



June 2008

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Background Brief on ...

# Farmworker Labor

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In 2006, Oregon ranked first in the nation in production of blackberries, hazelnuts, loganberries, black raspberries, three varieties of grass seed, seed sugarbeets, crimson clover and red clover seed, Dungeness crab, prunes and plums, potted forest azaleas, Christmas trees, and dried herbs. Oregon also ranks among the top 5 states nationwide in production of 20 other agricultural goods. Production of these crops requires the use of significant human labor. More than 150,000 jobs in Oregon (or 1 in 12) have a connection to agriculture.

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 27 H-2A guest workers worked in Oregon in 2006.

There are various estimates of the number of farmworkers in Oregon, as some figures estimate the number of seasonal and migrant farmworkers including their dependents, others only account for full-time employees, while others count specific industries such as crop production and livestock production. The 2002 U.S. Census of Agriculture reported 122,845 farmworkers in Oregon. The Oregon Employment Department estimates the average yearly agricultural employment in 2007 at 59,780 workers (averaging from 48,600 in January to the peak of 78,800 workers in July). A 2002 study reports an estimated 174,000 migrant and seasonal farmworkers and related family members in Oregon.

## 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 *Workers' Compensation* Background Brief.

## Unemployment Insurance

Some farmworkers are eligible for unemployment insurance if their employer meets the state definition of a "farm" and the employer pays more than \$20,000 in 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. For more information, see the *Unemployment Insurance* Background Brief.

### **Overtime and Minimum Wage**

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

The Oregon minimum wage of \$7.95 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. Under federal guidelines, if the employer did not employ more than 500 man-days (any day during which an employee performs agricultural labor for at least 1 hour) of agricultural labor in any quarter of the preceding calendar year, the exemption applies for all agricultural employees for the entire following year. Oregon's criteria is if the employer did not employ more than 500 piece rate work days in any calendar quarter of the preceding calendar year, the employer's hand harvesters and pruners who are paid on a piece rate basis are exempt from minimum wage for the entire following year.

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.

Farmworkers who are exempt from the state minimum wage are also exempt from Oregon regulations requiring minimum meal and rest periods (at least a 30-minute unpaid meal period when the work period is 6 hours or greater and a paid, uninterrupted 10 minute rest break for every 4 hour segment or major portion thereof in the work period). Effective on February 1, 2004, the Bureau of Labor and Industries (**BOLI**) that enforces compliance with both overtime and minimum wage laws established via administrative rule rest and meal periods for agricultural employees not exempted under the law.

### **Child Labor Laws**

Federal and state laws differ with regard to the employment of minors in agriculture. When the laws are different, the stricter standard applies.

Under federal law, minors 16 and older may work at any time 14 and 15-year old minors can work outside school hours in jobs not declared hazardous by the U.S. Secretary of Labor. Local minors ages 10 and 11 can hand harvest short-season crops outside school hours for no more than 8 weeks between June 1<sup>st</sup> and October 31<sup>st</sup> only if the employer has obtained a special waiver from the U.S. 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 where they can work (nonhazardous jobs), types of crops they are allowed to pick, and whether they need parental permission to work (ages 12 and 13). Nine through 11-year-olds may pick berries and beans outside of school hours with the written consent of their parent or guardian only if the farm has used less than 500 man-days of labor in all quarters of the preceding calendar year. 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 depending on the minor's age; if the work is being done while school is in session or during the summer months or a vacation period; if work is being done during harvest season; and if the minor will be assisting in the operation of or ride in or on power-driven farm machinery.

Minimum wage is required to the same extent as adult workers, with the exception that migrant hand harvest workers under age 16 employed at the same farm as their parent or guardian are paid the same piece-rate as adult workers.

Minors who are 16 and 17 years of age must receive at least a 30-minute meal period no later than 5 hours and 1 minute after beginning work. They can work through a meal period only if the nature and circumstances of the work prevent the employee from being relieved of all duty, and they must be paid for their time. Fourteen and 15-year-olds must always receive the required meal period regardless of the nature of the job. Paid rest periods of at least 15 minutes must be provided to minor employees during each 4 hour period (or major portion) of work time.

### **Workplace Health and Safety**

The Occupational Safety and Health Division (**OR-OSHA**) of the Department of Consumer and Business Services 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 *Farmworker Housing* section).

### **Farm Labor Contractors**

A farm labor contractor is involved in obtaining labor for the production and/or harvesting of farm products on private or public land, or the gathering of certain wild forest products from public lands. The definition of a farm labor contractor also includes one who furnishes board or lodging in connection with obtaining labor for these purposes.

Farm labor contractors are licensed by BOLI. Besides obtaining the required license, they are required to have a corporate surety bond of either \$10,000 for contractors with up to 20 employees or \$30,000 for 21 or more employees; and an additional bond of no less than \$15,000 if they operate a farmworker camp and are required to have a camp operator license indorsement, regardless of the number of employees employed. The contractor must also provide proof of workers' compensation insurance and provide insurance for vehicles that transport workers.

According to the Oregon Employment Department, there are currently over 400 licensed farm and forest labor contractors in Oregon. 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 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 Statutes chapters 661 and 662 that 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 to change the collective bargaining law relating to farmworkers, most recently by House Bill 3258 in 2005, but no legislation has been enacted to date.

In July 2007, workers from Three Mile Canyon Farms, the state's largest dairy, and the United Food Workers entered into a collective bargaining agreement for dairy and farm workers. The agreement was the first large-scale agricultural collective bargaining contract in Oregon.

### **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. There were 330 registered farmworker housing facilities in 2007, with an estimated occupancy of over 11,000. 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 eligible entities can participate in the Farm Worker Housing Tax Credit Program that gives an Oregon income tax credit to investors who incur costs for constructing, installing, acquiring, or rehabilitating farmworker housing. The tax credit may be taken on 50 percent of the eligible costs actually paid or incurred to complete a farmworker housing project. The Housing and Community Services Department (**OHCS**) administers the tax credit program in addition to coordinating other farmworker housing related issues.

OHCS also participates in the Migrant Housing Program in collaboration with the Department of Corrections. The program utilizes the Snake River Correction Institution's Building Construction Technology program by providing inmates the opportunity to apply their knowledge and skills in the real world through building modular homes that can be used for affordable farmworker housing.

On May 1, 2008, new administrative rules from OR-OSHA relating to farmworker housing went into effect. The rules were adopted in response to concerns that Oregon's rules were noncompliant with federal OSHA rules. Highlights of the new rules include requiring housing to be at least 500 feet from barns or other livestock structures, unless it is the employees' responsibility to work with the animals, and increasing the square footage ratio in housing built before 1975 from 60 square feet to 100 square feet per worker. A housing unit must also be provided with windows or skylights with a total area equal to at least ten percent of the required floor area.

The new rules also increase the ratio of certain items that need to be in a housing unit such as requiring at least 1 hand-washing station for every 6 occupants (up from 1 for every 15 occupants) and requiring at least 1 laundry facility for every 30 occupants (this was not previously required if a public laundry service was available within 5 miles of the housing unit). Operational heating equipment capable of keeping the facility at 68 degrees or more during use must be provided whenever the housing is

occupied (instead of from October to May).

In general, the new rules are effective on April 1, 2009; new rules related to increased square footage are effective on January 1, 2018. The implementation dates provide operators time to finance renovation projects and to secure required building permits.

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