Agricultural Safety and Wage & Hour Standards and Enforcement

House Labor & Workplace Standards
November 16, 2017
About this presentation

- L&I was asked to describe how Washington’s wage & hour standards and safety & health standards are enforced for H2A workers.
Key points

- WA labor and workplace-safety laws apply to all ag workers, including H-2A.
  - H-2A minimum wage differs from state minimum wage.
  - Ag workers not eligible for overtime.

- Workers may be hired directly by growers or recruited/hired through farm-labor contractors (FLC).
  - Some FLCs serve as the employer (temp-agency model); most recruit & transport, but don’t employ.

- If FLC is used and a violation occurs: L&I may cite the ag business and/or the FLC, depending on circumstances.

- Consequences differ across state laws:
  - Monetary penalties, District Court infractions, license revocation, etc.
FLCs: requirements and liability

- Obtain annual license through L&I and DOR.
  - 245 currently licensed FLCs in WA.
- Provide a surety bond (based on # of workers).
- Keep records of all workers recruited, supplied or hired.
- For workers employed by FLCs:
  - FLC has primary responsibility for paying wages and workers’ comp premiums and ensuring meal/rest breaks.
  - Ag business also is liable for wages and workers’ comp premiums not paid by its FLC.
Ag employers: requirements and liability

- Both ag employer and FLC have safety and health obligations.

- Ag employer that knowingly hires an *unlicensed* FLC is liable for:
  - Unpaid wages and damages.
  - Civil & criminal penalties.

- Ag employer that hires any contractor, including *licensed* FLCs, is liable for:
  - Unpaid wages, damages and unpaid workers’ comp premiums.
Consequences in state law

- **Wage Payment Act**
  - Collects unpaid wages; penalties up to $1,000.
  - May access FLC’s surety bond to collect unpaid wages.

- **Meal periods and rest breaks**
  - $250 infractions if meal periods and rest breaks not provided.
  - L&I files infractions with District Court.
  - Court assesses another 105%, totaling $513.

- **FLCs**
  - L&I may withhold, suspend or revoke license for violations.
  - Up to $1,000 per person/offense for lack of license, transporting without authorization, or other violations of Farm Labor Contractor Act (FLCA).

Con’t…
Consequences in state law (con’t)

- WA Industrial Safety & Health Act (WISHA)
  - Penalties up to $7,000 per serious violation.
  - Penalties up to $7,000 per day for not fixing conditions identified in violation issued by L&I.
  - Penalties up to $70,000 per willful violation.
  - Violations can be issued to FLC and/or ag business.
  - Employees are never penalized.
Ag-related inspections, consultations & investigations, FY 2013-2017

- FLC inspections or onsite compliance/consultation visits: 900
  - Mostly initiated by L&I, FLCs or referrals from other programs or agencies; some from complaints.
  - 50 notices of violation for failing to comply with FLCA.

- Agricultural wage claims (worker complaints): 560
  - 80 notices of assessment (NOA) for wage violations.
  - $350,000 assessed on all ag wage claims (including $150,000 assessed on wage claims with a NOA).

* Numbers rounded
Ag-related inspections, consultations & investigations, FY 2013-2017 (con’t)

- 1,130 safety & health inspections at ag workplaces.
  - 22 involved fatalities; 129 followed incidents requiring immediate hospitalization.
  - 450 stemming from complaints and referrals.
  - 1,200 serious and 2,900 total violations.
  - 26% of inspections find no violations.

- 25 safety-discrimination complaints by workers.

* Most numbers rounded
# Top 10 safety/health violations in ag

## Fiscal years 2013-2017

<table>
<thead>
<tr>
<th>Type of violation</th>
<th>Number</th>
</tr>
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<tbody>
<tr>
<td>Accident prevention program</td>
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<tr>
<td>Safety meetings</td>
<td>100</td>
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<tr>
<td>Record-keeping</td>
<td>100</td>
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<tr>
<td>Medical evaluations</td>
<td>65</td>
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<td>Personal protective equipment</td>
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<td>Written hazard communication</td>
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<td>Rollover protective structure</td>
<td>58</td>
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<tr>
<td>Employee information &amp; training</td>
<td>58</td>
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<tr>
<td>Emergency washing facilities</td>
<td>56</td>
</tr>
<tr>
<td>Eye protection</td>
<td>53</td>
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</tbody>
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State Supreme Court decisions in private lawsuits

Wage and hour cases

- Lopez Demetrio v. Sakuma Bros., August 2015
  - DECISION: Piece-rate ag workers must be paid separately for rest breaks, at their regular rate or minimum wage, whichever is greater.

- Carranza v. Dovex, argued September 2017
  - Deciding whether piece-rate ag workers should be paid separately for time worked outside of piecework; and if so, at what rate.

FLC case

- Saucedo v. Hancock, July 2017
  - DECISION: An entity that pays a per-acre fee to manage all aspects of a farm (including hiring and employing workers) on land owned by others must register as a farm labor contractor.
Today’s topics

- Wages
- Piece rate
- Meal and rest breaks
Wages

- 2017 state minimum wage = $11 per hour
  - Rate to increase annually for next 3 years: $11.50 in 2018, $12 in 2019, $13.50 in 2020.
  - H-2A minimum wage is different, set by ESD.

- Minimum wage must be met, regardless of pay basis (including piece-rate).

- Workers cannot waive right to receive minimum wage.
  - No volunteering allowed

- No overtime pay for ag workers.
Piece rate

- State Supreme Court decision (*Lopez Demetrio v. Sakuma*), July 2015:
  - Rest periods for agricultural piece-rate workers must be paid separately from piece-rate pay.
  - Payment must be at piece-rate worker’s regular rate of pay or minimum wage, whichever is greater.
Meal periods

- At least 30 minutes unpaid, if working more than 5 hours in a day.
- A second 30 minutes required if working more than 11 hours.
- Employees may be required to stay on the premises and not be paid.
  - Must be totally relieved of duty.
Rest breaks

- At least 10 minutes in each four hours of work.
  - Must be a full, uninterrupted, paid rest period.
  - Clock starts when worker is fully relieved of duties.
  - Employees must be allowed to stop work duties or activities for personal rest and relaxation.
  - Employees may not waive rest periods.
  - Employees may be required to stay on the premises.
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