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Background Brief on ...

# Farmworker Labor

In 2010, Oregon ranked first in the nation in production of peppermint, blackberries, hazelnuts, boysenberries and youngberries, loganberries, black raspberries, ryegrass seed, orchardgrass seed, fescue seed, sugarbeets for seed, crimson clover, red clover seed, potted forest azaleas, and Christmas trees. Oregon also ranks among the top four states nationwide in production of 19 other agricultural goods. Production of these crops requires the use of significant human labor. Based on data from 2009, one out of every eight jobs in Oregon has 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, while others are seasonal or migrate from employer to employer. 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. The Oregon Employment Department's estimates of agricultural employment are not precise due to the lack of an exact count of workers from employers' unemployment insurance tax records as only larger farms and ranches are subject to unemployment tax law. For 2011, the department has estimated almost 53,000 agricultural employees in Oregon. Combining all available statistical resources, the Oregon Department of Housing and Community Services (OHCS) determined the reliable

estimate that Oregon farms employ approximately 123,000 agricultural employees annually, of which 95,000 are seasonal (77 percent).

The federal [H-2A program](#) allows agricultural employers to bring foreign nationals to the United States to fill temporary agricultural jobs in which workers are otherwise not available.

### **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 statutory 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**

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. Employers are not required to pay overtime to employees performing work that meets the definition of "agriculture," which includes: cultivating and tilling the soil; producing, cultivating, growing, and harvesting any agricultural or horticultural commodities; raising livestock; and performing duties integral to the employer's farming operations. 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.

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, an employer that does not employ 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 is exempt. In Oregon, an employer is exempt if they did not use more than 500 piece rate work days in any calendar quarter of the preceding calendar year, and 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, salaried employees who spend more than 50 percent of their time in the range production of livestock, and a hand harvest or pruning workers who commute daily from their permanent residence to the farm and have 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 at the same farm and paid at the piece per rate basis as older workers are to be paid at the same rate as employees over the age of 16 who are also exempt.

Employers must provide at least a 30 minute unpaid and uninterrupted meal period when the work period is more than six hours, and a paid uninterrupted rest period for ten minutes for every four hour segment in the work period.

Exceptions are established for certain classes of agricultural employees, such as immediate family members, or are paid at a piece-rate basis and meet the criteria for being exempted from being paid minimum wage.

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

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<sup>1</sup> by the United States Secretary of Labor. 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

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<sup>1</sup> Examples of hazardous 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.

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 1<sup>st</sup> and October 15<sup>th</sup>, but only if the employer has obtained a special waiver from the Secretary of Labor.

Minors under the age of 16 cannot work when school is in session, and can work up to a maximum of three hours per day on school days, 10 hours per day on non-school days, and a maximum of 25 hours per week during school weeks. During the summer months or a vacation lasting more than one week, the minor can work up to 10 hours per day, 60 hours per week, and six days per week, unless a special permit is obtained from the Bureau of Labor and Industries.

If a minor under the age of 16 is employed to operate, assist in the operation of, or ride in or on power-driven farm machinery, they are allowed to work for up to eight hours per day on non-school days, and 18 hours per week during school weeks; outside of the harvest season, a maximum of 44 hours per week is allowed without obtaining an emergency overtime permit. There is no restriction on starting and quitting times, as long as the minor does not work when school is in session. Sixteen and 17 year old minors in similar jobs can work up to 25 hours per week during school weeks and 60 hours per week during the harvest season unless a special permit is first obtained.

Minimum wage is required to the same extent as adult workers, with exceptions for employees who are immediate family members and 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 are also under the same exemption from overtime as adult agricultural employees.

Minors must receive at least a 30-minute meal period no later than five hours and one minute after reporting to work. Like with other jobs, minors under the age of 16 must be fully relieved of work duties during the meal period; 16 and 17 year-old employees can work during a meal period if the nature of the work prevents them

from being relieved from all duties, but they must be paid for their time. 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, and cannot be added to the meal period or deducted from the beginning or end of the work period.

### **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; and also includes the act of submitting contract offers to supply labor, bidding on contracts to submit labor, and furnishing board or lodging in connection with obtaining labor for these purposes. 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.

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 cash deposit, or a financial instrument such as a Time Certificate of Deposit. The required amount of proof 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 also 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, and certifications of compliance from the Internal Revenue Service (**IRS**), Oregon Department of Revenue (**DOR**), and Oregon Employment Department (**OED**).

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.

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 decision was based 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 between PCUN and Nature's Fountain Farm. 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 (**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 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**) administer 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 and growers throughout Oregon. 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 all persons who own or control 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, 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 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.

OR-OSHA is responsible for the inspection of occupied agricultural labor housing, which result from complaints, referrals, or accidents, or happen randomly from the inspection list. The USDOL 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 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. Both the ETA and OR-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 BOLI Wage and Hour Division

may require refunds of rent for substandard housing.

If the Oregon Employment Department is coordinating an Agricultural Recruitment System order with an employer, the agency will require a preoccupancy housing inspection, which is conducted as part of the process of writing and approving the order and will be done by a representative of OR-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<sup>2</sup> must comply with state and federal standards. Camp operators must register with OR-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.

All farmworker camp operators must register with and pass a farmworker camp preoccupancy consultation by OR-OSHA; post certain certificates in a conspicuous location open to all employees and easily visible to occupants and visitors; and provide lodging without charge that 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, except if the cause of the closure was beyond the control of the camp operator. An operator that is required to be a licensed farm labor contractor with a camp operator's endorsement must also post and maintain a bond of \$15,000 payable to BOLI.

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<sup>2</sup> 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.

Illegal activities for a farmworker camp operator include operating without registration; make false or misleading statements or willfully concealing facts in the camp endorsement or application or a statement concerning terms and conditions of camp occupancy; 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 in any fashion 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; adopting rules concerning the use of housing unless they promote safety and welfare, are reasonably related to the purpose for which they are adopted, apply equally to everyone on the premises, and are clearly stated to fully employees of what must be done to comply; or retaliating in any fashion against an employee for their violation report regarding employer controlled housing.

On May 1, 2008, new administrative rules from Oregon OSHA relating to farmworker housing went into effect, 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).

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