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Inside this Brief

- **Workers' Compensation**
- **Unemployment Insurance**
- **Overtime and Minimum Wage**
- **Child Labor Laws**
- **Farm Labor Contractors**
- **Collective Bargaining**
- **Farmworker Housing**
- **Staff and Agency Contacts**

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Background Brief on ...

Farmworker Labor

In 2008, Oregon ranked first in the nation in production of blackberries, hazelnuts, loganberries, boysenberries, black raspberries, three varieties of grass seed, sugarbeets for seed, 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 five states nationwide in production of 18 other agricultural goods. Production of these crops requires the use of significant human labor. More than 140,000 jobs in Oregon (or one in 12) have a connection to agriculture, with about 60,000 of these located on farms.

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.

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. For instance, the 2007 U.S. Census of Agriculture reported 106,320 farmworkers in Oregon, which includes paid family members and does not include contract laborers. Migrant farm labor was used on 1,430 farms with hired labor, and 266 farms reporting only contract labor. Combining all available statistical resources, the state determined the reliable estimate that Oregon farms employ

approximately 123,000 agricultural employees annually, of which 95,000 are seasonal (77 percent).

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 (UI) benefits 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 working on 20 days, each day being in a separate calendar week during the current or preceding calendar year. For purposes of determining unemployment insurance tax, agricultural employers do not include non-cash compensation as wages (i.e., room and board).

To be eligible for benefits, an individual's total base period wages must be at least one and one half times of wages earned during the highest quarter in the base period and at least \$1,000 of wages earned in subject employment, or must have worked 500 hours of subject employment. Claimants who do not have enough wages and hours to qualify for UI benefits under the regular base year may qualify by using an Alternative Base Year, in which wages and hours during the most recent four completed calendar quarters are used. Individuals not authorized to work in the United States 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 work week 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 \$8.40 per hour applies to most types of agricultural work, whether workers are paid by the hour or at a piece rate. Both federal and state laws provide some exemptions from paying minimum wage for a "small" farm. Under federal guidelines, if the employer did not use more than 500 man-days (any day during which an employee performs agricultural labor for at least one hour) of agricultural labor in any quarter of the preceding calendar year. Oregon's criteria is if the employer did not use 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 a hand harvest or pruning worker who commutes daily from their permanent residence to the farm and has been employed in agricultural labor fewer than 13 weeks the previous calendar year. Minors who are 16 years old or younger and employed as a hand harvest laborer are paid the same rate as employees over the age of 16 who are also exempt.

Most agricultural workers are exempt from the right to receive time and one half of their regular hourly rate for every hour worked over 40 hours per work week. However, overtime wages must be paid to workers who are employed in forestation, reforestation, or firefighting; collect wild forest products such as mushrooms or evergreen boughs; employed on a farm that handles agricultural products produced on another farm; employed planning, running, and harvesting of Christmas trees. Also, only workers who are engaged in agricultural employment for 100 percent of the work week are exempt from overtime, which includes office

staff whose duties are integral to the employer's farming operations.

Farmworkers who are exempt from minimum wage are also exempt from Oregon regulations requiring minimum meal and rest periods, which is at least a 30-minute unpaid meal period when the work period is six hours or greater and a separate paid and uninterrupted 10 minute rest break for every four-hour segment or major portion thereof in the work period. For more information, see the *Employment Law* Background Brief.

Child Labor Laws

Federal and state laws differ with regard to the employment of minors in agriculture; specifically, requirements for different age groups. In these circumstances, the stricter standard applies.

No minor under the age of 18 can be employed to operate or assist in operating power-driven machinery, but 16- and 17-year old workers can operate or assist in operating power-driven machinery in an agricultural warehouse (under certain circumstances). Minors aged 16 and older may work at any time, and 14- and 15-year old minors can work outside school hours, in jobs not declared hazardous by the U.S. Secretary of Labor. Examples of prohibited jobs include work at feed mills, grain warehouses, or any workplace where power-driven machinery is used in or incidental to adapting articles or goods for sale. If certain requirements are met, 14- and 15-year old workers who are enrolled in vocational agricultural programs are exempt from some of the hazardous occupations provisions.

Twelve and 13-year old minors can work outside school hours if they have written parental consent or are working on the same farm where their parents are employed, and the job is not declared hazardous. Minors between the ages of nine to 11 can pick berries and beans outside of school hours with the written consent of their parent or guardian and only if the farm has used less than 500 man-days of labor in all quarters of the preceding calendar year, or the produce is sold within Oregon and is not transported

outside the state in any form. Local minors ages 10 and 11 can hand harvest short-season crops outside school hours for no more than eight weeks between June 1st and October 31st only if the employer has obtained a special waiver from the U.S. Secretary of Labor.

Youths employed on farms owned or operated by their parents may be employed in any occupation.

Minors under the age of 16 cannot work when school is in session; otherwise, there is no restriction on starting and quitting times. 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 five hours and one 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 four-hour period (or major portion) of work time.

It is important to note that this section does not provide all provisions of state and federal regulations on minors working in agriculture.

Farm Labor Contractors

A farm labor contractor is anyone involved in recruiting, supplying or employing workers to perform either agricultural or reforestation work on land that the contractor does not own or lease. The types of activities that workers would

perform include 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 the Bureau of Labor and Industries (**BOLI**). Besides obtaining the required license, they are required to provide proof of financial responsibility. The proof of financial responsibility can be either a corporate surety bond of a company licensed to do business in Oregon, a direct cash deposit, or a financial instrument such as a Time Certificate of Deposit. The required amount is based on the maximum number of employees that the contractor expects to employ during the base year; either \$10,000 for contractors with up to 20 employees or \$30,000 for 21 or more employees. An additional bond of no less than \$15,000 is required if they operate a farmworker camp and are required to have a camp operator license endorsement, 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.

Exemptions from obtaining a farm labor contractor license include a farmer or owner or land lessee, nursery owner or operator, or farm products processor who is dealing with workers or worker groups only concerning employment in their operations; a permanent employee under specified conditions; a person who is only engaged in the solicitation or recruitment for agricultural day-haul work; and a leader or leader's agent of a labor union organization as long as the only payment they receive from workers is in the form of membership dues for the organization.

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.

The first farmworker collective bargaining agreement in Oregon was signed in 1998. 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 farmworkers. The agreement was the first large-scale agricultural collective bargaining contract in Oregon.

For more information regarding collective bargaining contracts, see the *Collective Bargaining* Background Brief.

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 the Oregon Occupational Safety & Health Division (**Oregon 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 Oregon 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 Oregon 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 Farmworker 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 Oregon 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.

Section 203(a) of the federal Migrant and Seasonal Agricultural Worker Protection Act (**MSPA**) requires each person who owns or controls a facility or real property which is used for housing migrant agricultural workers to ensure that the facility or real property complies with substantive federal and state safety and health standards.

The U.S. Department of Labor (**USDOL**) Wage and Hour Division conducts safety and health inspections using the applicable federal standard. The federal standard to be used is either 29 CFR 1910.142 (Occupational Safety and Health Administration, OSHA) or 20 CFR 654 (Employment and Training Administration, **ETA**). Camps constructed prior to April 3, 1980,

or which were under contract for construction prior to March 4, 1980, may be inspected under either the ETA or the OSHA standard; camps constructed on or after April 3, 1980 must be inspected under the OSHA standard.

Oregon OSHA inspects occupied agricultural labor housing. These inspections result from complaints, referrals, or accidents, or happen randomly from the inspection list.

The U.S. Department of Labor, Wage and Hour Division, routinely inspects housing facilities as part of MSPA audits, using the two safety and health standards mentioned above. The standards used by these agencies (USDOL or Oregon OSHA) will depend on when the housing was constructed or whether it has been substantially modified.

Employers must meet minimum federal, state and local housing standards. ETA and Oregon OSHA standards specify requirements for the housing site, shelter and housing, water supply, toilet facilities, sewage disposal, laundry, hand washing and bathing facilities, electrical safety and lighting, refuse and garbage disposal, cooking and eating facilities, screening, insect and rodent control; fire, safety and first aid procedures, equipment, and supplies; and reporting of communicable diseases. The Wage and Hour Division may require refunds of rent for substandard housing.

If the Oregon Employment Department is coordinating an Agricultural Recruitment System (Clearance) order with an employer, the agency will require a preoccupancy housing inspection. That will be accomplished as part of the process of writing and approving the order and will be done by a representative of Oregon OSHA. An exception to this requirement would be allowed if the employer can show the housing has previously been inspected and the results of that inspection are still valid.

Anyone who operates a farmworker camp must comply with state and federal standards. A farmworker camp is an area of land where sleeping places, mobile home sites, or other types of housing are provided by a farmer, farm

labor contractor, employer, or other person in connection with recruitment or employment of workers in the production and harvesting of farm crops or reforestation of lands. Camp operators must register with Oregon OSHA, and must satisfy a number of prerequisites to operate a farmworker camp, including being registered as a farm labor contractor with an endorsement to operate a farmworkers camp; have any form of ownership in a business that operates a farmworker camp and files a Schedule F with the preceding year's income tax return; or be related by blood or marriage to anyone who satisfies the two preceding elements.

The operator must also pass a farmworker camp preoccupancy consultation by Oregon OSHA, provide lodging, without charge, which meets health and safety standards to all occupants of agricultural labor housing ordered vacated by any code enforcement agency based on a decision that it is not habitable. Substitute housing must be provided for seven days or until the camp is made habitable, whichever comes first, with an exemption if the cause of the closure was beyond the control of the camp operator.

Illegal activities for a farmworker camp operator include: operating without registration; assisting a person not entitled to operate a camp to violate the farmworker camp statute; inducing a farmworker camp occupant to give up any compensation to which the occupant is entitled; restraining any person who wishes to leave the camp from doing so; restricting access by authorized or invited persons to any housing owned, rented, or in any way controlled by an employer where employees are residing; retaliating against a person who has made a claim against the operator or employer for compensation, instituted any proceedings to enforce the agricultural labor housing statutes, has testified or is about to testify in proceedings to enforce agricultural labor housing statutes; or adopting rules concerning the use of housing that go beyond rules regarding promoting safety and welfare, reasonably related to the purpose for which they are adopted, and apply to all those on the premises equally.

On May 1, 2008, new administrative rules from Oregon 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 employee's 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 one hand-washing station for every six occupants (up from one for every 15 occupants) and requiring at least one laundry facility for every 30 occupants (this was not previously required if a public laundry service was available within five 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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