans for departures and subsequent re-entries.



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

Foreign nationals in the United States who wish to extend their stay or change their immigrant status may apply to a citizenship and immigration agency service center. The application must be made within the period of authorized stay. Approval of the request is on the U.S. Citizenship and Immigration Service's Form I-797A, which contains a new, updated I-94.

## **F. Applications for Lawful Permanent Residence by Nonimmigrants**

Because they must demonstrate an intent to remain in the country temporarily, nonimmigrants may not seek lawful permanent residence in the United States. Workers classified as "H", "L" and "O" nonimmigrants are excepted from this rule.

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

Nonimmigrant visa categories include those created for temporary business activities, foreign nationals authorized to work in the United States, trainees and visitors on exchange programs. Foreign nationals traveling to the country to conduct business use the B-1 visa and visa waiver program. Foreign nationals traveling to the United States for employment will most often use one of these 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 and NAFTA professionals. Foreign nationals in certain primary categories are allowed to work; students and foreign exchange visitors might also be allowed employment. U.S. companies may also sponsor foreign nationals for training.

## **H-2A Program Temporary Alien Agricultural Workers**

Under the H-2A program of the Immigration Reform and Control Act of 1986, employers may bring temporary, nonimmigrant agricultural workers into the country. This program ensures adequate agricultural labor and protects the jobs, wages and working conditions of domestic workers.

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

An agricultural employer who anticipates a shortage of domestic workers for seasonal or temporary agricultural labor may apply. The employer may be an individual, a partnership or a corporation. An association may file as a sole employer, a joint employer or as an agent filing an application for its members.

### **B. Where To Apply**

Send a signed application to the U.S. Department of Labor, Certifying Officer, Employment and Training Administration, in the region of employment. At the same time, file a copy with the State Employment Service Agency in the area of employment.

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

- Application for Alien Employment Certification (Form ETA 750), Part A, Offer of Employment

- Agricultural and Food Processing Order (Form ETA 790). This job offer portion of the application must be comprehensive and precise in order to become a contract between the employer and the worker.
- Attachments, if needed, to supplement information provided on the forms
- Statement of authorization of agent, if applicable
- Statement of association authorization and relationship, if applicable

#### **D. Conditions To Be Satisfied**

- Positive recruitment — The employer must try to fill positions in areas where the labor supply is expected, by using radio and/or newspaper advertising and state employment agencies. 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 pay must be as high as the Adverse Effect Wage Rate, the 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 cannot return to their permanent residences the same day. Housing must meet Safety and Health Administration standards. Rental housing that meets local or state safety and health standards also may be provided.
- Meals — The employer must provide three meals per day to each worker or furnish convenient cooking 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 the equivalent insurance for all workers.
- Tools and supplies — The employer must provide the worker all tools and equipment necessary for the job.
- Three-fourths guarantee — The employer must guarantee each worker employment for at least three-fourths of the contract period or pay the equivalent in wages for that period.
- Fifty-percent rule — The employer must hire any qualified U.S. worker who applies for the job until 50 percent of the contract has elapsed.
- Transportation —
  1. The employer must provide reasonable transportation and subsistence costs to and from the place of work. These funds may be advanced or reimbursed after 50 percent of the contract period.
  2. If the employer provides housing, the employer must provide transportation to and from the worksite.
  3. The employer must pay reasonable return transportation and subsistence costs to the place of recruitment or the next place of employment.
- Labor dispute — The employer must assure that the H-2A job opportunity is not the result of a labor dispute or strike.
- Certification fee — Upon certification, the employer will be charged \$100 per certification, plus \$10 for each job opportunity, up to \$1,000.
- Other conditions — The employer must provide a copy of the work contract for each worker. The worker must receive 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 Department of Labor and state employment agency at least 60 days before the date of need. Applications may be mailed or delivered in person or by commercial service.

## **E. Responsible Agencies**

U.S. Department of Labor, Employment and Training Administration  
Certifying Officer  
525 Griffin Street, Room 317  
Dallas, Texas 75202  
(214) 767-8263  
(214) 767-5113 (fax)  
<http://www.dol.gov/>

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

## **Migrant And Seasonal Agricultural Worker Protection Act — Federal**

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

Farm labor employers and prospective employees making work contracts must comply with these regulations. Growers, processors and associations are not farm labor contractors and are not required to register as such. However, agricultural employers and associations must comply with all worker protection provisions.

In April 1997, the Department of Labor's Wage and Hour Division defined farmers who use labor contractors as joint employers, making farmers and ranchers jointly liable for violations 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 protects most migrant and seasonal agricultural workers in interactions with farm labor contractors, agricultural employers, agricultural associations and migrant housing providers. However, some of these individuals and agencies are exempt from this law under limited circumstances.

Exceptions:

- Anyone engaged in farm labor contracting on behalf of a farm, processing establishment, seed conditioning facility, cannery, gin, packing shed or nursery owned or operated exclusively by him- or herself or an immediate family member
- Anyone, other than a farm labor contractor, for whom the man-days exemption for agricultural labor applies (see the section on Fair Labor Standards Act)
- Any labor organization, nonprofit charitable organization, or public or private nonprofit educational institution
- Anyone who engages in farm labor contracting solely within a 25-mile intrastate radius of his or her permanent residence for 13 weeks per year or less
- Any common carrier considered to be a farm labor contractor only because the carrier transports any migrant or seasonal worker

- Any custom grain harvesting, cotton harvesting, hay harvesting or sheep shearing operation

**NOTE:** Cotton harvesting was not originally listed as exempt. However, a subsequent Department of Labor ruling has provided this exemption.

- Any custom poultry harvesting, breeding, debeaking, desexing or health service operation, provided the employees are not regularly required to be away from their permanent residence other than during normal working hours
- Situations involving anyone recruiting full-time students to work in various agricultural activities (See Public Law 97-470)

### **C. Farm Labor Contractors**

Contractors must:

- Register with the U.S. Department of Labor and receive an annual Certificate of Registration
- Ensure that all full-time or regular employees of a certified labor contractor who recruit, solicit, hire, furnish or transport workers are registered
- Carry a Certificate of Registration at all times
- Employ no illegal alien. Compliance shows the contractor relied in good faith on legal documentation 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:

- At the time of recruitment and in the appropriate language, inform each worker in writing:
  - where he or she will be working
  - crops and operations he or she will work with
  - transportation, housing and other benefits to be provided, if any, and any costs for each item
  - wage rates to be paid
  - period of employment
  - strikes at place of employment
  - any commission arrangements between the farm labor contractor and local merchants dealing with workers
- At the place of employment, post the conditions of employment in the appropriate language where all workers can see them. Workers must be informed of all changes in their employment.
- If housing is provided, post the terms and conditions of occupancy
- For each worker, keep records for 3 years on:
  - gross earnings
  - itemization of each deduction
  - purpose of each deduction
  - net earnings
  - number of hours worked
  - basis on which wages were paid
  - number of piece work units earned, if applicable
- Give each worker a written record of these items for each pay period
- Provide all required written documents in English or in some other language common to the workers
- Pay the wages owed when due

- Not require workers to purchase goods or services only from the farm labor contractor
- Not unjustly violate the terms of the working arrangement
- If providing housing, ensure that the facility or property complies with applicable federal and state laws
- Not allow the housing facilities to be occupied unless they meet safety and health standards, and the certificate is posted at the site. If a request for inspection is not made 45 days before the expected occupancy date, the facility may be occupied.

**NOTE:** For information about labor contractor registration certificates contact the Department of Labor Wage and Hour Division.

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

Two classes of agricultural workers are covered:

- Migrant workers employed on a seasonal or other temporary basis who must be absent from their permanent residences overnight
- Seasonal workers employed on a temporary basis who are not required to be absent overnight when employed on a farm or ranch in 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 a day-haul operation. A day-haul operation picks up workers waiting to be hired, transports these workers to the place of employment and returns them 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.

More information is available in Public Law 97-470-January 14, 1983, Migrant and Seasonal Agricultural Worker Protection Act, from the U.S. Department of Labor Employment Standards Administration. For more information contact the U.S. Department of Labor.

## **E. Responsible Agency**

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

Offices in Texas:  
 Dallas District Office  
 U.S. Department of Labor  
 Employment Standards Administration, Wage and Hour Division  
 1701 E. Lamar Blvd., Suite 270, Box 22  
 Arlington, Texas 76006-7303  
 (817) 861-2150

Houston District Office  
 U.S. Department of Labor  
 Employment Standards Administration, Wage and Hour Division  
 8701 S. Gessner Drive, Suite 1164  
 Houston, Texas 77074-2944  
 (713) 339-5525

San Antonio District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
Northchase 1 Office Building  
10127 Morocco, Suite 140  
San Antonio, Texas 78216  
(713) 339-5500

## **Migrant Labor Housing Facility Act**

### **A. Objective**

This state regulation ensures that migrant farm workers have adequate, safe, sanitary and healthful housing facilities while they are employed in Texas.

### **B. Coverage**

Any employer operating an agricultural labor camp in Texas is covered by state regulations. An agricultural labor camp provides free or rental housing to two or more seasonal, temporary or migrant workers and their dependents for more than 3 days.

### **C. Employer Provisions**

Each employer must obtain a license to operate a labor camp. Application for the license is made to the State Commissioner of Health at least 45 days but not more than 60 days before the operation of the facility. The application specifies the ownership and location of the proposed labor housing facility. The application fee is \$100 or less. An inspection will be made within 30 days of the receipt of the application and fee. If the housing facility meets the required standards of construction, sanitation, equipment and operation, a permanent, nontransferable license good for 1 year is issued. The license must be renewed not less than 30 days before the expiration date. If the housing facility does not pass inspection, the applicant will be given reasons for this failure and may request a reinspection within 60 days of the notice. If the facility does not meet the standards after reinspection, a new application must be filed.

Licenses may be suspended or revoked for violation of any of the Act's provisions.

After giving proper notice, representatives of the health department can investigate the housing facility to determine whether the Act is being violated. Investigations must be at reasonable hours. Violations are subject to civil penalty of \$200 for each day of the violation. A district court can restrain any person from operating a housing facility found in violation.

### **D. Employee Provisions**

Employees who vandalize, misuse or violate regulations are subject to a maximum fine of \$25 or 10 days in jail or both.

### **E. Responsible Agency**

The Texas Department of State Health Services is responsible for the administration of the agricultural labor camp provisions. Permit applications must be filed with the Texas Department of Health. The department's regional offices conduct facility inspections.

## **Farm Labor Camps, Temporary — Federal**

### **A. Introduction**

Employers, food processors or farm labor contractors who employ migrant workers and operate licensed agricultural labor camps must construct, license and operate these facilities to ensure an adequate and timely labor supply.

Two current laws apply to farm labor camps. The older housing standards law is administered by the U.S. Department of Labor, Employment and Training Administration (20 CFR Part 654). The second federal law was passed in 1970 and is administered by the U.S. Department of Labor, Occupational Safety and Health Administration, or OSHA (29 CFR Part 1910.142).

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

Texas employers who provide temporary housing for migrant farm workers are governed by 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 OSHA

These regulations are similar, but differ in housing requirements and enforcement responsibilities.

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

Employers who house one or more farm workers and hire workers from outside the local area through the Texas Workforce Commission must comply with either of the federal standards, depending upon when the housing was constructed. Temporary farm labor housing constructed after April 3, 1980, must comply with OSHA standards. This agency's inspections of temporary farm worker housing are done post-occupancy. Licensing is not required under the agency's regulations.

### **D. Inspections**

Housing provided by employers using the Interstate Worker Recruitment Service of the Texas Workforce Commission must be inspected and approved before the application for workers is completed. A job order can be conditionally processed without approval of the labor camp if the discrepancies are minor, and if the employer guarantees compliance 45 days before expected occupancy and was in compliance the previous year. If the employer does not comply by the deadline, the order for workers cannot be processed until the camp is in compliance. Inspections are made randomly, in response to employee complaints, and after a report of a fatality or injury. Litigation has resulted from employers denying inspection officers access to their facilities without a search warrant. The courts have ruled that employers can deny access to the work place if the inspector does not have a search



warrant; the courts also have ruled that the Secretary of Labor or his agent can obtain a search warrant to inspect work places, and in October 1980, regulations authorized the Secretary of Labor to seek search warrants without the employer's knowledge.

The three U.S. Department of Labor agencies responsible for housing standards enforcement coordinate their inspections of migrant labor housing facilities. The Employment and Training Administration, through state employment agencies, conducts pre-occupancy inspections of facilities on farms that it supplies with workers. The Employment Standards Administration inspects facilities not inspected by the employment/training administration that are owned or operated by crew leaders. The Occupational Safety and Health Administration inspects camps not covered by the other two agencies and conducts post-occupancy inspections where injuries, deaths or complaints occur. The standards used by these agencies depend on when the housing was constructed or whether it has been substantially modified. The U.S. Employment Service determines what constitutes major modification and when "old" housing becomes "new" housing.

Employers must comply with minimum federal, state and local housing standards. The Employment and Training Administration and the Occupational Safety and Health Administration have standards for:

- Housing site
- Shelter and housing
- Water supply
- Toilet facilities
- Sewage disposal
- Laundry, hand washing and bathing facilities
- Electrical lighting
- Refuse and garbage disposal
- Cooking and eating facilities
- Screening, insect and rodent control
- Fire, safety and first aid facilities
- 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, D.C. 20210  
(866) 4-USA-DOL (866-487-2365)  
[www.dol.gov](http://www.dol.gov)

For local offices look in the telephone directory under:

U.S. Government

Department of Labor

Occupational Safety and Health Administration

<http://www.osha.gov/>

U.S. Government

Department of Labor

Employment and Training Administration

<http://www.doleta.gov/>

## **Standards For Sanitation at Temporary Places of Employment**

### **A. Objective**

This Act sets standards for the protection of employees and the public welfare; it also provides for sanitary facilities—including those for dispensing drinking water, washing hands, collecting refuse or eliminating body wastes—at temporary places of employment.

### **B. Who Must comply**

Anyone who directly or indirectly employs two or more people in field work done away from a permanent structure must comply.

- Each employer shall provide and maintain sanitary facilities at any temporary workplace.
- Where employees of more than one employer work at a temporary place of employment, each employer must furnish sanitary facilities for these employees.
- The sanitary facilities are free to employees.
- Employers must inform employees of the location of the sanitary facilities.
- Employers with six or fewer employees can arrange for transportation to sanitary facilities instead of providing temporary facilities. Nearby facilities must meet minimum sanitary standards and be accessible to employees.
- Potable drinking water, suitably cool and in sufficient amounts, must be accessible to all employees.
- One toilet and one hand-washing facility must be provided for every 20 employees, and be located within a ¼-mile walk or at the closest point of vehicular access. Such facilities are not required for employees who do daily field work for 3 hours or less.
- Maintenance of the sanitary facilities must meet public health sanitation practices. Water should be changed daily or as often as needed, toilets kept clean and potable drinking water kept sanitary.
- The employer must inform the employees of the health hazards in the field and ways to minimize exposure to them.

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

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

Work-site toilet facilities can be portable or fixed at a location; separate facilities must be provided if both sexes are employed. At a work site with 15 or fewer

employees, at least one toilet for both men and women must be available. As the number of employees increases, the number of toilet facilities should increase. These facilities must be kept sanitary.

At temporary work sites where employees eat lunch, employers must provide or designate an area for that purpose. An adequate number of trash containers must be available.

### **C. Penalties**

An offense under this Act is either 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 each day the violation continues. If the defendant is not a first-time offender, the fine shall not be less than \$10 or more than \$1,000.

State standards for temporary labor camps DO NOT supersede federal standards.

### **D. Responsible Agency**

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

## **Employment of Minors — Federal**

### **A. Coverage**

People 18 years of age and older are not included under the child labor provisions of the Fair Labor Standards Act. Farm employers not covered under other provisions of the Act, such as minimum wage and overtime regulations, must comply with the law if they employ minors younger than 16, which is the minimum age for working in agricultural jobs declared hazardous by the Secretary of Labor and the minimum age for working during school hours. For agricultural jobs outside of school hours and not declared hazardous by the Secretary of Labor, 14 is the minimum age.

Exceptions are 12- and 13-year-olds employed with written parental consent or on a farm where the minor's parent or guardian also is employed; and minors younger than 12 employed with written parental consent on farms whose employees are exempt from federal minimum wage provisions.

The Department of Labor can issue waivers permitting 10- and 11-year-old minors to work in hand-harvested, short-season crops if the employer does not use certain restricted pesticides and complies with re-entry times for specified chemicals.

Minors of any age may be employed by their parents on farms owned or operated by their parents or guardians.

Except for minors employed by their parents on their parents' farm, 14- and 15-year-old minors may:

- Work only during non-school hours and between 7 a.m. and 7 p.m. except for those enrolled in certain work training programs (see Exemptions section)
- Work as late as 9 p.m. only from June 1 through Labor Day
- Work only 3 hours per day on school days and 8 hours per day on non-school days

- Work only 18 hours per week when they attend school and 40 hours per week in non-school weeks

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

The Secretary of Labor declared certain occupations in agriculture to be hazardous. With a few exemptions, no minor younger than 16 years of age may be employed in these occupations:

1. Operating, driving or riding on a tractor with more than 20 PTO horsepower
2. Operating or assisting with 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 with a trencher or earth-moving equipment, forklift, potato combine, power-driven circular band saw or chainsaw
4. Working in an area with a bull, boar, stud horse, sow with piglets or cow with calf
5. Working around timber with a butt diameter of more than 6 inches
6. Working from a ladder or scaffold more than 20 feet high
7. Driving a bus, truck or automobile transporting passengers
8. Working inside a fruit, forage or grain bin or silo under specified conditions
9. Handling or applying anhydrous ammonia or other specified chemicals, including those that bear the legend "Poison" or "Warning" on the label
10. Handling or using explosives

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

- Minors younger than 16 working for their parents on their parents' farm are exempt.
- Student learners in a vocational agricultural program may work in the hazardous occupations listed 1 through 6 under a written agreement stating that the student learner's work is incidental to training, intermittent, for short periods of time, and under close supervision; that safety instructions are given by the school and with the on-the-job training; and that a schedule of work processes has 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.
- Minors ages 14 and 15 who earned certificates of completion in either the tractor operation or machine operation program of the 4-H Federal Extension Service Training Program may work in those occupations, which are covered by items 1 and 2 of the Hazardous Occupations Order. Farmers employing these minors must keep a copy of the certificate on file with the minor's records. Enrollment in this program is open to members and nonmembers of 4-H. Information is available from a Texas AgriLife Extension Service agent.
- Minors ages 14 and 15 who earned certificates of completion in either the tractor operation or machine operation program of the U.S. Office of Education Vocational Agriculture Training Program may work in these occupations, which are covered by items 1 and 2 of the Hazardous Occupations Order. Farmers employing these minors must keep a copy of the certificate of completion on file with the minor's records.

Employers of minors younger than 16 must:

1. Maintain records on each minor's full name, temporary and permanent addresses, date of birth and written parental consent, if required
2. Keep a minor employee's age or employment certificate on file
3. Observe legal wage and hour provisions
4. Prohibit minors younger than 16 from performing jobs declared as hazardous

Minor employees must provide employers with an employment or age certificate from local schools. Certificates issued under most state laws are acceptable.

More information is available from:

- The U.S. Department of Labor, Wage and Hour Division, which is responsible for enforcement of the Federal Child Labor Laws and Federal Hazardous Occupation Regulations
- The Fair Labor Standards Act of 1938, as amended in the Wage and Hour 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, Wage and Hour 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, Wage and Hour Publication 1283 (Rev. 12/72)
- Regulations: Part 579 – Child Labor Violations, Part 580 – Civil Penalties – Rules of Practice for Administrative Proceedings, Wage and Hour Publication 1415, September 1975
- Young Farm Workers and the Fair Labor Standards Act, Wage and Hour Publication 1338, May 1971
- A Guide to Labor Provisions of the Fair Labor Standards Act, Wage and Hour Publication 1236, 1976.

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

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

Offices in Texas:  
Dallas District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
1701 E. Lamar Blvd., Suite 270, Box 22  
Arlington, Texas 76006-7303  
(817) 861-2150

Houston District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
8701 S.Gessner Drive, Suite 1164  
Houston, Texas 77074-2944  
(713) 339-5525

San Antonio District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
Northchase 1 Office Building  
10127 Morocco, Suite 140  
San Antonio, Texas 78216  
(713) 339-5500

## Employment of Minors — Texas

The Texas Child Labor Law regulates the employment of children ages 14 to 17. Employing a child younger than 14 is illegal, with some exceptions. The employment of minors outside of school hours is exempt from this law.

Minors ages 14 or 15 may not work more than 8 hours a day or more than 48 hours a week, or between 10 p.m. and 5 a.m. on a day followed by a school day or between midnight and 5 a.m. on a day not followed by a school day.

Minors ages 14 through 17 cannot work in any occupation defined as hazardous by the U.S. Department of Labor.

### A. Responsible Agency

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

## Work Opportunity Tax Credit

### A. Introduction

For-profit employers who hire new employees from certain targeted groups are eligible for a tax credit. The exact amount depends on the employer's tax bracket and the qualified wages paid; the maximum is \$2,400 per eligible employee.

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

Qualifying individuals began work in these groups before September 1, 2011:

- A member of a family receiving Temporary Assistance to Needy Families for at least 18 consecutive months ending on the hiring date
- A member of a family receiving Temporary Assistance to Needy Families for any 9-month period during the 18-month period ending on the hiring date
- An 18- to 39-year-old member of a family who is or has recently received food stamps
- An 18- to 24-year-old resident of one of the federally designated Empowerment Zones, Enterprise Communities, or Renewal Communities

**NOTE:** All Round I Enterprise Communities, including enhanced Enterprise Communities expired on December 31, 2004. Round II Enterprise Communities still exist, as do Empowerment Zones.



- A 16- to 17-year-old Empowerment Zone, Enterprise Community or Renewal Community resident hired between May 1 and September 15 as a Summer Youth Employee

**NOTE:** All Round I Enterprise Communities, including enhanced Enterprise Communities, expired on December 31, 2004. Round II Enterprise Communities still exist, as do Empowerment Zones.

- A veteran who is a member of a family receiving food stamps
- A Vocational Rehabilitation Referral who completed rehabilitative services from a state certified agency, an employment network or the U.S. Department of Veterans Affairs
- An ex-felon who has a hiring date not more than 1 year after the last date on which he was convicted or released from prison
- A recipient of Supplemental Security Income 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 percent incurred after September 10, 2001
- have a hiring date not more than 1 year after discharge or release from active duty in the U.S. Armed Forces
- 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 members of a family:

- that received Temporary Assistance to Needy Families for at least 18 consecutive months before the hire date
- whose Temporary Assistance to Needy Families eligibility expired after August 5, 1997 (for applicants hired within 2 years after their eligibility expired)
- that received Temporary Assistance to Needy Families for at least 18 months since August 5, 1997, and were hired not more than 2 years after that 18-month period.

Employers who hire welfare recipients and provide part of their major medical insurance costs can receive the State of Texas Tax Refund. A qualifying employer:

- Pays taxes—including 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
- Pays wages during the first year of employment to a Texas resident who received Temporary Assistance to Needy Families or Medicaid benefits within 6 months of the employee's start date
- Provides part of a qualifying employee's Health Maintenance Organization health plan costs, self-funded or self-insured plan, or other approved health plan. **NOTE:** An employer who requests this refund must provide the same insurance coverage to that employee as 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, President Bush 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 into the Work Opportunity Tax Credit and extends the program, with changes and provisions, for a 2-year period through December 31, 2007. The following statutory changes apply to new employees hired 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 Work Opportunity Tax Credit.

This reauthorization is retroactive to January 1, 2006, and the amendments apply to new employees beginning work on or after January 1, 2007.

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

To apply for a Work Opportunity Tax Credit certification, the employer must mail all pertinent information to the Texas Workforce Commission.

- Within 28 days of the employee's start date, mail an Internal Revenue Service Form 8850: Work Opportunity Credit Pre-Screening Notice and Certification Request, completed by the date of the job offer.
- As soon as possible mail either Form ETA-9061: Individual Characteristics Form with all supporting documentation, if the new employee is not conditionally certified, or Form ETA-9062: Conditional Certification Form, if provided to the job seeker by a participating agency.
- Mail forms to:  
Texas Workforce Commission  
Work Opportunity Tax Credit Unit  
101 E. 15th St., Room 420-T  
Austin, Texas 78778-0001

### **D. Limitations**

If an employee works at least 400 hours:

Adult target group:  $\$6,000 \times 40 \text{ percent} = \$2,400$

Summer youth:  $\$3,000 \times 40 \text{ percent} = \$1,200$

No Work Opportunity Tax Credit can be claimed for an on-the-job training contract employee. However, credit can be claimed for wages paid after the contract expires. To claim this credit, employees must be Work Opportunity Tax Credit certified before their starting date. Time spent in on-the-job training programs does count toward the eligibility requirements.

If an employee works at least 120 hours but less than 400:

Adult target group:  $\$6,000 \times 25 \text{ percent} = \$1,500$

Summer youth:  $\$3,000 \times 25 \text{ percent} = \$750$

### **E. Responsible Agency**

For more information about the state tax refund visit the Web at <http://www.twc.state.tx.us/svcs/wotc/tanf.html>

For more information call the Texas Workforce Commission's Work Opportunity Tax Credit Unit.

For an IRS Form 8850, go to the Web at <http://www.irs.gov> or call (800) 829-3676. The IRS' General Business Credit publication gives information on filing for this tax credit.

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

Texas Workforce Commission  
Work Opportunity Tax Credit Unit  
101 E. 15th  
Austin, Texas 78778  
(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 quarter of the preceding calendar year—the equivalent of eight full-time employees—must comply.

Employers who hired less than 500 man-days of agricultural labor in any quarter of the preceding calendar year do not have to follow the minimum wage provisions of the Act for the entire following calendar year. 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 number of man-days is less.

Exceptions are:

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

If covered, employers must:

- Pay at least minimum wage to all employees—currently \$6.55 per hour, increasing to \$7.25 by 2009
- Maintain payroll records for at least 3 years for each employee, including:
  - d. Full name of employee
  - e. Complete home address
  - f. Sex and occupation
  - g. Identification of employees who are:
    - members of an employer's immediate family
    - hand-harvest workers paid on a piece-rate basis
    - employees in range livestock production
  - h. The number of man-days worked (a man-day is any day during which an employee does agricultural work for 1 hour or more)
  - i. Beginning day and time of employee's work week
  - j. Basis on which wages are paid, such as \$6.55 per hour, \$52.40 per day or piece work
  - k. Hours worked each day and week
  - l. Total daily or weekly earnings
  - m. Total additions to or deductions from wages with an explanation of each
  - n. Total wages paid each pay period, together with proof of cash advances or other deductions
  - o. Date of payment and pay period
- File a statement from each exempt piece-rate employee showing the number of weeks employed in agriculture during the preceding year
- File the date of birth and the parent's name for each exempt minor paid piece rate
- Record the full name, present and permanent addresses, and date of birth of any minor younger than 19 who works when school is in session or in a hazardous occupation

- Display the official poster on minimum wages, “Notice to Employees,” where employees can see it

Employers may need to deduct some costs from farm workers’ wages; however, the deductions may not reduce wages below the minimum.

Deductions that may not lawfully reduce the wage level below the minimum wage per hour are transportation advances and charges for contractors’ (crew leader) services.

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

- Deductions required by law, such as Social Security and Withholding Tax
- “Third Party” deductions authorized by the employee, such as union dues, United Funds or health insurance if paid to a third party
- Salary advances exclusive of interest charges (receipts for cash advances must be retained)
- Housing and meals that do not exceed the reasonable cost or fair value determined by the Secretary of Labor but do meet 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 workers less than 20 years of age and in the first 90 consecutive calendar days of employment.

- The law does not mandate a youth wage of only \$4.25 per hour—any rate that is not less than \$4.25 or more than minimum wage is permitted.
- Eligible workers may be paid the youth wage up to and including the day before their 20th 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 employee works.

To determine the eligibility period:

- An employee can be “initially employed” only once by an employer.
- An employee is “initially employed” by more than one employer for the youth wage.
- An eligible worker may be paid the youth wage for up to 90 calendar days after initial employment with any employer.
- The worker’s eligibility to be employed simultaneously by a separate employer does not affect either employer’s right to pay the youth wage.
- The 90-day period does not start until the employee’s first day of work, regardless of when the employee was hired.
- The 90-day period continues even if the employee comes off the payroll during that time. 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 30 days after he or she quits. If this student returns the following summer to work for the same employer, eligibility for the youth wage has expired.

No training requirements are necessary for an employer to pay the youth wage. The youth wage rate 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, D.C. 20210  
(866) 4-USWAGE (866-487-9243)  
[www.wagehour.dol.gov](http://www.wagehour.dol.gov)

Offices in Texas:  
Dallas District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
1701 E. Lamar Blvd., Suite 270, Box 22  
Arlington, Texas 76006-7303  
(817) 861-2150

Houston District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
8701 S. Gessner Drive, Suite 1164  
Houston, Texas 77074-2944  
(713) 339-5525

San Antonio District Office  
U.S. Department of Labor  
Employment Standards Administration, Wage and Hour Division  
Northchase 1 Office Building  
10127 Morocco, Suite 140  
San Antonio, Texas 78216  
(713) 339-5500

## **Texas Minimum Wage Law**

### **A. Introduction**

Texas Minimum Wage Law applies to agricultural labor; however, the Federal Fair Labor Standards Act supersedes the Texas Act when employers are covered by both. The only exemption from the Texas state law are employees of dairy producers, livestock producers and supporting activities.

The federal minimum wage automatically becomes the Texas minimum wage. Federal legislation has the minimum wage at \$5.85 per hour effective July 24, 2007; \$6.55 per hour effective July 24, 2008; and \$7.25 per hour effective July 24, 2009.

The Commissioner of Agriculture establishes piece rates for agricultural commodities commercially produced in Texas if sufficient information is available. The piece rates should guarantee at least minimum wage for harvesters of average ability, while more productive harvesters can earn more.

### **B. Responsible agency**

Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711  
(Piece Rates for Commodities)  
(512) 463-7476

## **Texas Payday Law**

During the 1989 session, the Texas Legislature amended the Texas Payday Law, transferring enforcement to the Texas Workforce Commission. The law allows the commission to collect wages that have not been paid to workers.

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

All employers must comply.

- Employers must pay employees not subject to overtime provisions of the Fair Labor Standards Act at least once a month and all other employees at least twice monthly. Employers must designate paydays; if they do not, paydays are the 1st and 15th of each month.
- English and Spanish notices designating the official paydays must be posted prominently in the workplace. Sample notices are available at Texas Workforce Commission offices.
- An employer may not withhold or direct any part of an employee's wages unless authorized to do so by a court of law or by state or federal law, or unless he or she has written authorization from the employee to deduct part of the wages for a lawful purpose.
- Employers must pay a fired employee within 6 calendar days after dismissal.
- Employers must pay an employee who quits by the next regular payday.
- Employers must not give a paycheck to a person other than the employee without the employee's written authorization.
- The law does not allow wage claims to be filed for vacation pay, sick leave pay, parental leave pay or severance pay unless owed to an employee under a written agreement or written policy of the employer.

### **B. Related Information**

- Survival Guide to the Texas Payday Law 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 at the address below or fax a request to (512) 834-3526. Orders are not taken by telephone.
- For more information, call the division's toll-free line at (800) 832-9243.

### **C. Responsible Agency**

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

## **Federal Income Tax Withholding for Farm Workers**

### **A. Objectives**

Federal income tax withholding collects current income tax revenues, reduces the need to file and pay estimated taxes, and reduces the amount of income tax owed at filing time.

## **B. Coverage**

If a farm worker's cash wages are subject to Social Security and Medicare taxes, they are also subject to federal income tax withholding. 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 their wages total \$2,500 or more during the year. Employees are farm workers if they:

- Raise or harvest agricultural or horticultural products on a farm
- Work with the farm and its tools and equipment
- Handle, process or package any agricultural or horticultural commodity their employer produced more than half of
- Do housework in a private home on a farm operated for profit

An employee who does 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 store 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. A 20-factor test is used 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. Otherwise, the employer must withhold federal income taxes from the employee's wages based on only one withholding allowance. The amount of tax to withhold is listed in IRS circulars A and E. Withholding of income tax is not required if an employee files Form W-4 stating that he or she had no income tax liability last year and anticipates none for the current year.

### **2. Employment Taxes**

Cash wages paid to farm employees are subject to Social Security, Medicare taxes and income tax withholding. Cash wages include checks and money orders but not 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, Medicare taxes or income tax withholding. However, commodity wages and other non-cash payments are subject to Social Security, Medicare taxes and income tax withholding if the substance of the transaction is a cash payment.

### **4. Family Members**

Wages paid to family members who are employees are subject to Social Security, Medicare and income tax withholding, and Federal Unemployment Tax Act funds. Certain exemptions may apply for a child, spouse or parent of the employer.

## **D. Exemptions**

Wages to a child of the owner or partner in a limited liability company are not subject to Social Security and Medicare. Use Form W-2 to report these wages with no tax showing in the Social Security and Medicare boxes. Do not use 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 temporarily to perform agricultural

labor under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act.

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

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 Ave. NW  
Washington, D.C. 20220  
(202) 622-2000  
(202) 622-6415 (fax)  
<http://www.ustreas.gov/>  
Internal Revenue Service  
<http://www.irs.gov>

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

## **Social Security — Federal**

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

Employers who pay more than \$2,500 to all employees for agricultural labor during the year must make Social Security deductions. If the total payroll is less than \$2,500, individual wages of more than \$150 during the year are subject to the Federal Insurance Contributions Act. For Social Security, wages include only cash payments made to employees for farm labor, not food, lodging and other non-cash items.

Family employment not covered by Social Security is any work done by:

- A child younger than 18 employed by his or her parent
- A parent employed by a son or daughter doing
  - domestic service in the son's or daughter's private home
  - work not in the son's or daughter's business

This exception does not apply when the employer is a corporation or association classified as a corporation, or when the employer is a partnership, unless the employee is related to all the partners.

Employers must withhold Social Security tax equal to 6.20 percent of the gross wages, 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 6.20 percent tax is imposed on employers.

Employers also must pay a separate payroll tax of 2.90 percent of an employee's income, with 1.45 percent paid directly by the employer and an additional 1.45 percent deducted from the employee's paycheck. This portion of the tax, which has no maximum limit, is used to fund the Medicare program that provides health benefits to retirees.



These two federal programs have a combined tax rate of 15.30 percent, with 7.65 percent paid by the employee and 7.65 percent by the employer.

Employers must 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 who reports employment taxes of \$50,000 or less per year must make only monthly deposits on or before the 15th day of the following month.

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

An employer who reports employment taxes of more than \$50,000 per year is a semi-weekly depositor for the entire year and must make deposits on or before Wednesdays or Fridays, depending on the timing of 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:

- Give each employee 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 of each year
- File Form W-3, Transmittal of Income and Tax Statements, and a copy of each employee's W-2 form with the Social Security Administration, Office of Central Records Operations, Baltimore, MD 21290, by February 28 of each year
- File Form 943, Employer's Annual Tax Return for Agricultural Employees, with the Internal Revenue Service by January 31 of each year, or by February 10 if the tax was paid in full with Form 511
- Maintain payroll records for at least 4 years for each employee, including:
  - 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
  - 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 received by state or local government workers participating in their employers' alternative retirement system
- Net annual self-employment earnings of less than \$400
- Wages received as an election worker, if less than \$1,400 a year (in 2008)
- Wages received 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 a similar religious service if the person has a conscientious objection to public insurance because of personal religious beliefs, but only for “qualified services” performed for a religious organization
- Other minor exceptions

Members of recognized religious sects, such as the Amish and Mennonites who are opposed to public insurance, also have an exception from all Social Security taxes.

## **D. Responsible Agencies**

### **Benefits**

U.S. Department of Health and Human Services  
200 Independence Ave. SW  
Washington, D.C. 20201  
(202) 619-0257  
(877) 696-6775  
<http://www.hhs.gov/>

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

Enforcement and Tax Collection  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, D.C. 20220  
(202) 622-2000  
(202) 622-6415 (fax)  
<http://www.ustreas.gov/>

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

To locate local offices visit the Web at <http://www.irs.gov/localcontacts/> or look in the telephone directory under United States Government, Internal Revenue Service.

## **Unemployment Compensation**

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

Any employer of farm workers must pay unemployment compensation if, in the current or preceding calendar year, he or she:

- Had a payroll of at least \$6,250 in a calendar quarter OR three or more employees for some portion of a day in 20 or more weeks
- Employed migrant labor
- Employed seasonal workers on truck farms, orchards or vineyards

- Employed seasonal workers and migrant workers at the same time and same location for the same work

## **B. Responsible Employer**

The FARM OPERATOR is the employer if:

- The worker is employed by the farm operator under common law rules of master and servant
- The worker is furnished by the crew leader who is acting on behalf of the farm operator
- The crew leader is designated as an employee of the farm operator under a written agreement

The CREW LEADER is the employer if:

- The crew leader has valid certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act
- Most crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other equipment
  - The STATE tax will vary depending on the experience rating of the farm employer. Farm employers without an experience rating pay 2.7 percent of the first mechanized equipment provided by the crew leader.
- The employee does not work for any other person under common law rules of master and servant

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

- Farm work for an exempt employer (See section on who must comply.)
- Students working for credit in a work-study program
- Service done by an individual employed by his or her son, daughter or spouse, or by a child under the age of 21 employed by his or her parent
- Service done as part of an unemployment work-relief or work-training program assisted or financed by any federal or state agency
- Service done on a fishing vessel normally having a crew of fewer than 10 if the crew member's payment is a share of the catch and the services are not employment under the Federal Unemployment Tax Act

Employers must:

- Pay unemployment compensation tax on the first \$9,000 of annual payroll earnings for each employee. The effective federal tax is 0.8 percent of the first \$9,000 of the annual payroll of each employee for six calendar quarters. (The actual federal tax is 6.2 percent less a credit of 5.4 percent if the employer pays the state tax.) At the end of the sixth calendar quarter, the rating process starts. Taxes paid in the seventh and subsequent quarters are based on the experience rating, which is recalculated annually thereafter. Annual rate notices are mailed to all employers in January of the applicable year.
- 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 calendar quarter. Penalty and interest charges are due if the 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, requires each employee's name, Social Security number, number of weeks worked in the calendar quarter, and gross wages. The state reporting form is due during the month after the end of the quarter. The state may impose a penalty for reports filed late and an additional penalty if taxes are paid after the due date.

- Furnish the local office with information about the job separation, which may be disqualifying (see list on next page), when a former employee submits an Unemployment Benefit Claim. After receiving a Notice of Claim Filed from the local office, the most recent employer has 10 days to provide the information about the job ending. Other past employers will also be notified of the claim on a Chargeback Notice sent by the central office and have 10 days to furnish the information about the separation. If the employer does not reply within the prescribed period, the claim may be charged against his experience rating and result in a higher tax rate.
- Display the poster “To Employees” in a place where all employees can see it. This form is available in English and Spanish.
- Have records available for inspection during the business day and maintain records for 5 calendar years.

## **D. Employee Eligibility**

To be eligible for Unemployment Compensation, an individual must be employed less than full time, able and available to work, actively seeking work, not subject to any disqualification and have the necessary wage credits during the first four of the last five completed calendar quarters preceding the claim. Claims are effective the Sunday preceding the filing date. Tax forms and information on taxes and coverage under the Texas Unemployment Compensation Act are available at local Texas Workforce Commission offices.

### **1. Weekly Benefits**

A claimant is entitled to a weekly benefit amount based on his or her earnings during the base period. The maximum benefit amount, which is subject to change each year, is determined by the Legislature.

### **2. Employee Claims**

The cost of unemployment insurance is borne by employers, not employees. Eligible unemployed farm workers may file for benefits at the local Texas Workforce Commission office.

Farm workers may not be eligible for benefits if:

- They voluntarily quit their jobs
- They were discharged for work-connected misconduct
- They fail to apply for or accept suitable work
- Their unemployment is due to participation in a labor dispute
- They have willfully misrepresented their case (They can be fined or imprisoned for this.)
- They are receiving or are eligible to receive a retirement income other than disability from a base period employer
- They are receiving or are seeking unemployment benefits under an unemployment compensation law of another state or the United States
- They are illegal aliens

## **E. Responsible Agency**

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

## **Texas Workers Compensation Law**

Workers' compensation laws covering agricultural laborers, which took effect January 1, 1985, address on-the-job injuries and the corresponding insurance benefits.

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

While the law does not require employers to purchase workers' compensation insurance, all employers must comply with specific provisions of the law.

### **B. Exemptions**

Some agricultural workers are exempt from coverage under the Workers' Compensation Law. An employer may, however, 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 migrant, seasonal and other agricultural employees.

#### **1. Migrant Workers**

The law provides no exemptions regarding migrant workers regardless of the number employed or the gross annual payroll. Migrant workers are those 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, this agent is considered the employer of the migrant labor and is responsible under this law. Labor agents who do have coverage are required to present evidence of insurance to those they have contracts with. When the agent purchases the insurance, the person he or she contracts with is not responsible in a separate action should injury or death occur, except as provided by the law.

If the agent does not subscribe, the person he or she has contracted with 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 the agent has not subscribed to.

#### **2. Seasonal Workers**

Seasonal employees work in seasonal or temporary positions that do not require them to be away from home overnight. Seasonal workers employed on truck farms, orchards or vineyards are not exempt from or excluded by this law. A truck farm produces fruits, garden vegetables, potatoes, sugar beets or vegetable seeds for market. There are no exemptions or exclusions for seasonal labor working in these three operations.

A seasonal worker doing the same work at the same time and place and for the same employer as migrant workers is considered to be a migrant worker and is not exempt from coverage.

Seasonal workers in other categories are exempt from the law if their employer's gross annual payroll was less than \$37,871 in 1998. For subsequent years, the preceding year's payroll must be less than the prior year's required payroll amount adjusted for inflation. The comptroller provides an annual inflation multiplier before each October.

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

Agricultural employees are exempt if their employer has fewer than three non-seasonal or non-migrant workers and a payroll the year before that was less than the minimum outlined under the seasonal worker provision.

Threshold figures are determined by the state and released each October. For current threshold figures, contact an insurance agent.

The gross annual payroll includes amounts paid to farm and ranch laborers, seasonal and migrant workers and labor agents, but not wages paid to the employer or his family, a partner or partner's family, or a shareholder or member of his family.

Employers who purchase the insurance to cover their workers may also cover themselves, a partner, a corporate officer or a family member.

### **C. Rates**

The cost of workers' compensation insurance, which is set by the state insurance board, is stated in dollars per \$100 of gross payroll. Agricultural workers are included in several classifications.

Rates are established through an experience-factor system, which links the claims made with the rate of income generated. The rate is subject to annual change if the claims and income are not somewhat equal. Contact an insurance carrier to determine employees' exact classification and the cost of coverage.

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

Workers' compensation insurance is not mandatory. Employers who choose not to purchase this kind of insurance are still required to comply with the law by:

- Displaying posters in both English and Spanish stating that workers are not covered by any workers' compensation insurance
- Providing a written statement to all new employees that states they will not be covered by a workers' compensation policy
- Filing notice with the Texas Workers' Compensation Commission by May 15 each year stating lack of coverage

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

Employers who provide workers' compensation insurance must:

- Display posters in both English and Spanish informing employees that they are covered by workers' compensation insurance
- Allow new employees to sign a waiver to opt out of coverage, if they wish
- Display both English and Spanish posters informing employees of the ombudsman program
- File an injury report within 8 days of an accident that leads to lost time, or of notification of an occupational disease
- Have a "drug free work place" policy if 15 or more persons are employed

More information is 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, Texas 78701  
(800) 252-7031  
<http://www.tdi.state.tx.us>

## Advanced Earned Income Credit — Federal

Certain taxpayers qualify for a basic tax credit of up to \$1,750 for 2008. (**NOTE:** The amount increases every year.) Qualifying employees may choose to receive the basic portion in advance from their employers. Payment is made by using a specific table and is reflected as a separate item on the employee's check. Employers take credit for these payments against their liability for either income taxes or Social Security taxes.

### A. Who Must Comply

All employers must pay advance earned income credit if the eligible employee requests payment.

### B. Exemptions

Employers who pay agricultural workers on a daily basis are not required to pay advanced earned income credit.

Employers must:

- Inform employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit.
- Provide the Form W-5, Earned Income Credit and Advanced Payment Certificate, to the employee upon request. These forms are available at an IRS office or post office.
- When a Form W-5 is filed:
  - a. Compute the employee's gross pay. Agricultural employees' gross pay is that amount 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 requested 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.
  - e. Retain all records of advanced earned income credit payments for 4 years, including:
    - Copy of employee's Form W-5
    - Amount and date of employee's earnings
    - Dates of each employee's employment
    - Dates and amount of tax deposits made
    - Copies of returns filed
- File the appropriate forms with the IRS: Form 941, Employer's Quarterly Tax Return for non-farm packinghouses, canners and processors, or Form 943, Annual Tax Return for Agricultural Employers for farm employers.
- File Form 2-3, Transmittal of Income and Tax Statement, to the Social Security Administration in Baltimore by February 28 each year, accompanied by a W-2 Form for each individual employee.

Employers are reimbursed by the federal government for advanced earned income credit payments.

- The non-farm employer deducts the amount of the advanced earned income credit payment from his or her total liability for withholding taxes as he or she files with the IRS.



- If the taxes withheld are not sufficient to cover the amount of the advanced earned income credit payments to employees, the employer may deduct the excess from the employee contribution to Social Security.
- If advanced income credit payments are still too large, the employer may deduct the excess from the employer's contribution to Social Security.

### **C. Employee Eligibility**

An employee is eligible for this income credit if:

- The employee's expected earned income and adjusted gross income for 2008 is less than \$12,880 with no children or \$33,995 with one qualifying child and \$38,646 with two or more children
- The employee, if married, files a joint return or qualifies to file as head of household, not as married filing separately. If married filing jointly, adjusted gross income for 2008 must be less than \$15,880 with no children, \$36,995 with one qualifying child, or \$41,646 with two or more children
- The employee does not claim the foreign earned income or housing expense exclusion, or the foreign housing expense deduction
- The employee is not a qualifying child of another person
- The employee has a qualifying child as defined in Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit
- A child is claimed as a dependent by the employee. However, special rules may apply if the child has divorced or separated parents.

### **D. Additional Information**

- 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 Ave. NW  
Washington, D.C. 20220  
(202) 622-2000  
(202) 622-6415 (fax)  
<http://www.ustreas.gov/>

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

To locate local IRS offices, visit the Web at <http://www.irs.gov/localcontacts/> or look in the telephone directory under United States Government, Internal Revenue Service.

## **Worker Protection Standards Act**

### **A. Introduction**

The Worker Protection Standard for Agricultural Pesticides was issued by the U.S. Environmental Protection Agency to protect anyone who uses pesticides on farms and in forests, nurseries and greenhouses. The regulation requires employers to reduce the risk of pesticide-related illness and injury in their operations.

The regulation covers:

- Agricultural workers who cultivate and harvest plants on farms or in greenhouses, nurseries or forests
- Pesticide handlers who 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 required protections.

Employers are defined as:

- Agricultural employers who employ or contract for the services of workers or operate an establishment with employees
- Handler employers who hire pesticide handlers or are self-employed as handlers, including commercial applicators and companies that supply agricultural crop advisory services

At a minimum, employers are required to comply with new personal protective equipment and restricted entry statements on the pesticide labels.

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

Some protections required by the regulation are nearly the same whether the employees are workers or handlers.

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

Information must be posted at an easily seen, central location at each agricultural establishment. That information includes:

- Facts about each pesticide application, the product name, Environmental Protection Agency registration number and active ingredient, location and description of treated area, the time and date of the application, and the restricted-entry interval
- The name, address and telephone number of the nearest emergency medical facility
- An EPA safety poster about the regulation

The information must be posted where workers and handlers can easily access it. Employees must be notified of any changes to the emergency medical facility information.

### **2. Decontamination Sites**

Employers must provide sites where 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
- Clean coveralls for handlers

Decontamination materials must be within ¼-mile of the employees' worksite. If the workplace is more than ¼-mile from the nearest vehicular access point, the decontamination materials may be at the nearest access point. Handler employers must also provide decontamination materials:

- Where handlers remove their personal protective equipment at the end of a task
- At each mixing and/or loading site

Emergency eye flush water must be immediately available if protective eye wear is required by the pesticide label.

The decontamination materials may not be located in a restricted-entry area except for handlers working in that area. All materials must be protected from contamination.

### **3. Emergency Assistance**

If a handler or worker may have been poisoned or injured by pesticides, an employer must promptly transport that person to an appropriate medical facility and provide the victim and medical personnel with:

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

### **4. Pesticide Safety Training**

Handlers and workers must be trained every 5 years unless they are certified applicators.

Handlers must be trained before they work with any pesticides.

Workers must receive complete worker protection training within 5 days of entering an agricultural area that has been treated or under a restricted entry interval in the last 30 days. Workers also must receive basic pesticide safety information before entering a treated area. This training may be conducted by a licensed applicator or by a participant of a train-the-trainer program. Training may be oral or audio-visual, but must be presented in an understandable language and manner, using easily understood terms, and, if necessary, with an interpreter.

### **5. Information Exchange**

An employer must be informed when a pesticide is to be applied on his or her agricultural establishment by a commercial handler. The handler must provide information to be posted at the central location. This information can include both oral alerts and the required posted, written warnings that are at least 14x16 inches in size. Any other protection requirements on the label also should be included.

The agricultural employer must make sure the commercial handler is aware of all areas where pesticides will be applied or where a restricted entry interval will be in effect while the commercial handler is on the premises and the entry restrictions for those areas. Each employer must provide his or her employees with the required protections.

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

Agricultural employers must provide some additional protections for their workers.

#### *a. Restrictions during Applications*

Keep all workers out of areas being treated with pesticides; only properly trained and properly equipped handlers are allowed in areas being treated. Some conditions require that nursery and greenhouse workers must also stay a certain distance from the treated area.

#### *b. Restricted-Entry Intervals*

During a restricted entry interval, do not allow workers to enter a treated area or to contact anything treated with the applicable pesticide, as stated on the label. When two or more pesticides are applied at the

same time and have different restricted entry intervals, observe the longer interval.

*c. Notice about Applications*

Employers must notify workers about pesticide applications on the establishment, either through oral or posted warnings. For some pesticides, employers must do both. Posted signs must be:

- In the language commonly spoken and read by workers
- Posted 24 hours or less before application and during the restricted entry interval, and not removed before workers enter
- Posted to be seen at all normal entrances to treated areas

Oral warnings must be understandable by workers, through an interpreter if necessary, and must include:

- Location and description of treated area
- The restricted entry interval
- Specific directions not to enter during the restricted entry interval

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

Employers are required to provide additional protections to their pesticide handlers.

*a. Application Restrictions*

Do not allow handlers to apply a pesticide so that it directly contacts or drifts onto anyone other than trained and equipped handlers.

*b. Monitoring*

Sight or voice contact must be made at least every 2 hours with anyone handling poisonous pesticides labeled with a skull and crossbones. When using a fumigant in an enclosed area, handlers must be constantly monitored by potential rescuers with access to personal protective equipment.

*c. Specific Instructions for Handlers*

Before working with pesticides, handlers must:

- Be given safe-use information from the pesticide label
- Have access to the label during the entire handling task
- Know how to use the necessary equipment safely

Commercial handler employers must make sure their employees know where pesticides have been applied or where a restricted entry interval is in effect, and know of pesticide label restrictions in those areas.

*d. Personal Protective Equipment*

Employers must provide handlers with the personal protective equipment listed on the pesticide label. The employer must:

- Maintain clean and operational personal protective equipment
- Make sure the equipment fits correctly
- Make sure the handler wears and uses the equipment correctly
- Provide a clean place to put on and remove the equipment and store personal clothing
- Not allow workers to wear or take home the personal protective equipment
- Take steps designed to prevent heat-related illness while the equipment is worn

e. *Cleaning and Maintaining Personal Protective Equipment*

Employers must make sure:

- Personal protective equipment is cleaned according to manufacturer's instructions, inspected and repaired before each use
- Non-reusable personal protective equipment is disposed of properly
- Clothing drenched with pesticide labeled DANGER or WARNING is discarded
- Personal protective equipment is washed and dried properly, and stored away from personal clothing
- Respirator filters, cartridges and canisters are replaced as often as required

Anyone cleaning personal protective equipment must be informed of possible pesticide residues on the equipment, of the potentially harmful effects of pesticides, and of the correct ways to handle and clean the equipment.

f. *Equipment Safety*

Equipment used for mixing, loading, transferring or applying pesticides must be 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 using a pesticide product with labeling that refers to the Worker Protection Standards, those standards must be followed.

## C. Responsible Agency

Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711  
(512) 463-7476  
(800) TELL-TDA (835-5832)  
(888) 223-8861 (fax)  
[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 gives farm operators and agricultural workers information about hazardous chemicals used in agricultural operations and safe use of these chemicals.

### A. Who Must Comply

- Agricultural employers who 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, must comply.
- Agricultural employers who hire permanent agricultural workers whose gross annual payroll is \$50,000 or more and who annually use or store 55 gallons or 500 pounds of any pesticide must comply.
- Other agencies that normally store more than 55 gallons or 500 pounds of pesticides and are subject to the Emergency Reporting Requirement must comply.

An agricultural laborer plants, cultivates, harvests or handles an agricultural commodity; this includes laborers who handle chemicals covered by this Act. Payroll thresholds for seasonal, migrant and permanent workers, regardless of their duties, are to be included in the calculation.

## **B. Responsibilities**

Employers must provide agricultural workers with information about pesticide use, including:

- Relevant crop sheets with space for the name and telephone number of the employer to be contacted for more information. This information should be read aloud to workers at least once each work season.
- Relevant pesticide re-entry intervals
- Workplace Chemical Lists and Material Safety Data Sheets that are accessible to workers, medical personnel or community members on request
- Basic health and safety information, approved by the Texas Department of Agriculture
- Emergency information for workers, local fire chiefs, medical personnel and designated farm worker representatives, on request

### **1. Crop Sheets**

The Texas Department of Agriculture, in coordination with the Texas AgriLife Extension Service, develops crop sheets in Spanish and English that contain:

- A list of the most commonly used pesticides
- Months of pesticide application
- Re-entry interval or length of time that farmers must wait before allowing workers to enter a pesticide-treated field
- Acute or short-term symptoms of pesticide exposures, as well as chronic or long-term health effects
- Summary of agricultural workers' rights under the law
- Emergency procedures for pesticide poisoning
- Summary of basic safety measures to prevent pesticide poisoning
- Material Safety Data Sheets and Workplace Chemical Lists
- Information about training programs to be provided statewide by the Texas Department of Agriculture and the Texas AgriLife Extension Service

The Texas Department of Agriculture and the Texas AgriLife Extension Service provide copies of the crop sheets on request.

### **2. Workplace Chemical List**

The Workplace Chemical List from the Texas Department of Agriculture is used to record information about the pesticides used or stored in the workplace. The employer maintains one form for each crop, workplace or work area, whichever is most practical, for chemicals in excess of 55 gallons or 500 pounds used or stored each year. The Workplace Chemical List includes:

- Employer's name, address and identification
- Name of crop
- Date of each pesticide application or storage
- Product name of pesticide
- Environmental Protection Agency registration number from the label

- Locations or sites treated or where stored
- Number of acres treated
- Estimated total quantity of pesticide used
- Location of pesticide storage area

The law requires that the lists be updated and maintained by the employer for 30 years. Or employers may file these lists with the Texas Department of Agriculture by each January 31.

### **3. Material Safety Data Sheets**

A Material Safety Data Sheet identifies the chemical and its ingredients and gives health, safety and emergency information about the pesticide. This information is provided by chemical manufacturers and distributors. Dealers are required to provide this information upon request, if available. The employer must keep the most current safety data available on file for each pesticide listed on the Workplace Chemical List.

### **4. Emergency Reporting Requirement**

Operations that normally store more than 55 gallons or 500 pounds of pesticides within ¼-mile of a residential area with three or more private dwellings must follow the emergency reporting requirement. Those covered by this clause are required to notify the local fire chief of the names and telephone numbers of responsible people who can be contacted for more information. Upon request by the fire chief, they must provide copies of the Workplace Chemical Lists and Material Safety Data Sheets and allow inspection of the storage area.

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

Agricultural workers are entitled to:

- Copies of crop sheets and have this information read to them, if necessary
- Access to Material Safety Data Sheets and Workplace Chemical Lists
- The last and future dates of pesticide applications and applicable re-entry period
- Other basic health and safety information
- The right to anonymously report suspected violations of this law to the Texas Department of Agriculture without fear of retaliation
- A designated representative to act on their behalf

### **1. Designated Representatives**

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

### **2. Legal Ramifications**

The Texas Department of Agriculture will complete an investigation within 90 days of receiving a complaint. Employers who knowingly disclose false information or fail to disclose a hazard are subject to a civil penalty of not more than \$5,000 per violation. Employers who cause an injury by knowingly disclosing false hazard information or failing to disclose hazard information are subject to a criminal fine of not more than \$25,000.

**NOTE:** 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  
P.O. Box 12847  
Austin, Texas 78711  
(512) 463-7476  
(800) TELL-TDA (835-5832)  
(888) 223-8861 (fax)  
www.agr.state.tx.us

## **Occupational Safety And Health Act – Federal**

### **A. Objective**

The Occupational Safety and Health Act ensures, as far as possible, that the nation has safe and healthful working conditions for its workers.

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

With a few exceptions, any employer engaged in any form of interstate commerce must comply with OSHA regulations. However, members of a farmer's family who work for him or her are not covered under this act. Annual exemptions from all rules, regulations, orders or standards issued or prescribed under the Occupational Safety and Health Act of 1970 have been provided since 1976.

A farming operation employing no more than 10 employees during the previous 12 months is exempt if it does not maintain a migrant labor camp. This exemption has been renewed annually as part of the OSHA funding authorization by Congress. Employers should check with the agency's area office to determine if the exemption is currently available.

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

An employer of no more than 10 employees will not be assessed penalties for non-serious violations if the employer has:

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

All employers must:

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

Employers of 11 or more workers must:

- Keep records of occupational injuries and illnesses
- Prominently display the Log and Summary of Occupational Injuries and Illnesses, OSHA Form No. 200, during each February
- Provide a workplace free from recognized hazards and comply with the specific agricultural standards for:
  - Slow-moving vehicle emblems
  - Logging and pulpwood operations

- Roll-over protection structures and seatbelts where required
- Temporary labor camps
- Anhydrous ammonia storage and handling
- Farm machinery protection
- Records for 5 years
- Hazard communications

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

## **C. Training**

Employee training is required under certain standards.

### **1. General:**

- The employer shall ensure the ready availability of medical advice and consultation on matters of workplace health.
- In the absence of a nearby infirmary, clinic or hospital, a designated person shall be adequately trained to render first aid. Approved first aid supplies shall be readily available.

### **2. Temporary Labor Camps**

- Adequate and approved first aid facilities for emergency treatment of injured persons shall be maintained in every labor camp.
- Persons in charge of such facilities shall be trained to administer first aid and be readily accessible at all times.

### **3. Tractor Roll-Over Protective Structures**

Every employee who operates an agricultural tractor shall know how to:

- Securely fasten the seat belt if the tractor has a roll-over protective structure
- Avoid operating the tractor near ditches, embankments and holes where possible
- Reduce speed when turning and crossing slopes, and on rough, slick or muddy surfaces
- Stay off steep, unsafe slopes
- Use caution, especially at row ends, on roads and around trees
- Have a no-riders policy
- Operate the tractor smoothly with no jerky turns, starts or stops
- Hitch only to the drawbar and hitch points recommended by tractor manufacturers

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

At the time of initial assignment and once a year thereafter, the employer shall instruct every employee in the safe operating and servicing of all covered equipment, including these practices:

- Keep all guards in place when the machine is in operation.
- Permit no riders on farm field equipment except those required for instructions or assistance.

- Stop the engine, disconnect the power source and wait for all machines and parts to stop moving before servicing, adjusting, cleaning or unclogging the equipment except where the machine must be running to be serviced or maintained; the employer shall instruct employees as to procedures necessary to safely service or maintain the equipment.
- Make sure everyone is clear of machinery before starting the engine, engaging power or operating the machine.
- Lock out electrical power before performing maintenance or service on farmstead equipment.

Keep records of all safety and health training, including what was covered and when the training was provided. Have employees sign an acknowledgement that they have received the training.

## **D. Inspections**

Ordinarily, OSHA Compliance Safety and Health officers are admitted to the workplace upon request. However, if the employer denies entry, the agency's safety officers must obtain a search warrant showing due cause for the inspection. Regulations issued by the Secretary of Labor permit such an officer to seek a search warrant before being denied workplace access and in some cases to seek warrants without the knowledge of the employer. Employers are not required to pay employees for the time spent accompanying a safety officer on walk-around inspections.

## **E. Responsible Agency**

U.S. Department of Labor  
 Frances Perkins Building  
 200 Constitution Ave. NW  
 Washington, D.C., 20210  
 (866) 4-USA-DOL (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 cover motor vehicles and drivers. The regulations have two parts relevant to agriculture: a section dealing with drivers of farm trucks and a section on vehicles and drivers who transport migrant farm workers.

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

Anyone 18 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:

- The vehicle is controlled or operated by a farmer
- The vehicle is operated within 150 miles of the farm
- The vehicle is used to transport agricultural products, farm machinery or farm supplies to or from a farm
- 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 listed exemptions are for Classes A and B of the Commercial Drivers License Code. The Class C License has no exemptions and is required if:

- The vehicle is designed to transport 16 or more passengers including the driver
- The vehicle is used to transport hazardous materials that require the vehicle to be placarded under 49 CFR, Part 172, Subpart F

## 1. General Requirements

A nonexempt farm driver must meet the physical requirements and comply with all other provisions of the Federal Motor Carrier Safety Regulations. A person cannot drive a farm vehicle if he or she has lost a foot, a leg, a hand or an arm unless he or she has a waiver. A driver cannot have any hand or finger impairment that interferes with grasping, or an arm, foot or leg impairment that interferes with normal driving. A farm vehicle driver cannot have diabetes, cardiovascular disease, respiratory dysfunction, high blood pressure, arthritis, rheumatism or epilepsy that might interfere with controlling a vehicle or driving safely.

The driver of a farm vehicle must have vision correctable to at least 20/40 with corrective lenses and not be color blind, have good hearing, and have no addictions 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, and are applicable only in the case of transportation of any migrant farm worker for 75 miles or more and across a state line. A migrant worker transporting him- or herself and immediate family members is not affected.

Compliance with these regulations is required of any person or business responsible for the transportation of the workers, including a crew chief or owner of the transporting truck. Transportation regulations do not apply to a farmer who will employ the migrant farm workers after their arrival in the state, if the farmer is not providing the workers' transportation. Sending the migrant workers money to pay for transportation does not make the employer responsible as the transporter. The regulations cover 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**

No person shall drive any motor vehicle carrying migrant farm workers unless he or she:

- Is at least 21 years of age
- Has no mental, nervous, organic or functional diseases that might interfere with safe driving
- Has no loss of foot, leg, hand or arm
- Has no loss of fingers or impaired use of foot, leg, hand or arm that might interfere with safe driving
- Has vision correctable to at least 20/40
- Has hearing of not less than 10/20 in one ear
- Is not addicted to narcotics or other habit-forming drugs or excessive alcohol
- Has a physical examination by a licensed doctor of medicine or osteopathy at least every 36 months and carries a certificate of physical examination at all times
- Reads and speaks English
- Has a valid driving permit applicable to the vehicle being driven

## **E. Operator Regulations**

Drivers of motor vehicles carrying migrant farm workers must:

- Obey driving rules
- Not drive while ill or fatigued
- Not drink alcoholic beverages
- Conform to the speed limit
- Maintain equipment and emergency devices
- Practice safe loading guidelines concerning
  - a. distribution and security of load
  - b. security of doors, tarpaulins, tailgates and other equipment
  - c. interference with driver
  - d. property on motor vehicle
  - e. maximum passenger limits on motor vehicles
- Provide rest and meal stops
- Know the kinds of motor vehicles to be used in transporting workers
- Maintain lights and reflectors
- Be careful with fuel
- Carry reserve fuel
- Not allow unauthorized people to drive
- Not leave vehicle unattended
- Provide passengers with protection from the weather
- Use caution at railroad crossings

## **F. Vehicle Specifications**

Regulations also cover vehicles, especially the lighting devices, brakes, fifth wheel mounting and locking coupling devices, tires and the passenger compartment's floors, sides, nails, screws, splinters, seats, weather protection, exit, gate and doors, ladders and steps, hand holds, emergency exits and ways to communicate with the driver. Some types of heaters are prohibited, including exhaust heaters, unenclosed flame heaters, heaters that allow fuel to leak, heaters that are not securely fastened and heaters that contaminate the air.

## **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**

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
1200 New Jersey Ave. SE  
Washington, D.C. 20590  
(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 workplace for more than 50 miles must comply with detailed safety rules, unless transportation is in a passenger car or station wagon.

### **B. Provisions**

The driver must:

- Carry a medical certification of good physical condition
- Have a valid permit, driving experience and knowledge of traffic rules
- Follow safe driving practices, including limits on hours of driving

Vehicles must have proper lighting and safety equipment, be in good, safe condition, and protect passengers from the weather.

Passengers should have a meal stop of 30 minutes or more at least once every 6 hours, with at least 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**

Agricultural employers should be fully aware of state and federal laws dealing with discrimination. Laws have become more stringent and enforcement activities have been stepped up; litigation in this area also has increased dramatically.

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

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination because of race, color, religion, sex and national origin. Employers may never discriminate on race or color, but may discriminate on religion, sex or national origin if it affects job qualifications. The employer must be able to prove 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 meet this qualification, the job should not be for men only. Instead, the job description should include details about what must be lifted, and all applicants should be questioned about their ability to do the lifting.

The Civil Rights Act of 1964 applies to employers with 15 or more employees in at least 20 calendar weeks of the current or previous year. Under this law, when discrimination has been established, the courts can grant broad judicial relief. Intent to discriminate can be inferred from the totality of circumstances. For example, an employer may not have intended to discriminate, but carelessness or lack of understanding of the law might have resulted in actual discrimination. Therefore, lack of familiarity with the law may not be an adequate defense.

Employers should be careful about the questions asked during the hiring process. Questions that seem prejudicial to minorities or women may not be asked. Some pre-employment questions are illegal, whether verbal or written. As a general rule, questions that are not job-related are probably illegal. For example:

1. "Are you a U.S. citizen?" (Instead ask: "Do you have the legal right to work in this country?" Proof may be requested after hiring.)
2. "What is your age?" (Instead ask: "If hired, can you give proof of age or a work permit?")
3. "Do you have any physical disabilities?" (Instead ask: "Do you have any physical condition that may limit your ability to do this job?" The employer may require a physical exam.)
4. "Are you married?" "With whom do you live?" (Do not ask. Minors may be asked for their parents' address.)
5. "Have you ever been arrested?" (Instead 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, corrects "wage differentials based on sex." The act requires equal pay for both sexes doing jobs requiring equal skill, effort and responsibility, and similar working conditions. Violations of this act are remedied by raising the lower-paid employee's wages to those 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 sex-based wage discrimination against employees subject to the minimum-wage provisions. Exceptions are permitted when wages are based on a seniority system, a merit system or a system that measures earnings by quantity or quality of production.

#### **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 previous year from age-based discrimination against individuals aged 40 to 70 in matters of hiring, discharging, wages and terms, conditions or privileges of employment.

The law prohibits any statement in advertisements that indicates preference, limitations, specifications or discrimination on the basis of age. For example, do not use such phrases as "age 25 to 35," "young," "boy," "girl" or similar statements.



Such phrases as “age 40 to 50,” “age over 65,” “retired” or “supplement your pension” are also prohibited because they discriminate against others in the 40- to 70-year-old group. The phrases “state age” or “give date of birth” are not a violation of the Act; however, since such a phrase may deter older applicants, use it carefully and lawfully.

The Act does not prohibit specifying a minimum age below 40 in advertisements, such as, “must be 18 or older.”

Some exceptions are permitted but should be used with care. If age is an occupational qualification and reasonably necessary to the normal operation of the business, an exception is permitted. However, this exception is narrowly defined and requires the employer to be able to establish its validity.

An employer may take an action otherwise prohibited where the differentiation is based on factors other than age. No precise definition is made of these other factors and the burden of proof is on the employer.

If test results are used to differentiate and the test does not relate to job performance, it is unlawful. Younger people, because of more recent experience with tests in primary and secondary schools, may have an advantage over older applicants in taking tests.

The claim that it is more costly to employ older persons cannot be used as a differentiation except for employee benefit plans.

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

This law clarifies several issues that were unresolved or not addressed in preceding Civil Rights Acts. One provision that might affect 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 people with physical or mental disabilities. The Act states that:

- In hiring or promotion, employers may not discriminate against an individual with a disability who is otherwise qualified for the job.
- Employers can ask about an individual’s ability to do a job, but cannot ask if that person has a disability or subject him or her to tests that screen out people with disabilities.
- Employers must provide “reasonable accommodation” to individuals with disabilities, including job reconstruction and equipment modification.
- Employers do not need to provide accommodations that impose an “undue hardship” on business operations.
- All employers with 15 or more employees must comply, effective July 26, 1994.

### **1. Remedies**

Legal assistance can be used 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. As part of the agency’s enforcement, state and local agencies—

known as “706 agencies”—can be designated as deferral agencies for discrimination complaints. 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, D.C., January, 1981.

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

The Family and Medical Leave Act provides up to 12 weeks of unpaid, job-protected leave to eligible employees for specific family and medical reasons during a 12-month period. Male and female employees are eligible if they have worked for a covered employer for at least 1 year and for 1,250 hours during the previous 12 calendar months.

### **1. Coverage**

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

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

### **2. Reasons for Taking Leave**

Unpaid leave must be granted:

- To care for the employee’s newborn child, adopted child or foster child
- To care for the employee’s spouse, child or parent who has a serious health condition
- For a serious health condition that makes the employee unable to perform his or her job

The employer or employee may choose to substitute certain kinds of paid leave for unpaid leave.

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

The employee may be required to provide advance leave notice and medical certification in some circumstances; leave may be denied if requirements are not met.

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

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

- For the duration of leave, the employer must maintain the employee’s health coverage under any group health plan.
- Upon return from leave, the employee is restored to his or her original or equivalent position with equivalent pay, benefits and other employment terms.

- The use of this leave cannot result in the loss of employment benefits that accrued before an employee's leave.

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

The employer may not:

- Interfere with, restrain or deny any right provided under the Act
- Discharge or discriminate against anyone for opposing any practice made unlawful by or for involvement in the Act.

## **6. Enforcement**

- The U.S. Department of Labor investigates complaints of violations.
- An eligible employee may bring a civil action suit against an employer for violations.

The Act 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 illegal under Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission enforces the Civil Rights Act, and according to the agency's 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 the proper legal definition, two types of conduct constitute sexual harassment. Employers, managers and supervisors should be sensitive to both.

Classical sexual harassment involves hiring, firing, promoting and making salary decisions based on an employee's submission to sexual demands. If the employee is fired as a result of rejecting these demands, the employer has illegally discriminated against him or her.

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

Employers will likely be held responsible for sexual harassment even if they do not know that it is happening. Therefore, an employer must know what could be construed as sexual harassment and how to prevent such behavior in the workplace.

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

The Equal Employment Opportunity Commission holds an employer liable for sexual harassment by a supervisor, even if the specific acts were forbidden by the employer. Because most "hostile environment" cases involve allegations against a supervisor, employers should provide a channel for grievance or complaint that does not require an employee to go to his or her immediate supervisor.

### **2. Handling Employee Complaints**

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

- Act immediately. Do not assume the problem will work itself out. Any delay in responding to a complaint could appear to be implicit approval of the offending conduct.
- Do not disregard any complaint. Treat each complaint separately and seriously. Do not be fooled if a complaining employee minimizes the incident. Victims of sexual harassment often are embarrassed about the incident and reluctant to talk about it. At the same time, be careful not to risk claims of slander or libel.
- Keep records of the investigation. 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 measures taken by the employer.
- Maintain confidentiality and privacy; keep the investigation confidential. Avoid investigating the complaint or holding interviews in public areas. Overheard conversations may lead to later claims of slander.
- Get both sides of the story. The person accused of sexually harassing another should be given the chance to respond. Determine the credibility of the complainant and the character of the accused.

### **I. Responsible Agency**

U.S. Equal Employment Opportunity Commission (EEOC)

1801 L Street, NW

Washington, D.C. 20507

(202) 663-4900

(800) 669-4000

<http://www.eeoc.gov/>

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









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