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Background Brief on ...

# Farmworker Labor

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## Background

The Oregon agriculture industry produces \$4.3 billion annually. In 2005, Oregon ranked first in the nation in production of blackberries, hazelnuts, loganberries, black raspberries, four varieties of grass seed, seed sugarbeets, crimson clover, potted forest azaleas, Christmas trees and dried herbs. Oregon also ranks among the top five states nationwide in production of 20 other agricultural goods. Production of these crops requires the use of significant human labor.

A farmworker is any person who works for pay in the production and harvesting of agricultural commodities, including crops, animals, and horticulture specialties. Some workers have permanent year-round jobs. Others are seasonal or migrate from employer to employer. The federal H-2A Guest Worker program is a temporary contract labor program in which agricultural employers are certified to hire foreign guest workers on a limited basis after they have demonstrated a shortage of domestic employees. Approximately 100 H-2A guest workers worked in Oregon in 2002.

There are various estimates of the number of farmworkers in Oregon. The Oregon Employment Department estimates the average yearly agricultural employment in 2002 at 49,500 (36,300 in January with a peak of 73,000 in July). The department's figures include those employed in crop production, in livestock production, and by farm labor contractors. Undocumented workers are not necessarily included in official Employment Department estimates. Other estimates of the Oregon farmworker population include 150,000 (*The Oregonian*) and 124,400 (1997 Census of Agriculture). It is likely these figures estimate the number of seasonal and migrant farmworkers including their dependents.

## Labor Laws

Although agricultural enterprises are often exempt from federal and state labor laws, farmworker employers are still subject to many regulations on employment and workplaces.

## Workers' Compensation

All agricultural employment is covered by workers' compensation law. Farmworkers injured during the course of their employment are eligible for full workers' compensation coverage. For more information on workers' compensation, see the "Background Brief on Workers' Compensation."

## Unemployment Insurance

Some farmworkers are eligible for unemployment insurance (UI) if their employer meets the state definition of “farm,” and the employer pays more than \$20,000 wages in a calendar quarter or has 10 or more employees in each of 20 weeks during a calendar year. To be eligible for unemployment insurance, workers must have earned at least \$1,000 in subject employment during the period against which the claim is filed. This period is the first four of the last five completed calendar quarters which is referred to as the “base year.” Individuals not authorized to work in the U.S. cannot collect unemployment insurance. See the “Background Brief on Unemployment Insurance” for more information.

## Overtime and Minimum Wage

Employers are not required to pay overtime to employees performing work that meets the definition of “agriculture.” “Agriculture” includes cultivating and tilling the soil, dairying, producing, cultivating, growing, and harvesting any agricultural or horticultural commodities, raising livestock. “Agriculture” generally does not include forest products and the harvesting of timber or Christmas trees. Only workers engaged in agricultural employment for 100 percent of the workweek are exempt from overtime.

Farmworkers who are exempt from the state minimum wage (see below) are also exempt from Oregon regulations requiring minimum meal and rest periods. Effective February 1, 2004, the Bureau of Labor and Industries’ administrative rules were amended to require rest and meal periods for agricultural employees not exempt under the law.

The Oregon minimum wage, \$7.50 per hour, applies to agricultural work, whether workers are paid by the hour or at a piece rate. Both federal and state laws provide exemptions from the minimum wage for “small” farms, based on various employment criteria. Minimum wage is not required for agricultural employees who are immediate family members of the employer, for salaried employees engaged in range production of livestock, or for certain local hand harvest workers. The Bureau of Labor and Industries (BOLI) enforces compliance with minimum wage

laws.

## Child Labor

Federal and state laws differ with regard to the employment of minors in agriculture – where the laws are different, the stricter standard applies. Under federal law, minors 16 and older may work at any time in jobs not declared hazardous by the US Secretary of Labor. Under state law, there are restrictions for minors under age 16 and minors who are employed to operate power-driven farm machinery, including various limitations on when they can work (outside of school hours), where they can work (non hazardous jobs), types of crops they are allowed to pick, and whether they need parental permission to work (under age 13). Youths employed on farms owned or operated by their parents may be employed in any occupation. There is no restriction on starting and quitting times for minors employed in agriculture, so long as the minor does not work when school is in session. There are some limitations on the number of hours worked. Minimum wage is required to the same extent as adult workers, with the exception of migrant hand harvest workers under age 16 who are paid the same piece-rate as adult workers. Meal and rest periods are required for minors.

## Workplace Health and Safety

The Department of Consumer and Business Services, Occupational Safety and Health Division (OR-OSHA) administers the Oregon Safe Employment Act (OSEA). OR-OSHA's responsibilities include enforcing Oregon's occupational safety and health rules and providing no-cost consultation and educational services to employers and employees. OR-OSHA rules establish minimum workplace safety and health standards for Oregon employers, including agricultural employers. Oregon employers “.....shall furnish employment and a place of employment which are safe and healthful for employees therein....”

OR-OSHA conducts worksite safety and health inspections and issues citations to employers when violations of the OSEA are identified. Civil penalties are assessed if the identified hazards expose workers to serious injury or death. OR-

OSHA is also charged with enforcement of regulations relating to agricultural labor housing (see discussion of Farmworker Housing below).

### **Farm Labor Contractors**

Farm labor contractors are licensed by BOLI. They are required to have a bond (\$10,000 for contractors with up to 20 employees and \$30,000 for 21 or more employees), and provide insurance for vehicles that transport workers. Farm labor contractors provide groups of employees to farms based on employment needs. In some cases, workers are employed by the farm labor contractor rather than the farm where they work. In those cases, the contractor is required to carry workers' compensation insurance for the farmworkers. There are currently over 250 licensed farm and forest labor contractors. Farm labor contractors are also required to be licensed by the U.S. Department of Labor under the provisions of the Migrant Seasonal Workers Protection Act.

### **Collective Bargaining**

All agricultural employees are exempt from the National Labor Relations Act. In 1933, the Oregon Legislature put into statute the principle that workers have the right to organize to improve their working conditions, and refuse to work until their grievances are addressed, free from retaliation. This legislation specifically excluded workers employed in agricultural labor.

The Oregon Court of Appeals ruled in *Rauda v. Oregon Roses* (147 Or App 106, 1997) that "concerted activities" of farmworkers—including discussion of wages and working conditions—were protected by state law. The Court of Appeals based its decision on legislative policy stated in Oregon Revised Statute chapters 661 and 662, which allow collective bargaining, unions, and resolution of labor disputes. The Oregon Supreme Court subsequently dismissed the case, leaving some question as to the applicability of collective bargaining law to agricultural labor. Several attempts have been made by the Legislature to change the collective bargaining law relating to farmworkers, most recently by HB 3258 (2005), but no agreement

has been reached.

### **Farmworker Housing**

There are two primary types of housing for agricultural workers: farm-based and community-based. Seasonal and migrant farmworkers often live in housing on or near the farm where they work. Agricultural employers and labor camp operators are required to annually register their farm-based farmworker housing with OR-OSHA. In 2004, there were 356 registered farmworker housing facilities, with an estimated occupancy of 11,916. These farmworker housing facilities must comply with minimum health and safety standards adopted by OR-OSHA.

Community-based housing, in the form of apartments and houses established specifically for farmworkers, must comply with local building code and occupancy requirements. While most community-based farmworker housing is not required to register with OR-OSHA, those facilities that fall under the division's jurisdiction must comply with minimum health and safety standards. Both agricultural employers and other entities are eligible for Farmworker Housing Tax Credits for construction or rehabilitation of both farm-based and community-based farmworker housing facilities. The Oregon Housing and Community Services Department administers the tax credit program in addition to coordinating other farmworker housing related issues.

The Farmworker Housing Interim Task Force was created by the 1999 Legislature to evaluate the housing situation for farmworkers in Oregon, develop a comprehensive approach to solving farmworker housing problems, and recommend actions to address the issue of farmworker housing. The task force's final report to the Governor contained 18 recommendations intended to eliminate or minimize barriers to adequate farmworker housing and to stimulate the provision of additional housing units. Recommendations included modification of the Farmworker Housing Tax Credit program to make it more accessible, usable, and flexible, continued OR-OSHA enforcement of farmworker housing facilities, increased civil penalties for failure to register

labor camps with OR-OSHA, and the designation of a state agency to facilitate and coordinate farmworker housing issues. Most of the recommendations were implemented by the 2001 Legislature.

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