



TEXAS FARM LABOR HANDBOOK



THE INFORMATION CONTAINED IN THIS HANDBOOK DOES NOT
HAVE THE FORCE OR INTENT OF LAW. IT IS FOR
INFORMATIONAL PURPOSES ONLY.

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INTRODUCTION

The intent of this handbook is to provide a brief summary of many labor regulations which relate to farm labor. Both state and federal regulations are covered. Through the use of this handbook, employers and employees should be able to find answers to most questions regarding farm labor. If this is not the case, the addresses and phone numbers of the responsible agencies are included and should be contacted for more details.

This handbook only provides information.

It is not an official interpretation of any regulation or law.

The information contained in the handbook

does not have weight of law, and the user must assume responsibility for any action taken on the basis of any information contained in the handbook.

Texas Worker's Compensation Law

OBJECTIVE

Workers' Compensation is an insurance system that provides payment of benefits to an employee or his survivor for work related disease, injury, or death which are deemed to be sustained in the course of employment.

COVERAGE

All employers of one or more employees are covered by the Act except agricultural labor and domestic services.

FACTORS FOR CONSIDERATION

While employers of agricultural labor are not required by Texas law to provide this coverage, an injured employee still has recourse under common law to sue the employer for negligence.

Employees may purchase workmans compensation insurance even though they are exempt under the Act.

RESPONSIBLE AGENCY

The Industrial Accident Board
Lyndon Baines Johnson Building
P. O. Box 12757, Capitol Station
Austin, Texas 78711

INDUSTRIAL ACCIDENT BOARD OFFICESAUSTIN IAB-001

200 East Riverside Drive
 First Floor
 Austin, Texas 787-04-1287
 Phone: 512/475-2251
 Tom Solomon - PHE

CORPUS CHRISTI IAB-003

4410 Dillon Lane, Suite 23
 Corpus Christi, Texas 78415
 Phone: 512/854-4858
 John Cain - PHE/Ofc. Mgr.

EL PASO IAB-005

Los Picos Building, Suite 213
 4150 Pinnacle Street
 El Paso, Texas 79902
 Phone: 915/532-3937
 Nate Slough - PHE/Ofc. Mgr.

HOUSTON IAB-007

1011 Tuam, Suite 114
 Houston, Texas 77002-9292
 Phone: 713/757-0087
 Roger Wich - Regional Dir.
 Cathy Haidusek - PHE
 Wil Simpson - PHE
 Jan Kelly - PHE

SAN ANTONIO IAB-010

Morris K. Building, Suite 303
 214 Dwyer Street
 San Antonio, Texas 78204-1095
 Phone: 512/225-4391
 Scott McAnally - PHE/Ofc. Mgr.

BEAUMONT IAB-002

Goodhue Building, Suite 605
 398 Pearl Street
 Beaumont, Texas 77701-2473
 Phone: 409/832-8446
 Mike Brumley - PHE/Ofc. Mgr.

DALLAS IAB-004

Maplewood Plaza, Suite 113
 5925 Maple Avenue
 Dallas, Texas 75235
 Phone: 214/350-7841
 Richard Fulcher - Regional Dir.
 Paul Goodwin - PHE
 Noelia Flores - PHE

FORT WORTH IAB-006

University Plaza Building,
 Suite 233C
 100 North University Drive
 Fort Worth, Texas 76107
 Phone: 817/335-2459
 Harold Hendley - PHE/Ofc. Mgr.

LUBBOCK IAB-008

5102 Avenue T
 Lubbock, Texas 79412
 Phone: 806/744-4568
 Claudine Edwards - Ofc. Mgr.
 Jack Picon - PHE

TYLER IAB-011

Smith County Office Building
 100 East Elm, Room 400
 Tyler, Texas 75702
 Phone: 214/595-3314
 Paul Robinson - PHE/Ofc. Mgr.

FAIR LABOR STANDARDS ACT
(MINIMUM WAGE) -- FEDERAL

Who must comply:

Any farmer who hired 500 man-days of labor during any calendar quarter of the preceding calendar year (The equivalent of about seven full-time employees working five days a week).

If the employer did not employ more than 500 man-days of agricultural labor in any quarter of the preceding calendar year, his agricultural employees are exempt from the minimum wage provisions of the act for the entire following calendar year. Conversely, if the employer used more than 500 man-days of farm labor in any calendar quarter of a year, coverage extends to the entire following calendar year even if the employer does not use 500 man-days of labor in any quarter of the second year.

The following employees are included in the 500 man-day test, but are excluded from minimum wage requirements:

- a) Employees who must be available at all hours to care for range livestock.
- b) Employees under 16 years who work with their parents in hand harvesting crops and are paid on the same piece rate basis as their parents.

The following employees are excluded from both the 500 man-day and minimum wage requirements:

- a) Employer's immediate family.
- b) Employees who
 - are paid on a piece rate basis AND
 - were employed in agriculture as hand harvest laborers fewer than 13 weeks in previous year AND
 - commute to work daily (non-migrants).

Employers must, if covered:

- Pay at least minimum wage to all employees -- currently \$3.35 per hour.
- Maintain payroll records for at least three years for each employee, including family members of employees. These records should include:

- 1) Full name of employee.
- 2) Complete home address.
- 3) Sex and occupation in which employed.
- 4) Identification of employees who are:
 - a) Members of an employer's immediate family.
 - b) Hand harvest workers paid on a piece rate.
 - c) Employees principally engaged in range livestock production.
- 5) The number of man-days worked each week or month (a man-day is any day during which an employee does agricultural work for one hour or more).

- 6) Beginning day and time of employee's work week.
- 7) Basis on which wages are paid, i.e., \$3.50 per hour, \$30.00 per day or piece work.
- 8) Hours worked each-work-day and total hours worked each-work-week.
- 9) Total daily or weekly earnings.
- 10) Total additions to or deductions from wages with an explanation of each.
- 11) Total wages paid each pay period together with proof of payment to individual workers including cash advances or other deductions.
- 12) Date of payment and pay period covered by payment.

- Have on file a statement from each exempt piece rate employee showing the number of weeks employed in agriculture during the preceding year.

- Have on file the date of birth and the parent's name for each exempt minor paid on a piece rate basis.

- Maintain a file showing the full name, present and permanent address and date of birth of any minor under 18 who works when school is in session or works in a hazardous occupation.

- Display the official poster "Notice to Employees" where employees can see it. This poster contains basic information on minimum wages.

Employers may:

Deduct the cost of certain items from the wages of farm workers. However, care should be exercised because the deduction of certain items may not reduce wages below the minimum wage.

Deductions which may lawfully reduce the wage level below \$3.35 per hour are:

- 1) Deductions required by law -- Social Security and withholding tax.
- 2) "Third Party" deductions authorized by the employee-union dues, United Fund, health insurance if it is to a "Third Party."
- 3) Salary advances exclusive of interest charges. Receipts for cash advances must be obtained and retained.
- 4) Housing and meals, provided it does not exceed the fair market value and meets a number of specified conditions dealing with profit and rate of return on investment.

Deductions which may not lawfully reduce the wage level below \$3.35 per hour are:

- 1) Transportation advances.
- 2) Charges for contractors' (crew leader) services.

RESPONSIBLE AGENCY

The Wage and Hour Division of the U.S. Department of Labor is responsible for the minimum wage provisions of the act. Texas area offices of the Division are:

Corpus Christi:	Room 714 - The Six Hundred Building 3417 Ayers 512/887-1604
Dallas:	Praetorian Building, Room 200 1607 Main Street Phone: 214/767-6294
El Paso:	Room 2, 1515 Airway Boulevard Phone: 915/543-7634
Fort Worth:	Room 7A12, 819 Taylor Street Phone: 817/334-2678
Houston:	2320 LaBranch, Room 2101 Phone: 713/527-4106
San Antonio:	U.S. Federal Building A-511, 727 East Durango Phone: 512/229-6125
Waco:	101 Citizen's Tower 5th and Franklin Streets Phone: 817/756-6511, Ext. 296

SPECIAL NOTES

Texas Minimum Wage Law. There is a Texas Minimum Wage Law which applies to agricultural labor. However, the federal Fair Labor Standards Act supercedes the Texas Act when employers are covered by both laws. Groups which are exempt from the Texas state law are producers engaged in the production of livestock or in dairy farming.

For those agricultural employees covered by the Texas Minimum Wage Law, the state minimum rate is \$1.40 per hour. For workers living on premises provided by the employer, the weekly minimum weekly salary is \$30 per week plus the living quarters. Piece-rates determined by the commissioner of agriculture. This rate is set for each agricultural commodity produced in substantial quantity in Texas and is based on the output of a worker of average ability. If no piece-rate is set, the minimum hourly rate for agricultural workers will apply.

RESPONSIBLE AGENCIES

The Department of Labor and Standards
Sam Houston Building
Austin, Texas 78711
Phone: 512/445-7001

Department of Agriculture
P.O. Drawer BB
Austin, Texas 78711
(Piece Rates for Commodities)

Additional information (obtainable from the responsible agency -- see below)

Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282, Wage and Hour Division, Employment Standards Administrations, U.S. Department of Labor, December, 1977.

Discussion Guide: Farm Labor Standards Amendments of 1977, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, November, 1977.

The Fair Labor Standards Act of 1938, as amended, WH Publication 1318, February, 1980.

Records to be kept by Employers under the Fair Labor Standards Act, as amended, WH Publication 1261, April, 1976.

Regulations, Title 29, Labor, Part 519, Employment of Full-time Students at Special Minimum Wage.

Wage Payments under the Fair Labor Standards Act of 1938 as amended, WH Publication 1210 Revised, November, 1972.

Exemptions Applicable to Agriculture, Processing of Agricultural Commodities and Related Subjects, WH Publication 1042, April, 1974.

Defining the Terms "Executive," "Administrative," "Professional," and "Outside Salesman," WH Publication 1281, November, 1977.

FEDERAL INCOME TAX WITHHOLDING FOR FARMWORKERS

Farm employers are not required to withhold federal income taxes on the wages of farm workers. A farm employer can withhold federal income taxes on a farm worker if he/she requests the employer to do so. The employer is not required to withhold income taxes even when requested.

Application for Withholding:

An employee wanting income tax withheld may request his employer in writing to withhold income tax. No particular form is necessary for this request. The request must contain the name, address, and Social Security number of the employee, and the name and address of the employer. A form W-4 must be furnished by the employee to the employer along with the written request. The W-4 is a simple card to claim withholding exemptions. If the farm employer accepts the written request and W-4 from the employee and commences withholding, this action indicates voluntary agreement on his part. The voluntary withholding agreement may be terminated by either employee, or employer by giving written notice 30 days prior to the desired termination date.

Deposit of Withholding Tax:

It may be necessary for the employer to deposit withholding taxes on a current basis. For example, when undeposited taxes (from withholding and Social Security) accumulate to \$500 or more, a deposit must be made by the 15th day of the following month (see Social Security section of this handbook for details). Form 511, Federal Tax Deposit, is used to make such deposits with a commercial bank authorized to receive federal tax deposits or with a Federal Reserve Bank.

Information Returns:

The farm employer who agrees to withhold federal income tax on farm workers must prepare and give to an employee a Form W-2, "Wages and Tax Statement," by January 31 for the preceding year's taxes withheld. Copy A of Form W-2 and a completed Form 943, "Employer's Annual Tax Return for Agricultural Employees," must be sent to the Internal Revenue Service by February 28th.

Employee Tax Obligations:

Farm employees should be aware that every citizen or resident of the U.S., whether an adult or minor, who has \$3,300 or more income in 1980 must file a return. In the case of married couples filing joint returns, the amount is \$5,400. These figures increase by \$1,000 if the individual or spouse is over 65 years of age and by \$2,000 if both are over 65. The taxable income thresholds change from year to year and the current amount should be obtained from I.R.S.

A farm employee is required to file a declaration of estimated tax using Form 1040-ES if he/she expects to have a tax liability of \$100 or more and expects a gross income of \$500 or more from sources not subject to withholding. The tax may be paid in four equal installments.

To restrict individuals from claiming excessive numbers of dependents in order to avoid income tax withholding. Recent rulings by I.R.S. require that anyone claiming ten or more dependents must have the Form W-4 reviewed by an I.R.S. office. If faced with this situation an employer should consult with the local I.R.S. office.

Related information:

1980 Circular A, Agricultural Employer's Tax Guide, Publication No. 51, Internal Revenue Service.

Responsible agency:

U.S. Department of the Treasury
Internal Revenue Service
Local offices are found in the telephone directory under:
United States Government
Internal Revenue Service
For toll-free information dial 1-800-342-8300
To order tax forms call toll-free 1-800-241-3860

ADVANCED EARNED INCOME CREDIT -- FEDERAL

Certain qualifying individuals are entitled to a tax credit of up to \$500. If employees think they qualify for this credit they may choose to receive it in advance from their employers. Payment is made by using a specific table design for this purpose and is reflected as a separate item on the employees check. Employers, in turn, take credit for these payments against their liability for either withholding taxes or social security taxes.

Who must comply:

All employers including farmers must pay Advance Earned Income Credit if the employee is eligible and requests payment.

Exemptions:

Employers who pay agricultural workers on a daily basis are not required to pay advance earned income credit.

Employer must:

- Provide the Form W-5, Earned Income Credit, Advance Payment Certificate, to the employee upon request (available at the nearest IRS office or post office).
- When a Form W-5 is filed,
 - a) Compute employee's gross pay (for agricultural employees gross pay is interpreted to mean those wages subject to Social Security taxes).
 - b) Compute employee's Social Security and Withholding Tax (Withholding tax not applicable to agricultural employees unless worker has voluntarily asked employer to withhold income tax).
 - c) Refer to tables in IRS Circular E (Supplement), Employer's payment Guide, and compute the Advance Earned Income Credit payment based on employee's gross pay for pay period.
 - d) Add the Advance Earned Income Credit to the worker's pay for the pay period.
 - e) Retain all records of Advance Earned Income Credit payments for four (4) years. These records should include the following information:
 1. Copy of employee's Form W-5.
 2. Amount and date of employee's earnings.
 3. Dates of each employee's employment.
 4. Dates and amount of tax deposits made.
 5. Copies of returns filed.
- File the appropriate forms with the Internal Revenue Service, Form 941, Employer's Quarterly Tax Return, for non-farm packinghouses, canners, and processors, or Form 943, Annual Tax Return for Agricultural Employers, for farm employers.
- File Form W-3, Transmittal of Income and Tax Statement, annually by February 28th, accompanied by a W-2 form for each individual employee to the Social Security Administration in Baltimore (see section on Social Security).

Employers are reimbursed by the Federal government for Advanced Earned Income Credit payments as follows:

- The employer deducts the amount of the Advance Earned Income Credit payment from his total liability for withholding taxes (non-farm employers only) as he periodically remits funds to the Internal Revenue Service.
- If the employer does not withhold federal income taxes (such as employers of farm workers), or if the taxes withheld are not sufficient to cover the amount of the Advance Earned Income Credit payments to his employees, the employer may deduct the excess from the employee contribution to Social Security.
- If there is still an excess of Advance Earned Income Credit payments, the employer may deduct the excess from the employer's contribution to Social Security.

Employee eligibility:

Employees are eligible to receive Advance Earned Income Credit payments if he or she:

- Maintains a household which is his or her principal place of residence and at least one of his or her children is a student or dependent who is claimed as an exemption on his or her tax return.
- Is unmarried and pays at least half the cost of keeping up a household and claims an exemption for a child who lives with him or her, or qualifies as an unmarried head of household because of an unmarried child who cannot be taken as an exemption.
- Has a combined earned income (including the spouse) of \$10,000 or less during the year.
- Files a Form W-5 with his or her employer. The employee is solely responsible for determining his or her eligibility when filing a Form W-5.
- An employee who files a Form W-5 and receives Advance Earned Income Credit payments must file an IRS Form 1040, Income Tax Return, at the end of the year. If he or she is married, it must be a joint tax return.

Additional information (obtainable from the responsible agency - see below):

- Circular E (Supplement), Publication 15, Employer's Tax Guide.

Other information:

Federal Register, Vol. 46, No. 21, February 2, 1981, page 10148.

Responsible agency:

Department of the Treasury
Internal Revenue Service
Washington, D.C. 20224

Local offices can be found in the telephone directory under:

U.S. Government
Internal Revenue Service
For toll-free information dial 1-800-342-8300.

TARGETED JOBS TAX CREDIT -- FEDERAL

The Revenue Act of 1978, as amended, provides a Targeted Jobs Tax Credit for qualified wages paid or incurred by employers in the employment of targeted groups for 1983 and 1984.

Employers may utilize this tax credit if they employ individuals who are classified as being in one of the following targeted groups:

1. Physically or mentally handicapped persons who are referred to the employer from a state vocational rehabilitation or Veterans Administration program.
2. Youth, at least 18 years old but not yet 25, who are members of an economically disadvantaged family. The family's annual income must be less than 70 percent of the Bureau of Labor Statistics lower living standard (for a family of four, the range is \$8,780 to \$11,000).
3. Vietnam-era veterans who are economically disadvantaged.
4. A convicted felon who is a member of a disadvantaged family and is employed no more than five years after the most recent of conviction or release from prison.
5. Individuals who receive Supplemental Security Income (SSI) for any month ending in the pre-employment period.
6. Individuals who receive cash payments based on need from state or local assistance programs for at least 30 days ending in the pre-employment period.
7. Youth, who are at least 16 years old but not yet 19, from disadvantaged families who have not graduated from high school or vocational school and are participating in a qualified cooperative educational program.
8. Individuals who were placed in employment under the WIN program, were eligible for aid to Families With Dependent Children (AFDC) and in receipt of AFDC payment immediately prior to hiring.
9. Involuntarily terminated CETA employees who begin work before January 1, 1983.

Certification:

Targeted group eligibility certifications are made by the Texas Employment Commission (TEC) or a school participating in a qualified cooperative educational program. Jobseekers may apply directly to TEC or be referred by a prospective employer. If determined eligible a voucher is issued by TEC. Vouchers are good for 45 days.

Once a worker is hired, the employer completes a section of the voucher and returns it to TEC or the school. The TEC completes the certification process and provides the employer with a final certification. The certification form provides the employer with all the evidence needed to claim the tax credit. Employers claim the tax credit by filing IRS Form 5884 with their income tax return.

Tax credit:

The tax credit can be taken for the first two years of eligible employment. Employment must be prior to January 1, 1983 to be eligible for the tax credit. The amount of credit is 50 percent of the first year wages and 25 percent of the second year wages. The credit is allowed on the first \$6,000 of wages for each certified employee. The credit can be taken only on employ-

ment related to a business or trade. Personal employment, i.e. maid, yardman, gardener, or household employees are not eligible for the tax credit.

In figuring business expenses for computing income tax, the deduction for wage expenses is reduced by the amount of the tax credit.

Limitations:

- The Targeted-Jobs Tax Credit cannot be taken on wages paid to an employee for any period you are receiving federal funds for on-the-job training. However, the credit may be claimed on certified employees after on-the-job training is completed.

- WARNING -- Retroactive certification is no longer permitted. The certification must be received or requested in writing by the employer before the potential employee actually begins work.

- The tax credit is limited to 90 percent of the employers federal income tax liability after certain other credits are deducted.

- Any unused tax credit can be carried back three years or forward for seven years.

Additional information (obtainable from the responsible agency - see below):

- Circular E (Supplement) Publication No. 15, Employer's Tax Guide.
- Publication 906, Targeted Jobs Tax Credit.

Other information:

- The Economic Recovery Tax Act of 1981: Provisions of Significance to Agriculture, USDA Staff Report AGES 810908, September 1981.

Responsible agency (TAX CREDIT):

U.S. Department of the Treasury
Internal Revenue Service
Washington, D.C. 20224

Local offices are listed in the telephone directory under:

U.S. Government
Internal Revenue Service

For toll-free information dial
1-800-342-8300

SOCIAL SECURITY -- FEDERAL

Who must comply:

Farm employers must make Social Security deductions if they:

- Pay an employee \$150 or more in cash wages during a calendar year, OR
- Pay an employee cash wages for 20 or more days during a calendar year on a time basis (hour, day, week, etc.) regardless of the amount of pay.

Some types of family employment are not covered by Social Security. This exemption is not optional. Noncovered family employment is any work performed by:

- 1) A child under 21 years of age in the employ of his father or mother.
- 2) A man in the employ of his wife or a woman in the employ of her husband.
- 3) A parent in the employ of a son or daughter performing:
 - a) domestic service in or about the private home of the son or daughter.
 - b) work not in the course of the son's or daughter's trade or business.

The family exclusion does not apply when the employer is a corporation or association classified as a corporation and a partnership, unless the family relationship exists between the employee and all the partners.

Employers must:

- Under existing law the rate will increase to 7.0 percent, however a credit of .3 percent has been granted to employees and the 1984 rate effectively remains the same as 1983, 6.7 percent. The taxable wage limit did increase to 37,800 for 1984 and will change each year based on an index of average wage levels.

- The tax rates will be 7.05 percent in 1985 and 7.15 percent in 1986 and 1987.

- Employers having an undeposited liability of withheld income taxes and Social Security deductions and contributions must deposit these funds in a Federal Reserve Bank or authorized commercial bank as indicated in the following schedule. Deposits must be accompanied by Form 511, Federal Tax Deposit.

Summary of Deposit Rules
for Social Security Taxes
and Withheld Income Tax

Deposit Rule

(1) If at the end of any eighth-monthly period (the 3rd, 7th, 11th, 15th, 22nd, 25th, and last day of each month) your total undeposited taxes are \$3,000 or more:

(2) If at the end of any month your total undeposited taxes are \$500 or more but less than \$3,000:

(3) If at the end of the quarter your total undeposited taxes for the year are less than \$500:

Deposit Due

Within 3 banking days after end of eighth-monthly period.

Within 15 days after end of month. (If less than \$500, carry over to next month. No deposit is required if you made a deposit for an eighth monthly period during the month under the \$3,000 rule in (1) above).

No deposit is required. You can pay the taxes to IRS with Form 943, or you may deposit them by the end of the next month.

- Provide each employee with a Form W-2, Wage and Tax Statement, showing the amount of earnings, income tax withheld, and amount of Social Security deductions by January 31.
- File Form W-3, Transmittal of Income and Tax Statements and attach copies of each employee's Form W-2 with the Social Security Administration, Office of Central Records Operations, Baltimore, MD 21290, by February 28th of each year.
- Prepare and file Form 943, Employer's Annual Tax Return for Agricultural Employees, with the Internal Revenue Service by January 31st of each year (February 10 if tax was paid in full with Forms 511).
- Maintain payroll records for at least four years for each employee.

These records should include:

- 1) Employee's name and social security number.
- 2) Cash payments to the employee for farmwork.
- 3) Any amount deducted as employee social security tax.
- 4) The number of days the employee did farmwork for cash wages on a time basis.
- 5) The amount, if any, of income tax withheld.
- 6) The amount of noncash wages paid (for income tax purposes only).

Self employed farmers:

Self employed farmers who report a net income of \$400 or more from the farming operation must contribute to Social Security. The contribution rate in 1983 is 9.35 percent of annual net earnings up to \$35,700. Under existing law the contribution rate will be 14.0 percent for 1984, 14.1 percent in 1985 and 14.3 percent in 1986-87, but the taxable income limit will change each year

based on an index of average wage levels. If a farmer also earns wages which are subject to Social Security deductions, he will contribute on his self employment income until the combined earnings reach the current income limitation (\$35,700 in 1983).

In addition, self employed persons will receive a tax credit of 2.7 percent of self-employment income in 1984, 2.3 percent in 1985, and 2.0 percent from 1986 through 1989. After 1989 these credits will be replaced with deductions designed to treat the self-employed in much the same manner as employees and employers are treated for Social Security and income tax purposes.

Additional information:

Circular A, Agricultural Employer's Tax Guide, Publication 51, Department of the Treasury, Internal Revenue Service. (Published annually)

Farmer's Tax Guide, Publication 225, Department of the Treasury, Internal Revenue Service. (Published annually)

The following pamphlets are available from most local Social Security offices:

- Farmers -- how to report your income for social security.
- Your Social Security.
- Your Social Security Rights and Responsibilities, Retirement and

Survivors Benefits.

- Your Social Security Rights and Responsibilities, Disability Benefits.
- If You're Self-Employed -- Reporting your Income for Social Security.
- If You Become Disabled.

Responsible agency:

Benefits:

U.S. Department of Health and Human Services
Social Security Administration

Enforcement and Tax Collection:

Department of the Treasury
Internal Revenue Service

Local Social Security Offices are normally listed in the telephone director under:

U.S. Government
Social Security Administration

UNEMPLOYMENT COMPENSATION -- FEDERAL

Who must comply:

Any employer of farm workers who, either has in the current calendar year or had in the preceding calendar year:

- a) a payroll of at least \$20,000 in any calendar quarter, OR
- b) ten (10) or more employees for some portion of a day in twenty (20) or more weeks during the year.

Responsible employer:

Depending upon the circumstances, the farm operator or the crew leader may be the employer.

The FARM OPERATOR is the employer under these circumstances:

- 1) The individual is an employee of the farm operator under common law rules of master and servant, or
- 2) The worker is furnished by the crew leader but is not treated as an employee of the crew leader, i.e., the crew leader is acting on behalf of the farm operator rather than as an employer, or
- 3) The crew leader has entered into a written agreement with the farm operator under which the crew leader is designated as an employee of the farm operator.

The CREW LEADER is the employer under these circumstances:

- 1) The crew leader holds valid certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act, or
- 2) Substantially all crew members operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment provided by the crew leader, and
- 3) The employee is not an employee of any other person under common law rules of master and servant.

Farm related exempt employment:

- Farmwork for an exempt employer (See who must comply).
- Certain students working for credit on a program combining academic instruction with work experience (work-study program).
- Service performed for a son, daughter, or spouse, or by a child under age 18 for his father or mother. When the employing unit is a partnership the exempt relationship must exist with all partners.
- Work on a fishing vessel under 10 net tons.

Employers must:

a) Pay unemployment compensation tax on the first \$7,000 of annual payroll earnings for each employee. There are two parts to the tax; federal and state.

- 1) The effective FEDERAL tax is 0.8 percent of the first \$7,000 of annual payroll of each employee. (The actual federal tax is 3.5 percent less a

credit of 2.7 percent if the employer pays the state tax by January 31st of the following year.)

2) The STATE tax will vary depending on the experience rating of the individual farm employer. Farm employers without an experience rating will pay 2.7 percent of the first \$7,000 of annual payroll of each employee for six calendar quarters. At the end of the sixth calendar quarter the rating process will be started and taxes paid in the seventh quarter and subsequent quarters will be based on the experience rating. Experience ratings are recalculated annually thereafter. Annual rate notices are mailed to all employers in late January of the applicable year. The current maximum tax rate payable in Texas is 6.55 percent to which must be added the 0.8 percent federal tax.

b) Submit tax and wage reports as required. The employer's Quarterly Tax and Wage Report (Form UCT-6) is due the first day of the first month following the end of the calendar quarter. Penalty and interest charges are due if the Tax and Wage Report is filed after the last day of the first month following the quarter. The Tax and Wage Report form, which is sent to each liable employer at the end of each quarter, provides for listing each employee's name, social security number, number of weeks worked in the calendar quarter, and the gross wages paid.

c) When a former employee submits an unemployment benefit claim, most recent employers will be notified from the local office on Form UCB-4, Notice of Claim Filed. The employer has ten days to furnish the local office information about the job separation which may be disqualifying (see list below). Other employers will also be notified of the claim by the central office on Form UCB-12. The employer has ten days to furnish the central office with information about the separation which may be disqualifying. If the employer fails to reply within the prescribed period concerning a disqualifying separation the claim may be charged against his experience rating and result in a higher tax rate in the future.

d) Display, in a place where all employees can see it, the poster "To Employees" (FDC Form BUC-83 in English or FDC Form BUC-83S in Spanish).

e) Have records available for inspection at any reasonable hour during the business day and maintain records for a period of five calendar years.

Employee eligibility:

In addition to being unemployed, able and available for work, and not subject to any of the disqualifications listed below, a claimant must have the necessary wage credits during the base period.

Base-Period -- The base period is the first four of the last five completed calendar quarters preceding the filing date of the worker's initial claim.

Wage Credits -- To be eligible a claimant must have during his base period received wages totaling not less than \$500 and equaling at least one and one-half times the amount of wages he received in the highest quarter of the base period. Or within one quarter of the base period received wages equal to two-thirds of the maximum amount of wages as defined in the Federal Insurance Contributions Act, as amended. Additionally if the claimant has had a prior benefit year he would have earned \$250 in wages since the beginning of his prior benefit year.

Weekly benefits:

The weekly benefit amount to which a claimant is entitled is based on the claimant's earnings during the base period, but can not be more than \$168. The maximum benefit amount can only be changed by an act of the Legislature.

Employee claims:

Employees do not pay for unemployment insurance. This cost is borne by the employer. Unemployed farm workers, who are eligible, may file for benefits at the local office of the Texas Employment Commission.

A farm worker may not be eligible for benefits if it is found that:

- He voluntarily quit his job without good cause attributable to his employer.
- He was discharged for misconduct connected with his work.
- He fails to apply for or accept suitable work.
- His unemployment is due to participation in a labor dispute.
- He fails to disclose required information on a benefit claim.
- Willful misrepresentation is also cause for fine and imprisonment.
- He is receiving or is eligible to receive a retirement income -- other than disability -- from a base period employer.
- He is receiving or is seeking unemployment benefits under an unemployment compensation law of another state or the United States.
- He is an illegal alien.

RESPONSIBLE AGENCY

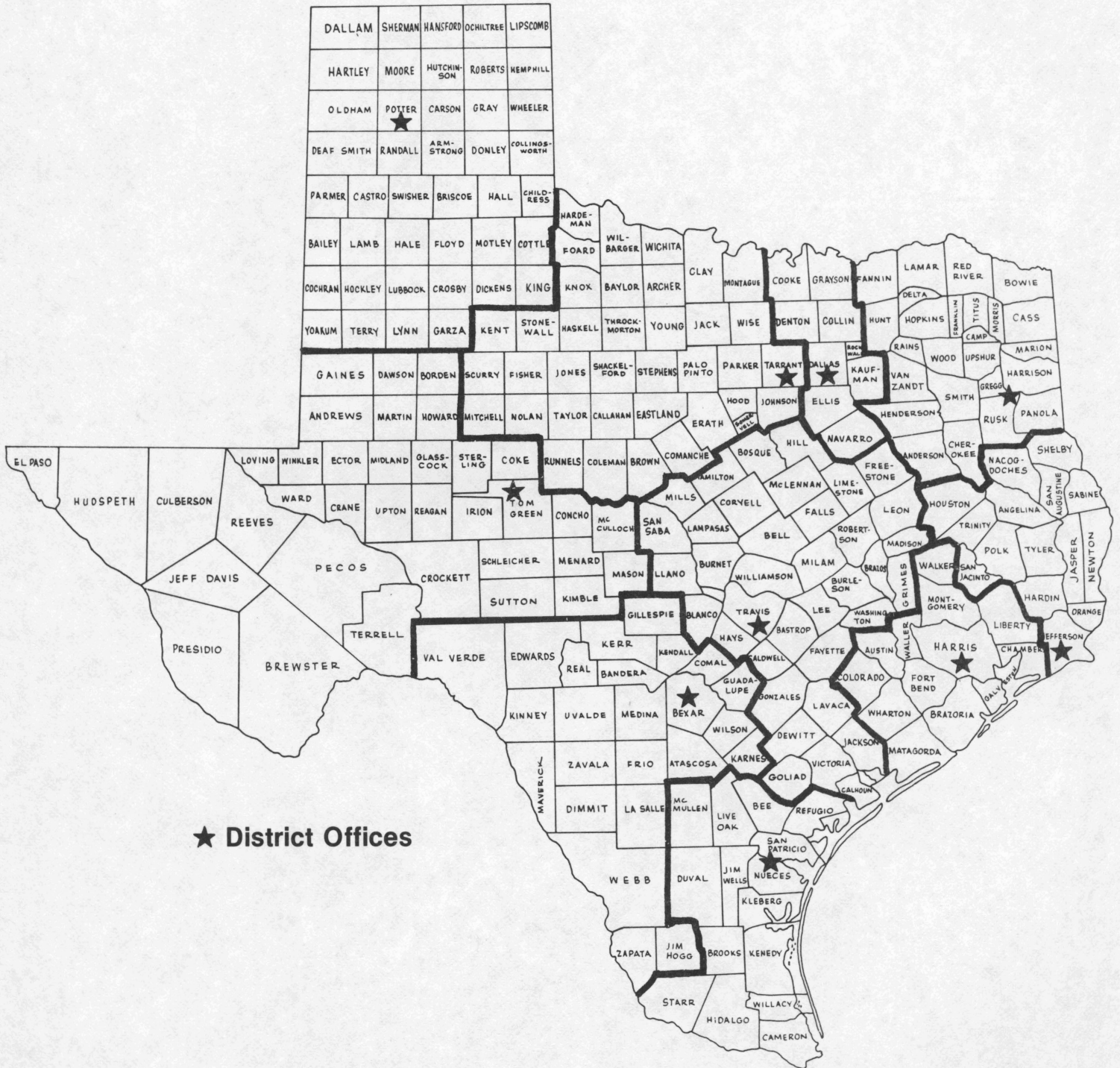
In Texas, the unemployment insurance program is administered by the Texas Employment Commission. The unemployment insurance programs in each of the states are controlled by the Federal Unemployment Tax Act, under which the Secretary of Labor must approve all state laws and their operation. Local Employment Commission offices located throughout the state receive and process unemployment insurance claims.

Unemployed migrant farm workers having returned to their home states may file claims at their local employment services offices.

Further information on unemployment insurance can be obtained from local offices of the Texas Employment Commission.

Note map on the last page of this section for Texas counties served by each local office.

TEXAS EMPLOYMENT COMMISSION Districts and Offices



★ District Offices

EMPLOYMENT OF MINORS -- FEDERAL CODES

Coverage:

Minors age 18 and over are not included under the child labor provisions of the Fair Labor Standards Act (FLSA). With some minor exceptions all other minors under age 18 are covered by the child labor provisions of FLSA. Farm employers who are not covered under other provisions of FLSA (minimum wages, overtime) for the most part must comply with the law if they employ minors under 16 years old.

16 years old is the minimum age for working in agricultural jobs:

- 1) declared hazardous by the Secretary of Labor, and
- 2) during school hours.

14 years old is the minimum age for working in agricultural jobs:

- 1) outside of school hours, and
- 2) not declared hazardous by the Secretary of Labor.

Except:

- 12 and 13 year olds may be employed with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed;

- Minors under 12 may be employed with written parental consent on farms whose employees are exempt from federal minimum wage provisions.

It should be noted that minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parent or person standing in place of their parent.

School hours and hours worked:

With the possible exception of minors employed by their parents on their parents' farm, minors 14 and 15 may not be employed:

- During school hours except for those enrolled in certain work training programs (see Exceptions Section).

10 and 11 year olds:

Upon application, waivers may be issued by the Department of Labor permitting 10 and 11 year old minors to work in hand harvested, short season crops provided the employer does not use certain restricted pesticides and complies with the minimum reentry times for specified chemicals.

Hazardous occupations in agriculture:

The Secretary has found and declared that certain occupations in agriculture are hazardous. Aside from certain exemptions, no minor under 16 years of age may be employed at any time in these occupations. Briefly these hazardous occupations are:

- 1) Operating, driving or riding on a tractor with more than 20 PTO horsepower.
- 2) Operating or assisting to operate a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, pea viner, feed

grinder, crop dryer, forage blower, auger conveyor, self unloading wagon or trailer, power post-hole digger, power post driver, nonwalking type rotary tiller.

- 3) Operating or assisting to operate a trencher or earth moving equipment, fork lift, potato combine, power driven circular, band or chain saw.
- 4) Working in pen, yard, or stall with a bull, boar, stud horse, sow with pigs or cow with calf.
- 5) Working around timber with a butt diameter of more than six inches.
- 6) Working from a ladder or scaffold more than 20 feet high.
- 7) Driving a bus, truck or automobile when transporting passengers.
- 8) Working inside a fruit, forage or grain bin or silo under certain specified conditions.
- 9) Handling or applying anhydrous ammonia or other specified chemicals, including those that bear the legend "Poison" or "Warning" on the label.
- 10) Handling or using explosives.

Exemptions from hazardous occupations in agriculture:

- As previously stated minors under 16 years old working for their parents on their parents' farm are exempt.
 - Student Learners - Student learners in a bona fide vocational agricultural program may work in the occupations listed in items 1 through 6 of the hazardous occupations order under a written agreement which provides that the student-learner's work is incidental to training, intermittent, for short periods of time, and under close supervision of a qualified person; that safety instructions are given by the school and correlated with on-the-job training; and that a schedule of organized and progressive work processes has been prepared. The written agreement must contain the name of the student-learner, and be signed by the employer and a school authority, each of whom must keep copies of the agreement.
 - 4-H Federal Extension Service Training Program - Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificates of completion on file with the minor's records.
- Enrollment in this program is open to minors who are not members of 4-H as well as 4-H members. Information on this program is available from an Extension Agent of the Texas Agricultural Extension Service.

Vocational agricultural training program

Minors 14 and 15 years old who hold certificates of completion of either the tractor operation or machine operation program of the U.S. Office of Education Vocational Agriculture Training Program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the hazardous occupations order. Farmers employing minors who have completed this program must keep a copy of the certificate of completion on file with the minor's records.

Information on the Vocational Agriculture Training Program is available from vocational agriculture teachers.

Employers must:

- Every employer, except a parent employing his own child on his own farm, who employs any minor under 16 years old must preserve and maintain records containing the following data on each minor employee:

- 1) Name in full
- 2) Place where minor lives and his permanent address
- 3) Date of birth
- 4) Evidence in writing of any required parental consent.

- Keep a minor employee's age or employment certificate on file.
- Observe wage and hour provisions of the FLSA.
- Prohibit minors under 16 from performing jobs declared as hazardous.

Minor employees must:

- Provide their employer with an employment or age certificate obtained from local school officials. Certificates issued under most State laws are acceptable.

Additional information (obtainable from the responsible agency)

The Fair Labor Standards Act of 1938, as Amended, Wage and Hour (WH) Publication 1318, February, 1980.

Regulation, Part 575, Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11-Year Old Minors in Hand Harvesting of Short-Season Crops, WH Publication 1438, October, 1980.

Child Labor Requirements in Agriculture Under the Fair Labor Standards Act, Wage and Hour Division, Child Labor Bulletin No. 102.

Occupations in Agriculture Particularly Hazardous for the Employment of Children Below the Age of 16, WH Publication 1283. (Rev. 12/72).

Regulations: Part 579 - Child Labor Violations, Part 580 - Civil Penalties - Rules of Practice for Administrative Proceedings, WH Publication 1415, September, 1975.

Young Farm Workers and the Fair Labor Standards Act, WH Publication 1338, May 1971 A Guide to Labor Provisions of the Fair Labor Standards Act, WH Publication 1236, 1976.

Employment of Minors -- Texas Codes

Children at any age may be employed at farm labor as members of the family of a farmer, rancher, or dairymen on their own premises whether owned or leased. Nothing in the Texas Act prevents the working of school children 14 to 17 years of age except that they shall not be permitted to work in a factory, mill, workshop, or other place where the employment of children is prohibited by law.

Children 14 or 15 may not work over 8 hours a day, over 48 hours a week, or between 10 p.m. and 5 a.m. on a day that is followed by a school day or between the hours of midnight and 5 a.m. on a day not followed by a school day.

Children under 17 are prohibited from working in any mine or quarry or place where explosives are used.

RESPONSIBLE AGENCIES

The agency responsible for enforcement of the Federal Child Labor Laws and Federal Hazardous Occupation Regulations is the U.S. Department of Labor, Wage and Hour Division. Area offices in Texas are shown in the section regarding minimum wage laws.

The state agency responsible for enforcement of the Texas Code as it relates to prohibited jobs for minors is the:

Texas Department of Labor and Standards
E. O. Thompson Building
P.O. Box 12157 - Capital Station
Austin, Texas 78701
Phone: 512/475-7001

Further information regarding the 4-H Club and vocational agriculture certification programs can be secured from any county Cooperative Extension office or instructor of vocational agriculture.

Alien Worker Employment

DEFINITIONS

An alien is a foreign born resident in the U. S. who has not become naturalized. Alien farm workers may be legal or illegal aliens. A certified alien farm worker is one who is legally in the country through a certification program administered by the U. S. Department of Labor. An illegal alien (undocumented alien) is not certified by the Department of Labor and his presence in the U. S. is in violation of the Immigration and Nationality Act.

CERTIFICATION OF ALIEN FARM WORKERS

Employers may request admission of aliens into the U.S. for temporary farm work. Such admission is possible only if the Department of Labor certifies that qualified Americans are not available and that the employment of an alien would not adversely affect the wages and working conditions of similarly employed workers in the United States. Department of Labor Regulations set forth the fact-finding process for granting or denial of temporary labor certification. These regulations also set forth the responsibilities of employers wishing to employ aliens in temporary farm work.

Employers wishing to hire certified aliens must demonstrate that they have attempted to recruit U.S. workers through advertising, through the public employment service and by other specified means. These recruitment efforts must assure that there has been an adequate test of the availability of U.S. workers.

An employer who desires to use foreign workers for temporary agricultural employment must file an application including a job offer for United States workers with a local office of the Texas Employment Commission. The application should be filed a minimum of 80 days before the estimated date of need for the workers. This would allow sufficient time for the required 60 day recruitment period and a determination by the Regional Administrator of the Department of Labor as to the availability of United States workers 20 days before the date the workers are needed.

The Department of Labor regulations also specify requirements for housing, payment of transportation costs, amount and length of employment and various other conditions of employment.

Employers wanting more detailed information should contact:

Division of Labor Certification
U. S. Department of Labor
Room 8410, 601 D Street, N. W.
Washington, D.C. 20213
Phone: 202/376-6295

The Texas Employment Commission can also provide information concerning the certification of alien farm workers.

ILLEGAL ALIENS

With the exception of registered farm labor contractors, farm employers are not prohibited by any federal or state law from employing illegal aliens. (Note section of this Handbook on Farm Labor Contractor Registration Act.) Several bills have been introduced in the U.S. Congress which would prohibit

employment of illegal aliens, but as of July 1, 1979, no such law has been enacted. Although an illegal alien can be legally employed, actual involvement in securing such employees or shielding them from detection can lead to severe penalty for criminal violations.

If an illegal alien is apprehended, he is subject to expulsion from the United States. He may also be subject to severe penalty for criminal violations relating to illegal entry into the country.

Immigration and Naturalization Service investigators and United States Border Patrol agents continuously seek out and apprehend illegal aliens either employed or unemployed. Typically, Border Patrol agents visit a farm after receipt of information indicating the presence of illegal aliens. Employers who are known to employ illegal aliens on a continuous basis are also frequently contacted.

It is the general policy of the Immigration and Naturalization Service to solicit a farm employer's permission to gain admission to the premises. Urgency of a situation may make it infeasible to get prior permission. There are legal alternatives available to the Service if a farm employer refuses permission. The details of these alternatives are beyond the scope of this Handbook. Employers may contact the Service for more detailed information.

The Immigration and Nationality Act does not set forth any recordkeeping requirements for farm employers. The Immigration and Naturalization Service may review employment records on occasion. Any method of recordkeeping would be satisfactory provided the records were not kept in a manner to deliberately interfere with detecting illegal aliens.

RESPONSIBLE AGENCIES

Division of Labor Certification
U. S. Department of Labor
Room 8410, 601 D Street, N. W.
Washington, D.C. 20213
Phone: 202/376-6295

Immigration and Naturalization Service
Room 1C13, Federal Building
1100 Commerce Street
Dallas, Texas 75242
Phone: 214/749-2643

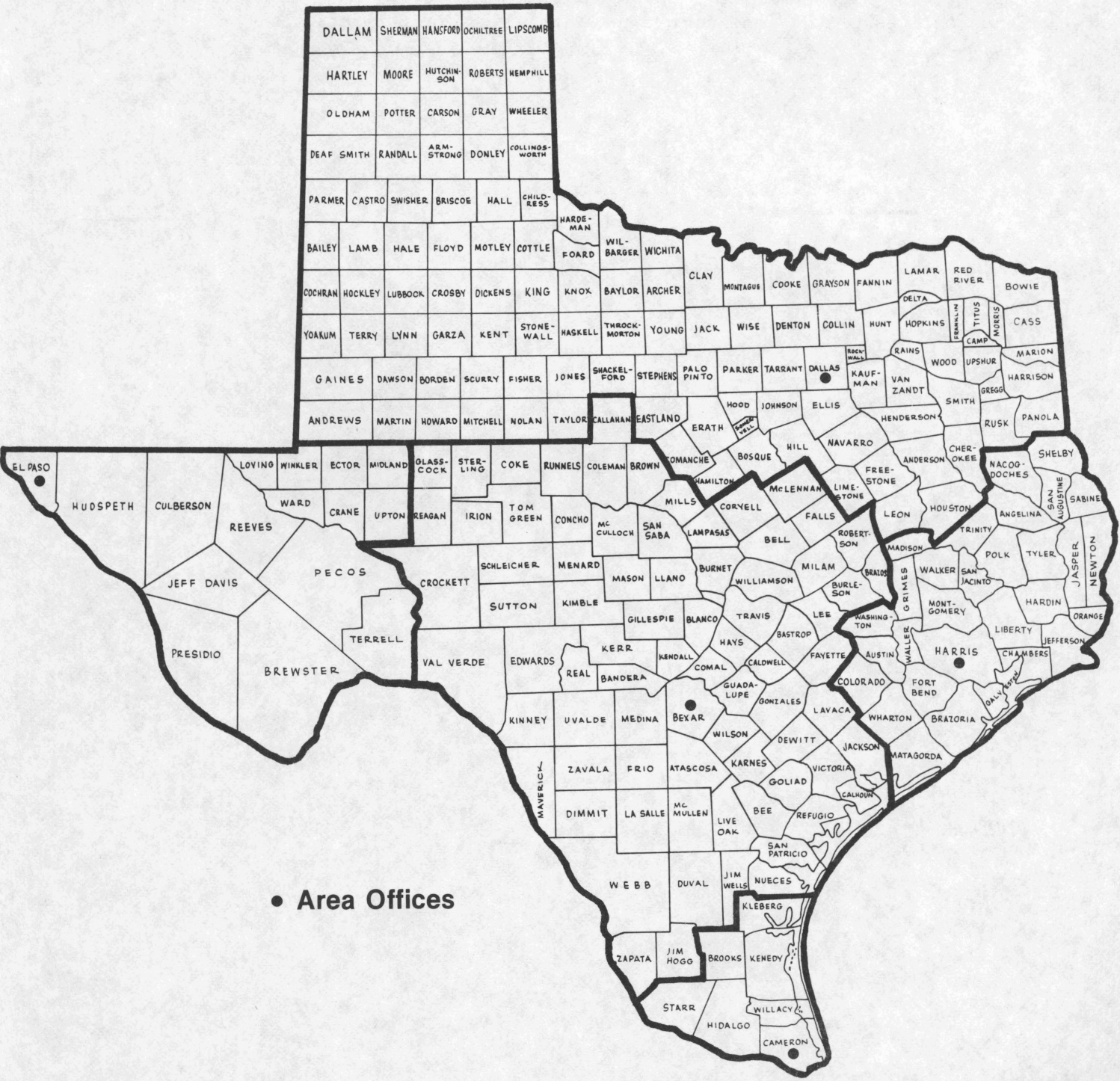
Immigration and Naturalization Service
343 U.S. Courthouse, P. O. Box 9398
El Paso, Texas 79984
Phone: 915/543-7600 or 7601

Immigration and Naturalization Service
719 Grimes Avenue
Harlingen, Texas 78550
Phone: 512/425-7333

Immigration and Naturalization Service
Federal Building
515 Rusk Avenue, P. O. Box 61630
Houston, Texas 77208
Phone: 713/226-4251

Note on the last page of this section for Texas counties served by the Texas offices of the Immigration and Naturalization Service.

IMMIGRATION AND NATURALIZATION SERVICE TEXAS OFFICES



MIGRANT AND SEASONAL AGRICULTURAL PROTECTION ACT
(Replaces the Farm Labor Contractor Regulation Act)

Who must comply:

Any person engaged in any farm labor contracting activity. Definitions make it clear that growers, processors and associations are not farm labor contractors and are no longer required to register as such. Only farm labor contractors and their employers are required to register. However, agricultural employers and associations are subject to the Act and must comply with all worker protections to migrant or seasonal workers who they employ.

Exceptions:

- 1) Persons who engage in farm labor contracting on behalf of a farm, processing establishment, seed conditioning facility, cannery, gin, packing shed or nursery which is owned or operated exclusively by this person.
- 2) Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor is applicable (See Section on Fair Labor Standards Act).
- 3) Any labor organization, nonprofitable charitable organization, or public or private nonprofit educational institution.
- 4) Any person who engages in any farm labor contracting solely within a twenty-five mile intrastate radius of their permanent residence and for not more than 13 weeks per year.
- 5) Any common carrier which would be considered a farm labor contractor solely because the carrier is engaged in transporting any migrant or seasonal worker.
- 6) Any custom combine, hay harvesting or sheep shearing operation.
- 7) Any custom poultry harvesting, breeding, debeaking, desexing or health service operation provided the employees are not regularly required to be away from their permanent place of residence other than during their normal working hours.
- 8) Several situations involving persons recruiting full-time students working in various agricultural related activities. (See Public Law 97-470 for specific details).

Farm Labor Contractors must:

- 1) Register and receive a Certificate of Registration annually with the U.S. Department of Labor.
- 2) Ensure that all full-time or regular employees of a certified labor contractor who engage in recruiting, soliciting, hiring, furnishing, or transporting workers are also registered.
- 3) Carry certificate of registration at all times.
- 4) Ensure that no individual who is an illegal alien be employed. Compliance is demonstration that the farm labor contractor relied in good faith on documentation prescribed by the Secretary of Labor and had no reason to believe the person was an alien.

Each farm labor contractor, agricultural employer and agricultural association who recruits migrant workers must:

- 1) At the time of recruitment, inform each worker in writing and in the language in which the worker is most fluent, the following:
 - a) Where he will be working.
 - b) Crops and operations on which he will be employed.
 - c) Transportation, housing and other benefits to be provided, if any and any costs to be charged for each of them.
 - d) Wage rates to be paid.
 - e) Period of employment.
 - f) Existence of strikes at place of employment.
 - g) Existence of any commission arrangements between the farm labor contractor and any local merchants dealing with workers.
- 2) At the place of employment, post the conditions of employment in the language in which the worker is most fluent in a place where all can see them. Workers must be informed of all changes in conditions of employment.
- 3) If housing is provided, post the terms and conditions of occupancy.
- 4) For each worker, make, keep, and preserve records for three years on the following information:
 - a) Gross earnings.
 - b) Itemization of the amount and purpose of each deduction.
 - c) Net earnings.
 - d) Number of hours worked.
 - e) Basis on which wages were paid.
 - f) If paid on a piece work basis, the number of piece work units earned.
- 5) Provide to each worker for each pay period a written record of the items listed in number 4.
- 6) The language of all required written documents shall be in English, or as necessary and reasonable in some other language common to the workers.
- 7) Pay the wages owed when due.
- 8) Not require workers to purchase goods or services solely from them.
- 9) Not violate, without justification, the terms of the working arrangement.
- 10) If providing housing ensure the facility or real property comply with federal and state laws applicable to that housing.
- 11) Not allow the housing facilities to be occupied unless it has been certified that it meets applicable safety and health standards and the certificate is posted at the site. If a request for inspection is made 45 days prior to the expected occupancy date and the inspection is not conducted by this date, the facility may be occupied.

Seasonal Workers:

Previous acts relating to agricultural workers contained language which made it unclear as to whether all workers in fields and processing plants were covered. This act defines two classes of agricultural workers who are covered.

- Migrant workers are those persons employed on a seasonal or other temporary nature and is required to be absent overnight.
- Seasonal workers are those persons employed on a seasonal or other temporary nature and not required to be absent overnight when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations or when employed in a canning, packing, ginning seed conditioning or related research or processing operations and are transported to the place of employment by means of

a day-haul operation. Day-haul operation means the assembly of workers at a pick-up point waiting to be hired and employed transport of these workers to the place of employment and returned to the same point.

This Act does not cover in plant workers unless transported by the employer through a day-haul operation.

Additional information (obtainable from the responsible agency - see below)

- Public Law 97-470 -- January 14, 1983, Migrant and Seasonal Agricultural Worker Protection Act.

COMPLIANCE AND ENFORCEMENT is by the:

U.S. Department of Labor
Employment Standards Administration

For local offices see the telephone directory for:

U.S. Government
Labor, Department of Wage and Hour Division

Farm Labor Contractor Registration Act - Texas Code

TEXAS PROVISIONS

Any person or company that obtains or seeks to obtain common laborers for any employer for a fee must be licensed as a labor agent by the state. Requirements for obtaining a license include paying license fees and posting a performance bond.

Among other conditions required to keep their license, contractors must do the following:

1. Promptly pay or distribute to the proper persons all money or other valuable things given to the contractor for distribution.
2. Have available for inspection in both Spanish and English a written statement showing the rate of pay to the workers and the amount of compensation received from the third party.
3. Have adequate insurance to cover injury to workers or damage to their property in case of an accident involving any vehicle used to transport such workers.
4. Post the labor agent license on all vehicles used to transport workers.
5. At the time of payment, or at least twice a month, give each worker a complete written statement of wages earned and deductions made from the workers pay.

The act does not apply to farmers or stock raisers who act jointly in securing labor for their own use where no fee is charged or collected, nor does it apply to employers or their representatives who recruit workers through the Texas Employment Commission.

RESPONSIBLE AGENCY

The administering agency is the Department of Labor and Standards Division of Employment Agencies, E. O. Thompson Office Building, Austin, Texas, 512/475-0719.

Reference - Labor Agency Law; Article 5221a-5, R.C.S.

Migrant Labor Camp Regulations

Texas farm employers providing temporary housing for migrant farm workers potentially face three sets of housing regulations:

1. Agricultural labor camp regulations administered by the Texas Department of Health.
2. Federal regulations administered through the United States Department of Labor by the Texas Employment Commission.
3. Occupational Safety and Health Act (OSHA) temporary labor camp regulations administered by the Occupational Safety and Health Administration.

These regulations are similar, but there are some important variations in housing requirements and enforcement responsibilities. Therefore, farm employers and employees need to be familiar with the three sets of regulations and the variations in inspection requirements.

State of Texas Labor Camp Regulations

OBJECTIVE

The objective of these state regulations is to assure that migrant farm workers have adequate, safe, sanitary and healthful housing facilities during the time they are employed in Texas.

COVERAGE

Any agricultural employer who operates an agricultural labor camp in Texas is covered by state regulations. For practical purposes, a farm employer has an agricultural labor camp if he is providing free housing or by rental arrangement to two (2) or more seasonal, temporary, migrant families or three (3) or more seasonal, temporary, migrant workers and accompanying dependents for more than three (3) days. To illustrate, one family of four workers living in a building on the employer's farm would not constitute an agricultural labor camp. Four workers not in the same family living on the farm would constitute a camp. Two families of two workers each would also constitute a camp.

EMPLOYER PROVISIONS

Each agricultural employer must obtain a license to operate his labor camp. Application for the license shall be made to the State Commissioner of Health. Upon receipt of the application and license fee a temporary license is issued permitting operation until an official inspection can be made. The fee ranges from \$15 to \$50 depending on the number of beds or housing units.

After an inspection is made and if the camp meets the reasonable minimum standards of construction, sanitation, equipment, and operations outlined by the Act, a permanent license is issued. Unless otherwise revoked the license is good for one year. It is not transferable. Renewal shall be made not less than 30 days prior to expiration.

If the camp does not pass inspection, the commissioner may issue a temporary permit for a period not to exceed six months to allow time for the necessary improvements.

Licenses may be suspended or revoked for violations of the law or rules and regulations promulgated by the State Board of Health prescribing standards for living quarters at the camps.

The regulations allow investigations of the camp by representatives of the health department upon proper notice. Investigations are to be made at reasonable hours to investigate whether provisions of the act have been or are being violated.

Violations of the act are misdemeanors, and affect both owners and users of the camp. Operators of a camp without a license are subject to a fine not to exceed \$25 or a maximum of 30 days in jail or both. Each day of violation is considered a separate offense.

EMPLOYER PROVISIONS

Employees who vandalize, misuse, or violate applicable regulations are subject to a maximum fine of \$25 or a jail sentence not to exceed 10 days or both.

RESPONSIBLE AGENCY

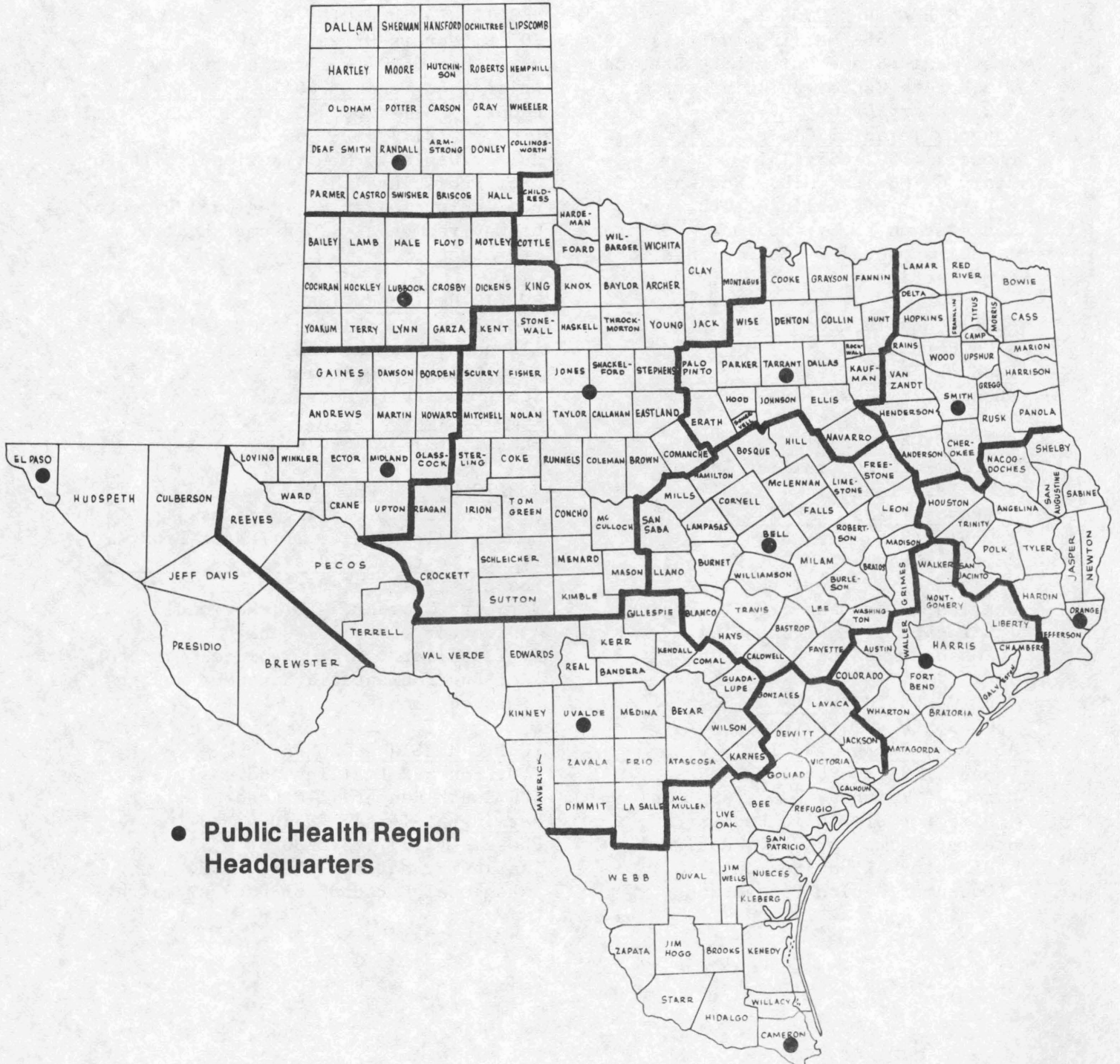
The Texas Department of Health is responsible for the administration for the agricultural labor camp provisions of the Texas Code. Permit applications must be filed with the Texas Department of Health. Facilities inspections are performed by the departments' regional offices in the respective areas of coverage.

The Texas Department of Health is headquartered:

General Sanitation Division
1100 West 29th Street
Austin, Texas 78756
512/458-7521

The area offices' address and counties served are shown on accompanying map.

TEXAS DEPARTMENT OF HEALTH PUBLIC HEALTH REGIONS



REGIONAL PERSONNELENVIRONMENTAL AND CONSUMER HEALTH PROTECTION
SERVICES TEXAS DEPARTMENT OF HEALTHPUBLIC HEALTH REGION 1

P. O. Box 968 (mailing address)
West Texas State University Station
Old Health Center Building
300 Victory Drive
Canyon, Texas 79016

Phone: (806) 655-7151
Henry C. Moritz, M.D., Regional
Director of Public Health
Ron Freeman, P.E., Regional Director
Environmental & Consumer Health
Protection

PUBLIC HEALTH REGION 2

4709 66th Street
Lubbock Texas 79413

Phone: (806) 797-4331

PUBLIC HEALTH REGION 3

P.O. Box 10736 (mailing address)
2300 East Yandell
El Paso, Texas 79997

Phone: (915) 532-8349
John L. Bradley, M.D., Regional
Director of Public Health
Charles T. Grimshaw, P.E., Regional
Director of Environmental &
Consumer Health Protection

PUBLIC HEALTH REGION 4

1290 South Willis
Abilene, Texas 79601

Phone: (915) 695-7170
Myron J. Wolthen, M.D., Regional
Director of Public Health
Stanley Thompson, P.E., Regional
Director of Environmental &
Consumer Health Protection

PUBLIC HEALTH REGION 5

701 Directors Drive
P. O. Box 5627 (mailing address)
Arlington, Texas 76011

Phone: (817) 460-3032 or
(817) 460-3033
Hal J. Dewlett, N.D., Regional Director
of Public Health
L. Don Thurman, P.E., Regional Director
of Environmental & Consumer Health
Protection

PUBLIC HEALTH REGION 6

P.O. Box 190 (mailing address)
Alexander Nursing Building
2408 South 37th Street
Scott and White Hospital
Temple, Texas 76501

Phone: (817) 778-6744

PUBLIC HEALTH REGION 7

P.O. Box 2501 (mailing address)
Cotton Belt Office, 1517 West Front St.
Tyler, Texas 75710

Phone: (214) 595-3585
Marietta Crowder, M.D., Regional
Director of Public Health
W. T. Ballard, P.E., Regional Director
of Environmental & Consumer Health
Protection

PUBLIC HEALTH REGION 8

P.O. Box 592 (mailing address)
500 South Rangerville Road
Harlingen, Texas 78550

Phone: (512) 423-0130
Charles B. Marshall, Jr., M.D.,
Regional Director of Public Health

PUBLIC HEALTH REGION 9

P.O. Drawer 630 (mailing address)
Old Memorial Hospital Building
Garner, Field Road
Uvalde, Texas 78801

Phone: (512) 278-7173

Rodger G. Smyth, M.D. Regional
Director of Public Health

PUBLIC HEALTH REGION 10

4605 Concord Road
Beaumont, Texas 77704

Phone: (409) 898-3722

Marietta Crowder, M.D., Regional
Director of Public Health
W.T. Ballard, P.E., Regional Director
of Environmental & Consumer Health
Protection

PUBLIC HEALTH REGION 11

1110 Avenue G
Rosenberg, Texas 77471

Phone: (713) 342-8685

Nina M. Sisley, M.D., Regional
Director of Public Health

PUBLIC HEALTH REGION 12

2301 North Big Spring
Midland, Texas 79701

Phone: () 683-9492

FARM LABOR CAMPS -- TEMPORARY -- FEDERAL

There are currently two laws which could apply to farm labor camps. The older is the housing standards law administered by the U.S. Department of Labor, Employment and Training Administration (ETA)(20 CFR part 654). The second federal law dealing with temporary farm labor housing was passed in 1970 and is administered by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) (29 CFR part 1910.142).

Who must comply:

Employers who house one or more farm workers and use the Texas Employment Service to obtain workers from outside the local area must comply with either the ETA or OSHA standards depending upon when the housing was constructed. Farm labor housing built to the earlier, less restrictive ETA standards be operated under these standards until the housing undergoes major modifications. Temporary farm labor housing constructed after April 3, 1980 must comply with OSHA standards.

Employers who house one or more temporary farm workers but do not use the Employment Service to obtain workers from outside the local area must comply with OSHA (or ETA if it is older housing) standards if the use of such housing is a "condition of employment" or by practical necessity. Differences between OSHA and growers develop when the grower does not use the Employment Service and does not require the employees to live in his housing as a "condition of employment." OSHA contends that any grower who houses temporary farm workers is subject to OSHA inspections and must comply with either OSHA or ETA standards depending on when the housing was constructed. Farm employers, on the other hand, contend that since the Occupational Safety and Health Act is restricted to the "work place," they are not subject to OSHA inspections if they do not require their employees to live in their housing as a "condition of employment." This issue has not been resolved and consequently farm employers may be subjected to inspection from both agencies if they use the Texas Employment Service.

Inspections:

Agricultural employers using the interstate worker recruitment service of the Texas Employment Service must have their housing inspected and approved prior to the completion of the application for workers. It is possible for an order to be conditionally processed without approval of the labor camp if the discrepancies are of a minor nature, the employer gives assurance that the camp will be in compliance 45 days before expected occupancy and the employer was in compliance the previous year. If the camp is not in compliance by the deadline date, the order for workers is removed from interstate clearance and cannot be processed until the camp is in compliance.

OSHA inspections of temporary farm worker housing is on a post-occupancy basis. There is no licensing procedure under OSHA regulations. Inspections are generally made in response to employee complaints, following a report of a fatality or injury and on a random basis. Considerable litigation has resulted from growers denying inspection officers access to their facilities without a search warrant. The courts have generally held that employers can deny access to the work place if the inspector does not have a search warrant. In a parallel vein the courts have held that the Secretary of Labor or his agent can obtain a search warrant to inspect work places and in October 1980 regulations

were issued which authorize the Secretary of Labor to seek search warrants without the knowledge of the employer.

Recently the three U.S. Department of Labor Agencies responsible for housing standards enforcement agreed on a plan for coordinating their inspections of migrant labor housing facilities. Under the agreement ETA (Employment and Training Administration) through state employment service agencies, will continue to conduct pre-occupancy inspections of facilities on farms which it supplies with workers. ESA (Employment Standards Administration) will inspect facilities owned or operated by crew leaders which have not already been inspected by ETA. OSHA (Occupational Safety and Health Administration) will inspect those camps not covered by the other two agencies. OSHA will continue to inspect camps on a post-occupancy basis where injuries, deaths or complaints occur. The standards used (ETA or OSHA) by any of these agencies will depend on when the housing was constructed or whether it has been substantially modified. The U.S. Employment Service has promulgated lengthy rules to guide its personnel in determining what constitutes major modification in determining when "old" housing becomes "new" housing and comes under OSHA standards.

Employers must:

Meet minimum federal, state and local housing standards. ETA and OSHA standards specify requirements for:

- 1) Housing site.
- 2) Shelter and Housing.
- 3) Water Supply.
- 4) Toilet facilities.
- 5) Sewage disposal.
- 6) Laundry, handwashing and bathing facilities.
- 7) Electrical lighting.
- 8) Refuse and garbage disposal.
- 9) Cooking and eating facilities.
- 10) Screening, insect and rodent control.
- 11) Fire, safety and first aid facilities.
- 12) Reporting of communicable diseases.

Related information:

- Part 620 - Housing for Agricultural Workers, Federal Register, October 31, 1968.
- Part 620 - Housing for Agricultural Workers, 3095, Federal Register, January 21, 1976.
- General Industry, OSHA Safety and Health Standards (29 CFR 1910), OSHA 2206 (Rev. January 1976), U.S. Department of Labor, Occupational Safety and Health Administration, pages 248-251.
- Safety and Health Standards for Agriculture, U.S. Department of Labor, Occupational and Safety Administration, 1971.

Responsible agency:

U.S. Department of Labor
Occupational Safety and Health Administration (OSHA)
Employment and Training Administration (ETA)
Employment Standards Administration (ESA)

Area and field offices:

For OSHA offices, see OSHA section.

OSHA Temporary Labor Camp Regulations

OBJECTIVE

The general purpose of the Occupational Safety and Health Act is to assure, as far as possible, every working man and woman in the nation safe and healthful working conditions and to preserve our human resources. The OSHA labor camp regulations are part of OSHA's effort consistent with the act's general purpose.

COVERAGE

Farm employers with 10 or fewer employees have been exempt from all OSHA regulations since October 1, 1976. One year extensions of the exemption have been made each year since 1976. The current exemption expires September 30, 1979. Unless the exemption is extended or made permanent, all farm employers will be covered after September 30, 1979.

During the exemption period, temporary labor camps of farm employers with 11 or more employees are subject to OSHA regulations. There is no licensing procedure under OSHA regulations. Labor camp inspections are made in response to employee complaints, following a report of a fatality and on a random basis.

EMPLOYER PROVISIONS

An agricultural labor camp must be maintained in a condition that satisfies the minimum requirements of OSHA Standard 1910.142.

It is the duty of the camp operator to report immediately to the local health officer the name and address of any person known to have or suspected of having a communicable disease.

EMPLOYEE PROVISIONS

There are no provisions specifically for employees.

FEDERAL MOTOR CARRIER REGULATIONS

The Federal Motor Carrier Safety Regulations provide detailed safety regulations for motor vehicles and drivers of motor vehicles. There are two parts to the regulations which are relevant to agriculture. The first deals with drivers of farm trucks and the second deals with vehicles and drivers used in transporting migrant farm workers.

Drivers of Farm Trucks

Exemptions:

In general, any person 18 years old or older who operates a farm vehicle is exempt from certain provisions of the Federal Motor Carrier Safety regulations if:

1. The gross weight of the farm vehicle is 10,000 pounds or less.
2. The gross weight of the farm vehicle is over 10,000 pounds but the vehicle is operated within 150 miles of the farm.
3. The vehicle is transporting machinery or supplies to or from a farm for custom harvesting or transporting custom harvest crops from the farm to storage or market.
4. The vehicle is used by a beekeeper engaged in the seasonal transportation of bees.

These exemptions generally apply to such things as:

1. Age
2. Listing of violations
3. Certificate of driver's road test
4. Written examination
5. Application for employment
6. Background inquiries
7. Medical examination
8. Maintenance of records

General Requirements:

Aside from these exemptions a driver of a farm vehicle must meet the physical requirements and comply with all other provisions of the Federal Motor Carrier Safety Regulations. For example, a person cannot drive a farm vehicle if he/she has lost a foot, a leg, a hand or an arm unless he/she has been granted a waiver. A person cannot have any impairment of a hand or finger which interferes with prehension or power grasping, or an arm, foot or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle. A driver of a farm vehicle cannot have diabetes, cardiovascular disease, respiratory dysfunction, high blood pressure, arthritis or rheumatism or epilepsy likely to interfere with the ability to control or drive a motor vehicle safely.

The driver of a farm vehicle must have visual acuity of at least 20/40 with corrective lenses and not be color blind. Hearing must not be significantly diminished and the person cannot be addicted to habit forming drugs or alcohol.

Related information:

Federal Motor Carrier Safety Regulations, C.F.R., Title 49, Chapter III, Subchapter B, Part 390, 391, U.S. Department of Transportation Federal High Administration, Bureau of Motor Carrier Safety, October 31, 1979.

Transportation of Migrant Farm Workers

Regulations governing the transportation of migrant farm workers apply to all vehicles except common carriers, passenger automobiles and station wagons. These regulations are applicable only in the case of transportation of any migrant farm worker for a total distance of more than 75 miles and then only if such transportation is across a state line. A migrant worker transporting himself and his immediate family is not affected.

These regulations are not oriented directly to employers of migrant farm workers. Rather, compliance is required of the person or business responsible for the transportation of the workers. This could include a crew chief who transports migrant workers, or an owner of a truck who transports a group of migrants. It does not apply to a farmer who will be the employer of migrant farm workers after their arrival in the state, if the employer is not responsible for transporting the workers. Simply sending money to migrants to finance their travel to the place of employment does not make an employer the transporter of the migrants for purposes of these regulations.

The regulations contain provisions setting forth the qualifications of drivers or operators, the driving of motor vehicles, parts, accessories necessary for safe operation, hours of service by drivers, maximum driving time and inspection and maintenance of motor vehicles.

Operator Qualifications:

The regulations on the qualifications of drivers provide that no person shall drive any motor vehicle carrying migrant farm workers unless he/she meets the following minimum qualifications:

1. Be 21 years of age or older.
2. Have no mental, nervous, organic or functional diseases likely to interfere with safe driving.
3. Have no loss of foot, leg, hand, or arm.
4. Have no loss of fingers, impairment of the use of foot, leg, hand or arm likely to interfere with safe driving.
5. Have visual acuity of at least 20/40 corrected.
6. Have hearing of not less than 10/20 in one ear.
7. Not be addicted to the use of narcotics or habit forming drugs, or the excess use of alcoholic beverages or liquors.
8. Have a physical examination by a licensed doctor of medicine or osteopathy at least every 36 months and carry a certificate of physical examination at all times.
9. Read and speak English.
10. Possess a valid driving permit applicable to the type of vehicle being driven.

Operator regulations:

Regulations governing the driving the motor vehicles carrying migrant farm workers include:

1. Driving rules to be obeyed
2. Driving while ill or fatigued
3. Alcoholic beverages
4. Schedules to conform to speed limit
5. Equipment and emergency devices
6. Safe loading
 - a. Distribution and securing of load
 - b. Doors, tarpaulins, tailgates and other equipment
 - c. Interference with driver
 - d. Property on motor vehicle
 - e. Maximum passengers on motor vehicles
7. Rest and meal stops
8. Kinds of motor vehicles in which workers may be transported
9. Lighting devices and reflectors
10. Ignition of fuel precautions
11. Carrying reserve fuel
12. Driving by unauthorized persons
13. Unattended vehicle precautions
14. Railroad grade crossings

Vehicle specifications:

The regulations also specify certain parts and accessory requirements for vehicles used to transport migrant farm workers as follows:

1. Lighting devices
2. Brakes
3. Coupling devices: fifth wheel mounting and locking
4. Tires
5. Passenger compartment
 - a. Floors
 - b. Sides
 - c. Nails, screws, splinters
 - d. Seats
 - e. Protection from weather
 - f. Exit
 - g. Gate and doors
 - h. Ladders and steps
 - i. Hand holds
 - j. Emergency exits
 - k. Communication with driver
6. Protection from cold, prohibited heaters:
 - a. Exhaust heaters
 - b. Unenclosed flame heaters
 - c. Heaters permitting fuel leakage
 - d. Heaters permitting air contamination
 - e. Heaters not securely fastened

Related information

Federal Motor Carrier Safety Regulations, C.F.R. Title 49, Chapter III, Subchapter B, Part 398. U.S. Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, October 31, 1979.

Texas Motor Carrier Regulations

COVERAGE

Any company or person who transports five or more migrant workers to or from that work place for a distance of more than 50 miles must compile with detailed safety rules. These regulations do not apply if transportation is in a passenger car or station wagon.

PROVISIONS

The regulations specify detailed driver and vehicle requirements. Briefly, the driver requirements are 1) must carry a medical statement certifying that they are in good physical condition, 2) have a valid permit, have driving experience and a knowledge of traffic rules, and 3) must follow safe driving practices including limitations on hours of driving. Vehicle requirements are 1) must have proper lighting and safety equipment, 2) all equipment must be in good safe condition, and 3) passengers must have protection from the cold and rain.

At least every six hours passengers should be given a meal stop of at least 30 minutes. There must be a minimum of one rest stop between meal stops.

More complete details on the above items may be obtained from the Texas Department of Public Safety, Austin, Texas, 78773, (512-452-0331) who is responsible for enforcement of the state regulations.

OCCUPATIONAL SAFETY AND HEALTH ACT - (OSHA) - FEDERAL

Who must comply:

Aside from the exemptions discussed below, any employer of one or more workers engaged in a business that affects interstate commerce must comply with OSHA regulations. This act, however, does not apply to members of a farmer's family who work for him. Annual exemptions from all rules, regulations, orders or standards issued or prescribed under the Occupational Safety and Health Act of 1970 have been provided for certain farmers since 1976.

Farming operations employing 10 or fewer employees during the previous 12 months are exempted if they do not maintain a migrant labor camp. This exemption is not a part of the OSHA law but has been renewed annually as part of the OSHA funding authorization by Congress. Employers should check with the area OSHA office to determine if the exemption is in force for the current year.

Farm employers with 11 or more employees are generally exempt from civil penalties for non-serious, first-instance violations unless 10 or more violations are found on any single inspection. Again, this limitation does not apply to employers who operate migrant labor camps.

Employers of 10 or fewer employees will not be assessed penalties for non-serious violations if the employer has:

- 1) voluntarily requested consultation under an approved program or approved private consultant,
- 2) had the consultant examine the condition cited, and
- 3) made or is making a good faith effort to eliminate the hazard.

All employers must:

- Inform employees of safety regulations and display prescribed posters in a place where employees will see them.
- Report any accident which results in one (1) or more deaths or in hospitalization of five (5) or more employees. This report must be made within 48 hours. (Also see reporting requirements under Workers' Compensation)

Employers of 11 or more workers must:

- Keep required records of occupational injuries and illnesses.
- Display in a prominent place the Log and Summary of Occupational Injuries and Illnesses, OSHA Form No. 200, during February each year.
- Comply with the general duty clause on providing a work place free from recognized hazards and comply with the specific agricultural standards for:

- 1) Slow moving vehicle emblems.
- 2) Logging and pulpwood operations.
- 3) Rollover protection structures (ROPS) and seatbelts on certain tractors.
- 4) Temporary labor camps.
- 5) Storing and handling anhydrous ammonia.

- 6) Guarding of farm machinery.
- 7) Retain all records for a period of five years.

Employee must:

Each employee must comply with all safety and health regulations which are applicable to his own actions and conduct. He must obey all rules, regulations and safety procedures required by his employer to comply with the law, including participation in safety training and certifying that he has received such training. The employee is not subject to fines for noncompliance as is his employer, however, repeated failure to observe recommended safety procedures or use provided safety equipment is grounds for dismissal when properly documented.

Training:

Employee training is required under certain of the standards applicable to agriculture.

- General:

- 1) The employer shall insure the ready availability of medical persons for advice and consultation on matters of work-place health.

- 2) In the absence of an infirmary, clinic or hospital in near proximity to the work place which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available.

- Temporary Labor Camps:

- 1) Adequate first aid facilities approved by a health authority shall be maintained and made available in every labor camp for emergency treatment of injured persons.

- 2) Such facilities shall be in charge of person trained to administer first aid and shall be readily accessible for use at all times.

- Tractor Roll-Over Protective Structures (ROPS). Every employee who operates an agricultural tractor shall be informed of the operating practices listed below:

- 1) Securely fasten your seat belt if the tractor has an ROPS.

- 2) Where possible, avoid operating the tractor near ditches, embankments and holes.

- 3) Reduce speed when turning, crossing slopes, and on rough, slick or muddy surfaces.

- 4) Stay off slopes too steep for safe operation.

- 5) Watch where you are going, especially at row ends, on roads and around trees.

- 6) Do not permit others to ride.

- 7) Operate the tractor smoothly -- no jerky turns, starts or stops.

- 8) Hitch only to the drawbar and hitch points recommended by tractor manufacturers.

- Guarding of Farm Equipment:

At the time of initial assignment and at least annually thereafter, the employer shall instruct every employee in the safe operation and servicing of all covered equipment with which he is or will be involved, including at least the following safe operating practices:

- 1) Keep all guards in place when the machine is in operation.
- 2) Permit no riders on farm field equipment other than persons required for instructions or assistance in machine operation.
- 3) Stop engine, disconnect the power source, and wait for all machine movement to stop before servicing, adjusting, cleaning or unclogging the equipment except where the machine must be running to be properly serviced or maintained, in which case the employer shall instruct employees as to all steps and procedures which are necessary to safely service or maintain the equipment.
- 4) Make sure everyone is clear of machinery before starting the engine, engaging power or operating the machine.
- 5) Lock out electrical power before performing maintenance or service on farmstead equipment.

It is suggested that records be kept of all safety and health training. The records should include exactly what was covered, when the training was provided and the signature of the employee acknowledging that he has received the training.

Inspections:

Ordinarily OSHA Compliance Safety and Health Officers (CSHO) will be admitted to the workplace upon request. However, if for some reason the employer chooses to deny entry, the CSHO must obtain a search warrant showing due cause for the inspection in order to obtain entry. Recent regulations issued by the Secretary of Labor permit a CSHO to seek a search warrant prior to being denied access to the workplace and in some cases to seek ex parte warrants, i.e., without the knowledge of the employer. Employers are not required to pay employees for the time spent accompanying a CSHO on walkaround inspections.

Additional information (obtainable from the responsible agency -- see below)

- OSHA 2001, The Occupational Safety and Health Act of 1970, P.L. 91-596.
- OSHA 2069, Ley De Seguaridad Y Salud Ocupacionales De 1970, P.L. 91-596.
- OSHA 2203, (Poster) Job Safety and Health Protection.
- OSHA 2202, (Poster) Seguridad Y Proteccion De La Salud En El Trabajo.
- BLS Report 421-2, What Every Employer Needs to Know About OSHA

Recordkeeping

- BLS Recordkeeping Requirements under the Occupational Safety and Health Act of 1970.
- OSHA 2209, OSHA Handbook for Small Businesses.
- OSHA 2056, All About OSHA.
- OSHA 2098, OSHA Inspections.
- OSHA 2253, Workers Rights Under OSHA.
- OSHA 2210, El Empleado Y OSHA.
- OSHA 2227, Essentials of Machinery Guarding.
- OSHA 2237, Handling Hazardous Materials.
- OSHA 2256, Guarding of Farm Field and Farmstead Equipment and Cotton Gins.

- Order No. 008923, (Film) Hand Signals for Agriculture
- OSHA 2297, OSHA Requirements for Agricultural Machines Guarding Standards. (Audio-Slide Set).

Responsible agency (administration and enforcement)

U.S. Department of Labor
Occupational Safety and Health Administration
Washington, D.C. 20250

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Region VI

DALLAS AREA OFFICE

Central Place, Suite 230
1425 West Pioneer Drive
Irving, Texas 75061
(214) 767-5347 FTS: 729-5347

HOUSTON AREA OFFICE

2320 LaBranch Street, Room 1103
Houston, Texas 77004
(713) 750-1727 FTS: 526-6727

AUSTIN AREA OFFICE

103 Grant Building
611 East 6th Street, Room 303
Austin, Texas 78701
(512) 482-5783 FTE: 770-5783
From Dallas: 117 + 4 digit sta.

LUBBOCK AREA OFFICE

1205 Texas Avenue, Room 421
Lubbock, Texas 79401
(806) 762-7681 FTS: 738-7681
From Dallas: 123 + 4 digit sta.

CORPUS CHRISTI AREA OFFICE

4455 South Padre Island Drive, Suite #50
Corpus Christi, Texas 78411
(512) 888-3257 FTS: 734-3257

HUMAN RIGHTS --
DISCRIMINATION -- FEDERAL

It is increasingly important that agricultural employers be fully aware of state and federal laws dealing with all forms of discrimination. Laws have become more stringent and enforcement activities, both federal and state, have been stepped-up. More importantly, individuals, particularly minorities and women, are more aware of their rights and the availability of assistance under federal and state discrimination laws. The amount of litigation in this area has increased dramatically in recent years. The number of discrimination complaints and litigation tends to increase when collective bargaining organizing efforts are underway.

While the courts have interpreted the National Labor Relations Act to prohibit racial discrimination, agriculture is excluded from the provisions of this law. In general, however, human rights in agriculture are dealt with in three basic federal laws and apply to most, but not all farm employers.

Civil Rights Act of 1964:

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color, religion, sex and national origin. Employers may never discriminate on the basis of race or color. Employers may discriminate on the basis of religion, sex, or national origin if it is a bona fide occupational qualification (BFOQ). Use of this aspect of the law by employers is fraught with risks and should be used carefully. The employer has the burden of proof to show that this kind of job requirement is essential for the normal operation of the business. For example, a job requiring heavy lifting may be difficult for many women. But if some women can do it, it is not essential to make it a job for men only. Rather the job description should describe in detail what must be lifted, and all applicants or promotion candidates should be questioned about their ability to do the lifting.

The Civil Rights Act of 1964 applies only to employers with 15 or more employees in at least 20 calendar weeks of the current or preceding year. Under this law, when discrimination has been established, the courts are authorized to grant broad judicial relief. Intent (to discriminate) can be inferred from the totality of circumstances, i.e. employer may not have intended to discriminate but carelessness in personnel practices and lack of understanding of the law may have resulted in actual discrimination. Hence, lack of familiarity with the law may not be an adequate defense.

In the hiring process care should be taken in the questions asked on an employment application form and in the interview. Questions which have a "disparate" impact on minorities or women may not be asked. For example, certain pre-employment questions are illegal, regardless of whether they are verbal or on a written application form. As a general rule, what is not job related is likely to be illegal. Examples are as follows:

1. "Are you a U.S. citizen?" (Better to ask: "Do you have the legal right to work in this country?" Proof may be requested after hiring).
2. "What is your age?" (Better to ask: "If hired, can you give proof of age or a work permit?")
3. "Do you have any physical disabilities?" (Better to ask: "Do you have any physical condition that may limit your ability to do this job?" The hiring may be contingent on the passing of a physical examination paid for by the employer).

4. "Are you married?" "With whom do you live?" (Better to ask nothing. Minors may be asked parents' address).

5. "Have you ever been arrested?" (Better to ask: "Have you ever been convicted of a crime, and what are the circumstances?")

Equal Pay Act of 1963:

The Equal Pay Act of 1963 which amends the Fair Labor Standards Act of 1938 was enacted for the purpose of correcting "Wage differentials based on sex." The act requires equal pay for both sexes for jobs requiring substantially equal skill, effort, and responsibility, and for jobs which have similar working conditions. The job or working condition comparisons usually only apply to one establishment or plant, even if an employer has similar, multiple plants or establishments. Violations of this act are cured by raising the wages of the lower paid employee to that of the higher paid. Criminal penalties may be imposed for willful and flagrant violations.

The Equal Pay Act of 1963 applies to farm workers and prohibits wage discrimination on the basis of sex to employees who are subject to the minimum wage provisions of the act. Exceptions are permitted when wages are based on: (a) a seniority system, (b) a merit system, or (c) a system which measures earnings by quantity or quality or production.

Related information:

Section 6(d) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, et seq.

Title 29 Code of Federal Regulations, Part 800.

Age Discrimination in Employment of 1967:

This act prohibits employers with 20 or more workers during at least 20 calendar weeks of the current or preceding year from discriminating against individuals aged 40 to 70 in matters of hiring, discharging, wages and terms, conditions or privileges of employment because of age.

The law prohibits any statement in advertisements which indicate any preference, limitations, specifications, or discrimination on the basis of age. For example, you are not permitted to use such phrases as "age 25 to 35," "young," "boy," "girl," or others of similar nature. Such phrases as "age 40 to 50," "age over 65," "retired," or "supplement your pension" are also prohibited since they discriminate against others in the 40 to 70 year old group. The phrase "state age" is not, in itself, a violation of the act. However, since it is felt that such a phrase will tend to deter older applicants, its use will be carefully scrutinized to assure that such a request is for a lawful purpose. The same reasoning should be followed when using similar phrases such as "give date of birth" on an employment application.

The act does not prohibit specification of a minimum age below 40 in advertisements, i.e. "must be 18 or over."

These are permitted exceptions to the above rules but they should be used with care. An exception is permitted where age is a bona fide occupational qualification (BFOQ) and is reasonably necessary to the normal operation of the particular business. This exception is narrowly construed and the burden of proof in establishing that it applies is the responsibility of the employer.

The act provides that it shall not be unlawful for an employer to take an action otherwise prohibited where the differentiation is based on reasonable

factors other than age. No precise definition is made of these other factors and the burden of proof is on the employer.

If the results of a test are used as the basis for differentiation and cannot be related to job performance, it is unlawful. A vital factor in employee testing as it relates to the 40-70 age group is the "test-sophistication" or "test-wiseness" of the individual. Younger persons, due to the increased use of tests in primary and secondary schools in recent years, may have an advantage over older applicants.

A differentiation based on the claim that it is more costly to employ older persons is unlawful except for employee benefit plans.

Enforcement

Enforcement of discrimination complaints is handled by the Equal Employment Opportunity Commission (EEOC). As part of the EEOC's enforcement apparatus certain state and local agencies are designated as deferral agencies for discrimination complaints filed with EEOC. These agencies are generally known as "706 agencies." As a general rule discrimination complaints must be filed with a deferral agency if one is available.

Related information:

Eliminating Discrimination in Employment: A Compelling National Priority, The U.S. Equal Employment Opportunity Commission, July 1979.

Laws Administered by EEOC, Equal Employment Opportunity Commission, Washington, D.C., January 1981.

Employer-Employee Collective Bargaining in Agriculture

There are no state of Texas or federal laws controlling or providing for collective bargaining by farm employers and employees. Agricultural employment is specifically exempted from the provisions of the National Labor Relations Act. This act and its amendments establish the rules and procedures for collective bargaining in industries other than agriculture. The act does not make bargaining between farm employers and employees illegal; it simply does not provide the rules and procedures for such bargaining. The exemption also excludes agriculture from the services of the National Labor Relations Board.

Any collective bargaining regulations existing in other states through state laws (California laws, for example) do not apply in Texas.

Educational programs conducted by the Texas Agricultural Extension Service serve people of all ages regardless of socioeconomic level, race, color, sex, religion, handicap or national origin.

Cooperative Extension Work in Agriculture and Home Economics, The Texas A&M University System and the United States Department of Agriculture cooperating. Distributed in furtherance of the Acts of Congress of May 8, 1914, as amended, and June 30, 1914.
2M—2-84, Revision

ECO 7-2