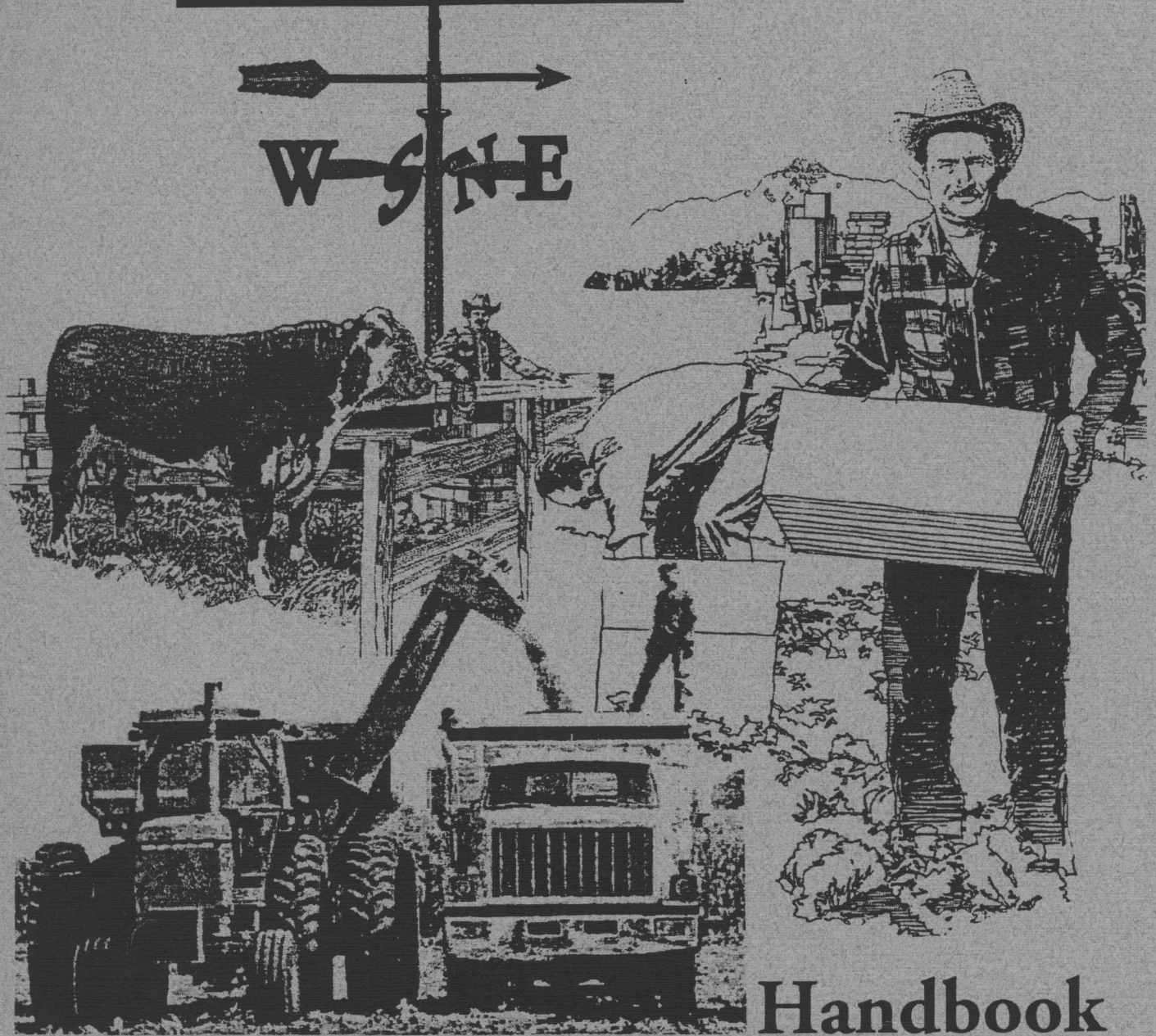




Texas Agricultural Extension Service  
The Texas A&M University System

# Texas Farm Labor

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## Handbook

Texas Agricultural Extension Service • Zerle L. Carpenter, Director      The Texas A&M University System • College Station, Texas

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## INTRODUCTION

### IMMIGRATION REFORM AND CONTROL ACT OF 1986

The intent of this handbook is to provide a brief summary of many labor regulations that 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 address and phone numbers of the responsible agencies are included and they should be contacted for more details.

This is not an official interpretation of any regulation or law. The information does not have weight of law, and the user must assume responsibility for any action taken on the basis of this information.

During the first 5 years, INS outreach efforts focused on completing the I-9 forms and on imposing sanctions if the records were not correctly maintained. However, an important part of IRCA is the anti-discrimination provision, which provides the assurance that employers will not discriminate against foreign-looking or foreign-sounding applicants.

Since the passage of IRCA, studies have shown that discrimination based on national origin or citizenship status continues at an alarming rate. Researchers believe this is due to employers' fear of the documentation process, i.e., lack of knowledge about specific details of IRCA.

Because of amendments to the original IRCA, the I-9 form has been revised. The revision is partly directed at ensuring that employers comply with anti-discrimination provisions and address behavior that could be construed as discriminatory.

#### Who must comply

All persons or businesses who have

employment. However, an employee who was on the payroll prior to November 6, 1986, and whose employment was terminated, is subject to the Act upon re-employment.

- 2) Persons you employ for casual domestic work in a private home on a sporadic, irregular or intermittent basis.
- 3) Persons who are independent contractors.
- 4) Persons who provide labor to you and are employed by a contractor providing contract services (e.g., employee leasing).

*NOTE: You cannot contract for the labor of an alien if you know the alien is not authorized to work in the United States.*

The following guidelines are offered to aid in complying with the anti-discrimination provisions.

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## IMMIGRATION REFORM AND CONTROL ACT OF 1986

In November 1986, Congress passed the Immigration Reform and Control Act (IRCA). The law requires employers to document that their workers have a legal right to work in this country. In practice, the documentation requirement is satisfied by maintaining duly completed Immigration and Naturalization Service (INS) I-9 forms for all employees. The employer and employee both must complete a portion of the form.

During the first 5 years, INS outreach efforts focused on completing the I-9 forms and on imposing sanctions if the records were not correctly maintained. However, an important part of IRCA is the anti-discrimination provision, which provides the assurance that employers will not discriminate against foreign-looking or foreign-sounding applicants.

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Because of amendments to the original IRCA, the I-9 form has been revised. The revision is partly directed at ensuring that employers comply with anti-discrimination provisions and addresses behavior that could be construed as discriminatory.

### Who must comply

All persons or businesses who have

one or more employees must comply with the law, except for the following exceptions.

You **DO NOT** need to complete a Form I-9 for:

- 1) Persons hired before November 6, 1986, who have continued their employment. However, an employee who was on the payroll prior to November 6, 1986, and whose employment was terminated, is subject to the Act upon re-employment.
- 2) Persons you employ for casual domestic work in a private home on a sporadic, irregular or intermittent basis.
- 3) Persons who are independent contractors.
- 4) Persons who provide labor to you and are employed by a contractor providing contract services (e.g., employee leasing).

**NOTE:** *You cannot contract for the labor of an alien if you know the alien is not authorized to work in the United States.*

The following guidelines are offered to aid in complying with the anti-discrimination provisions.



## **DOs for complying with IRCA**

**DO** hire applicants before requesting they show work authorization and identity document(s). If you require a completed I-9 as part of the application, you should ensure that all applicants complete I-9 forms at that time.

**DO** allow employees to choose which document they wish to use for establishing their employment eligibility and identity. Never specify a particular document or demand to see immigration papers. Do not request more documents if those provided meet requirements of IRCA. A partial listing of acceptable documents is shown later in this section.

**DO** verify that you have seen the documents offered by the employee. You need not photocopy documents. If one looks genuine and the name corresponds to the applicant, accept it.

**DO** keep all I-9 forms in a separate file apart from personnel files.

## **DO NOTs for complying with IRCA**

**DO NOT** treat applicants differently because they look or sound like foreigners. From initial contact to termination, employees should be judged on their qualifications for the job.

**DO NOT** require specific documents for verification. Allow applicants to choose documents that verify work authorization and identity. A policy of accepting only a specific document is illegal.

**DO NOT** refuse to accept valid work authorization with a future expiration date. An expiration date does not imply the applicant will be deported after that time. Many immigrants are simply awaiting issuance of resident alien cards or extension of work authorization.

**DO NOT** refuse to accept valid work authorization because you are unfamiliar with the type of document. There are numerous types of documents that are acceptable.

**DO NOT** have a "U.S. citizens only" hiring policy unless it is required by law.

**DO NOT** demand that applicants speak only English on the job.

Additional information can be found in a Texas Agricultural Extension Service bulletin entitled "The Immigration Reform and Control Act of 1986 - An Employer's Guide to Employment Practices." This can be obtained through any county Extension office.

## **Documentation process**

All employees must show their employer proof of identity and employment authorization within 72 hours of being hired. If employment is for less than 72 hours, then the verification must be established by the end of the first day. Verification of the presentation of acceptable documents is attested to by completing an I-9 form. A copy of an I-9 form and a list of acceptable documents that employees may submit to establish identity and the legal right to work in this country follows this section. The

employer must complete and sign the I-9 form. The employee must also sign the form.

This form is to be retained for 3 years after the date of employment or 1 year after employment is terminated, whichever period is longer.

Copies of documents are not required by law. If you choose to make copies, be sure to make copies of all employees' documents and maintain these along with the corresponding I-9 forms.

### What all employers should know

- 1) Agents of the Immigration and Naturalization Service and the Department of Labor are allowed under this law to arrive unannounced and ask to examine I-9 forms.
- 2) Record maintenance violations carry fines between \$100 and \$1000 per employee whose I-9 form is not complete, retained or presented.
- 3) For discriminatory practices, hiring and continuing to hire unauthorized employees, the fines are:
  - **First violation:** \$250 to \$2,000 per employee
  - **Second violation:** \$2,000 to \$5,000 per employee
  - **Subsequent violations:** \$3,000 to \$10,000 per employee
- 4) Remedies for an employee who has been discriminated against may include hiring, reinstatement and back pay.
- 5) Those found engaging in a continuing

practice of hiring unauthorized employees may be fined \$3000 per employee and/or imprisoned for 6 months.

- 6) Those found engaging in fraud or making false statements about visas, permits and identification documents may be imprisoned up to 5 years and fined.

### Responsible agencies

Immigration and Naturalization Service  
District Office  
727 E. Durango  
Suite A 301  
San Antonio, Texas 78206  
210-871-7047 or 871-7048

U.S. Equal Employment Opportunity Commission  
Public Information Hotline  
800-669-3392  
(English & Spanish)

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## LISTS OF ACCEPTABLE DOCUMENTS

### LIST A

#### Documents that Establish Both Identity and Employment Eligibility

1. U.S. Passport (unexpired or expired)
2. Certificate of U.S. Citizenship (*INS Form N-560 or N-561*)
3. Certificate of Naturalization (*INS Form N-550 or N-570*)
4. Unexpired foreign passport, with *I-551* stamp or attached *INS Form I-94* indicating unexpired employment authorization
5. Alien Registration Receipt Card with photograph (*INS Form I-151 or I-551*)
6. Unexpired Temporary Resident Card (*INS Form I-688*)
7. Unexpired Employment Authorization Card (*INS Form I-688A*)
8. Unexpired Reentry Permit (*INS Form I-327*)
9. Unexpired Refugee Travel Document (*INS Form I-571*)
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph (*INS Form I-688B*)

**OR**

### LIST B

#### Documents that Establish Identity

1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
2. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

**For persons under age 18 who  
are unable to present a  
document listed above:**

10. School record or report card
11. Clinic, doctor, or hospital record
12. Day-care or nursery school record

**AND**

### LIST C

#### Documents that Establish Employment Eligibility

1. U.S. social security card issued by the Social Security Administration (*other than a card stating it is not valid for employment*)
2. Certification of Birth Abroad issued by the Department of State (*Form FS-545 or Form DS-1350*)
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Native American tribal document
5. U.S. Citizen ID Card (*INS Form I-197*)
6. ID Card for use of Resident Citizen in the United States (*INS Form I-179*)
7. Unexpired employment authorization document issued by the INS (*other than those listed under List A*)

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE.** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification.** To be completed and signed by employee at the time employment begins

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
<b>I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.</b>		I attest, under penalty of perjury, that I am (check one of the following): <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A Lawful Permanent Resident (Alien # A _____) <input type="checkbox"/> An alien authorized to work until ____/____/____ (Alien # or Admission # _____)	
Employee's Signature			Date (month/day/year)

**Preparer and/or Translator Certification.** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

**Section 2. Employer Review and Verification.** To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): ____/____/____		____/____/____		____/____/____
Document #: _____		_____		_____
Expiration Date (if any): ____/____/____		_____		_____

**CERTIFICATION -** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_/\_\_\_\_/\_\_\_\_ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name		Date (month/day/year)
Address (Street Name and Number, City, State, Zip Code)		

**Section 3. Updating and Reverification.** To be completed and signed by employer

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.	
Document Title: _____ Document #: _____ Expiration Date (if any): ____/____/____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

# MIGRANT AND SEASONAL AGRICULTURAL PROTECTION ACT - FEDERAL

## Who must comply

Any person engaged in any farm labor contracting activity must comply. 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 protection provisions.

## 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 that 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 the section on Fair Labor Standards Act).
- 3) Any labor organization, nonprofit charitable organization, or public or private nonprofit educational institution.
- 4) Any person who engages in any farm labor contracting solely within a 25 mile intrastate radius of his permanent residence and for not more than 13 weeks per year.
- 5) Any common carrier that would be considered a farm labor contractor solely because the carrier is engaged in transporting any migrant or seasonal worker.
- 6) Any custom grain harvesting, cotton harvesting, hay harvesting or sheep shearing operation.  
*NOTE: Cotton harvesting was not originally listed as an exempt activity. However, a subsequent ruling by the Department of Labor has exempted cotton harvesting from this law.*
- 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 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; and

4) ensure that no individual who is an illegal alien be employed. Compliance demonstrates 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 did not have the legal right to be employed.

Each farm labor contractor, agricultural employer and agricultural association that recruits migrant workers must comply with the following.

1) At the time of recruitment, inform each worker in writing and in the language in which the worker is most fluent of the following:

- a) where he/she will be working;
- b) crops and operations on which he/she will be employed;
- c) transportation, housing and other benefits to be provided, if any, and any costs to be charged for each item;
- d) wage rates to be paid;
- e) period of employment;
- f) existence of strikes at place of employment; and
- 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 workers can see them. Workers must be informed of all changes in the conditions of their employment.

3) If housing is provided, post the terms and conditions of occupancy.

4) For each worker, make, keep and preserve records for 3 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; and  
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 above.

6) Provide all required written documents in English, or as necessary and reasonable in some other language common to the workers.

7) Pay the wages owed when due.

8) Do not require workers to purchase goods or services solely from the farm labor contractor.

9) Do not violate, without justification, the terms of the working arrangement.

10) If providing housing, ensure that the facility or real property complies with federal and state laws applicable to that housing.

11) Do not allow the housing facilities to be occupied unless it has been

certified that they meet 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.

### **Provisions for Seasonal workers**

Previous acts relating to agricultural workers contained language that 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 basis and who are required to be absent overnight.
- Seasonal workers are those persons employed on a seasonal or other temporary basis and who are 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 who are transported to the place of employment by means of a day-haul operation. A day-haul operation is one that picks up workers waiting to be hired at an assembly point, transports these workers to the place of employment and returns them to

the same point at the end of the work day.

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

Additional information is available in Public Law 97-470 -- January 14, 1983, Migrant and Seasonal Agricultural Worker Protection Act. It is available from the U.S. Department of Labor-Employment Standards Administration, the agency responsible for enforcement of the law.

For local offices see the telephone directory for:

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



## EMPLOYMENT OF MINORS - FEDERAL

### Coverage

Persons age 18 and over are not included under the child labor provisions of the Fair Labor Standards Act (FLSA). With a few exceptions all others 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.

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

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

Fourteen 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.

### Exceptions:

- 1) Twelve- 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; and
- 2) Minors under 12 may be employed with written parental consent on farms whose employees are exempt from federal minimum wage provisions.

### 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.

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

### School hours and hours worked

With the possible exception of minors employed by their parents on their parents' farm, minors 14 and 15 years old may:

- 1) only work during non-school hours and only between 7 a.m. and 7 p.m. except for those enrolled in certain work training programs (see Exemptions section);
- 2) only work up to 9 p.m. from June 1 through Labor Day;
- 3) only work 3 hours per day on school days and 8 hours per day on non-school days; and
- 4) only work 18 hours per week in weeks in which they attend school and 40 hours per week in non-school weeks.

### 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 posthole digger, power post driver or nonwalking type rotary tiller;
- 3) operating or assisting to operate a trencher or earth moving equipment, fork lift, potato combine, power driven circular, band saw or chain saw;
- 4) working in a 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 6 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; and/or
- 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 that 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 of minors under 16 must comply with the following.**

- 1) Preserve and maintain records containing the following data on each minor employee:
  - a) name in full;
  - b) place where minor lives and his/her permanent address;
  - c) date of birth; and
  - d) evidence in writing of any required parental consent.
- 2) Keep a minor employees's age or

employment certificate on file.

- 3) Observe wage and hour provisions of the FLSA.
- 4) 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 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.
- 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.

### Certification

Targeted group eligibility certifications are made by the Texas Employment Commission (TEC) or a school participating in a qualified cooperative educational program. The request for certification must be made (in writing) to TEC on or before the day the

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

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 Job Tax Credit cannot be taken on wages paid to an employee for any period when you are receiving federal funds for on-the-job training. However, the credit may be claimed on certified

## EMPLOYMENT OF MINORS -- TEXAS

The Texas Child Labor Law governs employment of children 14 to 17 years of age. With some exceptions, it is generally illegal to employ a child under the age of 14. The employment of children of any age outside of school hours is exempt from this law.

Children age 14 or 15 may not work more than 8 hours a day or more than 48 hours a week, or between 10:00 p.m. and 5:00 a.m. on a day that is followed by a school day or between the hours of midnight and 5:00 a.m. on a day not followed by a school day.

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

Employers of minors under 18 must comply with the following:

- 1) Preserve and maintain records containing the following data on each minor employee:
  - a) name in full;
  - b) place where minor lives and his/her permanent address;
  - c) date of birth; and
  - d) evidence in writing of any required parental consent.
- 2) Keep a minor employee's age or

Children 14 through 17 cannot work in any occupation considered to be hazardous as defined by the U.S. Department of Labor.

### Responsible agencies

The state agency responsible for the enforcement of the Texas Child Labor Law is the

**Texas Employment Commission  
15th & Congress  
Austin, TX 78778**

- 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.
- 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 1435, 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

## TARGETED JOBS TAX CREDIT - FEDERAL

The Tax Reform Act of 1986 extends the Targeted Jobs Tax Credit for qualified wages paid or incurred by employers in the employment of individuals within certain target groups.

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

- 1) vocational rehabilitation referrals;
- 2) economically disadvantaged youths;
- 3) vietnam veterans from economically disadvantaged families;
- 4) SSI recipients;
- 5) general assistance recipients(not available in Texas);
- 6) economically disadvantaged ex-convicts;
- 7) cooperative education students from economically disadvantaged families;
- 8) eligible work incentive employees; or
- 9) qualified summer youth employees.

### Certification

Targeted group eligibility certifications are made by the Texas Employment Commission (TEC) or a school participating in a qualified cooperative educational program. The request for certification must be made (in writing) to TEC on or before the day the

worker enters employment. The employer will be provided with necessary mail-in documents, if the worker is eligible, TEC will provide the employer with TJTC certification that contains all the evidence necessary to claim tax credit. Employers claim the tax credit by filing IRS Form 5884 with their income tax returns.

### Tax credit

The tax credit is available only through December 1994 unless extended. (Note: After December 1994, please contact the nearest TEC office about the status of this program.) The credit can be taken for the first year of eligible employment. The amount of credit is 40 percent of the first \$6000 in wages for each certified employee. The credit can be taken only on employment related to a business or trade. Domestic employees (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 when 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 employer's federal income tax liability after certain other credits are deducted.

■ Any unused tax credit can be carried back 3 years or forward for 7 years.

**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

- 1) vocational rehabilitation
- 2) economically disadvantaged youth
- 3) vietnam veterans from economically disadvantaged families
- 4) SSI recipients
- 5) general assistance recipients (not available in Texas)
- 6) economically disadvantaged ex-convicts
- 7) cooperative education students from economically disadvantaged families
- 8) eligible work incentive employees; or
- 9) qualified summer youth employees

## 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 5 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 excluded from minimum wage requirements regardless of the 500-man-day test.

- 1) Employees who must be available at all hours to care for range livestock.
- 2) Migrant 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.
- 3) Employer's immediate family.
- 4) Employees who:
  - a) are paid on a piece rate basis, AND
  - b) were employed in agriculture as hand harvest laborers fewer than 13 weeks in previous year AND

c) commute to work daily (non-migrants).

- 5) Employees engaged in fishing or seafood processing.

### Employers must, if covered comply with the following.

- 1) Pay at least minimum wage to all employees – currently \$4.25 per hour.
- 2) Maintain payroll records for at least 3 years for each employee, including family members of employees. These records should include:
  - a) full name of employee;
  - b) complete home address;
  - c) sex and occupation in which employed;
  - d) identification of employees who are
    - members of an employer's immediate family,
    - hand harvest workers paid on a piece rate or
    - employees principally engaged in range livestock production;
  - e) 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);
  - f) beginning day and time of employee's work week;
  - g) basis on which wages are paid, i.e., \$4.25 per hour, \$34.00 per day or piece work;
  - h) hours worked each-work-day



- and total hours worked each-work-week;
- i) total daily or weekly earnings;
  - j) total additions to or deductions from wages with an explanation of each;
  - k) total wages paid each pay period together with proof of payment to individual workers including cash advances or other deductions; and
  - l) date of payment and pay period covered by payment.
- 3) Have on file a statement from each exempt piece rate employee showing the number of weeks employed in agriculture during the preceding year.
  - 4) Have on file the date of birth and the parent's name for each exempt minor paid on a piece rate basis.
  - 5) Maintain a file showing the full name, present and permanent address and date of birth of any minor under 19 who works when school is in session or works in a hazardous occupation.
  - 6) Display the official poster "Notice to Employees" where employees can see it. This poster contains basic information on minimum wages.

**Employers may need to comply with the following.**

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 that may not lawfully reduce the wage level below the minimum wage per hour are:**

- 1) transportation advances and
- 2) charges for contractors' (crew leader) services.

Deductions that may lawfully reduce the wage level below the minimum wage per hour are:

- 1) deductions required by law – Social Security and withholding tax;
- 2) "Third Party" deductions authorized by the employee, such as union dues, United Funds or 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); or
- 4) housing and meals, provided it does not exceed the reasonable cost or fair value as determined by the Secretary and meets a number of specified conditions dealing with profit and rate of return on investment.

**Overtime provision**

All farmworkers are exempt from overtime pay.

**Responsible Agencies**

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

## TEXAS MINIMUM WAGE LAW

There is a Texas Minimum Wage Law that applies to agricultural labor. However, the Federal Fair Labor Standards Act supersedes the Texas Act when employers are covered by both laws.

The only employees exempt from the Texas State law are employees of producers engaged in dairy farming, and producers of livestock and any activity in support thereof.

For those agricultural employees covered by the Texas Minimum Wage Law, the state minimum rate is \$3.35 per hour.

Piece-rates are 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. If piece-rates are used and workers do not achieve the minimum wage rate, the minimum rate of \$3.35 must still be paid.

### Responsible agencies

Department of Agriculture  
Post Office Drawer BB  
Austin, Texas 78711  
(Piece Rates for Commodities)

## TEXAS PAYDAY LAW

The Texas Legislature amended the Texas Payday Law during the regular 1989 session and transferred enforcement responsibility to the Texas Employment Commission. The law gives the Commission the authority to collect wages that have not been paid to workers.

### Who must comply

All employers must comply.

### Provisions under the law

- 1) Employers must pay their employees who are not subject to the overtime provisions of the Fair Labor Standards Act at least once a month, and must pay all other employees at least twice monthly. Employers must designate paydays, and if they fail to do so, paydays shall be the 1st and 15th of each month.
- 2) Notices must be posted prominently in the workplace designating the official paydays. Sample notices can be obtained from any Texas Employment Commission office. Notices in both English and Spanish must be posted.
- 3) An employer may not withhold or direct any part of an employee's wages unless the employer:
  - a) is authorized to do so by the court;
  - b) is authorized to do so by state or federal law; or
  - c) has written authorization from the employee to deduct a part of the wages for a lawful purpose.
- 4) Employers must pay a fired employee within six calendar days after dismissal.
- 5) Employers must pay an employee who quits by the next regularly scheduled payday.
- 6) Employers must not give a paycheck to a person other than the employee without the employee's written authorization.
- 7) The new law does not allow wage claims to be filed for vacation pay, sick leave pay, parental leave pay or severance pay unless it is owed to an employee under a written agreement with the employer or under a written policy of the employer.

### Related Information

- *Survival Guide to the Texas Payday Law* - this guide explains the law in simple terms and includes a step-by-step guide for dealing with payday claims. To order the booklet, write to the Commissioner's office or fax a request to 512/463-3196. No orders will be taken by telephone.
- For more information on employer and employee rights, call the division's toll-free line at 1-800-TEC-WAGE.

### Responsible agency

Texas Employment Commission  
15th & Congress  
Austin, Texas 78778

# FEDERAL INCOME TAX WITHHOLDING FOR FARM WORKERS

Farm employers are required to withhold federal income taxes on the wages of agricultural labor. Employers must withhold income tax from agricultural labor on all wages paid after 1989 that are subject to social security taxes.

A farm employer should obtain a completed Form W-4, Employee's Withholding Allowance Certificate, from each farm worker. It should be made effective the first payday after it is received. If an employee does not provide the employer with a valid Form W-4, the employer should withhold as if he or she is single and claiming no withholding allowances to figure the amount of income tax to withhold. A copy of the W-4 form following this section.

There are different rules as to what constitutes wages for Social Security and federal income tax purposes. For income tax withholding, wages include cash payments as well as the fair market value of items provided to employees, such as payment for services (i.e., meals, lodging or other goods).

## Deposit of withholding tax

Combined withholding and social security taxes must be paid into an authorized bank on a timely basis. The frequency depends on your relative size as an employer. Small employers can do this monthly. Most farmers would fall into the small or medium category. Exact details on determining size and methods of making the necessary deposits can be obtained from your nearest IRS office.

## Information returns

The farm employer must prepare and give to each 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.

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

## Related information

- 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

FEDERAL INCOME TAX WITHHOLDING FOR FARM WORKERS

The Texas Legislative Council has passed the Texas Payday Law, which requires employers to withhold federal income tax from wages paid to employees. The law is effective for wages paid on or after January 1, 1983. The law requires employers to withhold federal income tax from wages paid to employees who are not exempt from withholding. The law also requires employers to file Form 943, "Employer's Annual Tax Return for Agricultural Employees," with the Internal Revenue Service by February 28th.

To assist employers in complying with the law, the Internal Revenue Service has issued the following guidelines: 1. Employers must withhold federal income tax from wages paid to employees who are not exempt from withholding. 2. Employers must file Form 943 with the Internal Revenue Service by February 28th. 3. Employers must keep accurate records of wages paid and taxes withheld. 4. Employers must provide a copy of Form 943 to the employee.

There are different rules as to what constitutes wages for Social Security and federal income tax purposes. For Social Security purposes, wages include all payments made to an employee for services performed. For federal income tax purposes, wages include all payments made to an employee for services performed, except for payments for non-exempt services.

Employers should refer to the Internal Revenue Manual for more information. The Internal Revenue Manual is available on the Internet at [www.irs.gov](http://www.irs.gov). The Internal Revenue Manual is also available in hard copy for purchase from the Internal Revenue Service.

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# Form W-4 (1994)

## Want More Money In Your Paycheck?

If you expect to be able to take the earned income credit for 1994, you can have part of it added to your take-home pay. For details, get Form W-5 from your employer.

**Purpose.** Complete Form W-4 so that your employer can withhold the correct amount of Federal income tax from your pay.

**Exemption From Withholding.** Read line 7 of the certificate below to see if you can claim exempt status. *If exempt, complete line 7; but do not complete lines 5 and 6.* No Federal income tax will be withheld from your pay. Your exemption is good for 1 year only. It expires February 15, 1995.

**Note:** You cannot claim exemption from withholding if (1) your income exceeds \$600 and includes unearned income (e.g., interest and dividends), and (2) another person can

claim you as a dependent on their tax return.

**Basic Instructions.** Employees who are not exempt should complete the Personal Allowances Worksheet. Additional worksheets are provided on page 2 for employees to adjust their withholding allowances based on itemized deductions, adjustments to income, or two-earner/two-job situations. Complete all worksheets that apply to your situation. The worksheets will help you figure the number of withholding allowances you are entitled to claim. However, you may claim fewer allowances than this.

**Head of Household.** Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals.

**Nonwage Income.** If you have a large amount of nonwage income, such as interest or dividends, you should consider making estimated tax payments using Form 1040-ES.

Otherwise, you may find that you owe additional tax at the end of the year.

**Two Earners/Two Jobs.** If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. This total should be divided among all jobs. Your withholding will usually be most accurate when all allowances are claimed on the W-4 filed for the highest paying job and zero allowances are claimed for the others.

**Check Your Withholding.** After your W-4 takes effect, you can use **Pub. 919, Is My Withholding Correct for 1994?**, to see how the dollar amount you are having withheld compares to your estimated total annual tax. We recommend you get Pub. 919 especially if you used the Two Earner/Two Job Worksheet and your earnings exceed \$150,000 (Single) or \$200,000 (Married). Call 1-800-829-3676 to order Pub. 919. Check your telephone directory for the IRS assistance number for further help.

### Personal Allowances Worksheet

**A** Enter "1" for yourself if no one else can claim you as a dependent . . . . . **A** \_\_\_\_\_

**B** Enter "1" if: } **B** \_\_\_\_\_

- You are single and have only one job; or
- You are married, have only one job, and your spouse does not work; or
- Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less.

**C** Enter "1" for your spouse. But, you may choose to enter -0- if you are married and have either a working spouse or more than one job (this may help you avoid having too little tax withheld) . . . . . **C** \_\_\_\_\_

**D** Enter number of dependents (other than your spouse or yourself) whom you will claim on your tax return . . . . . **D** \_\_\_\_\_

**E** Enter "1" if you will file as head of household on your tax return (see conditions under Head of Household above) . . . . . **E** \_\_\_\_\_

**F** Enter "1" if you have at least \$1,500 of child or dependent care expenses for which you plan to claim a credit . . . . . **F** \_\_\_\_\_

**G** Add lines A through F and enter total here. **Note:** This amount may be different from the number of exemptions you claim on your return **G** \_\_\_\_\_

For accuracy, do all worksheets that apply. }

- If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2.
- If you are single and have more than one job and your combined earnings from all jobs exceed \$30,000 OR if you are married and have a working spouse or more than one job, and the combined earnings from all jobs exceed \$50,000, see the Two-Earner/Two-Job Worksheet on page 2 if you want to avoid having too little tax withheld.
- If neither of the above situations applies, stop here and enter the number from line G on line 5 of Form W-4 below.

----- Cut here and give the certificate to your employer. Keep the top portion for your records. -----

Form **W-4**  
Department of the Treasury  
Internal Revenue Service

## Employee's Withholding Allowance Certificate

OMB No. 1545-0010  
**1994**

► For Privacy Act and Paperwork Reduction Act Notice, see reverse.

<p><b>1</b> Type or print your first name and middle initial _____ Last name _____</p> <p>Home address (number and street or rural route) _____</p> <p>City or town, state, and ZIP code _____</p>	<p><b>2</b> Your social security number _____</p> <p><b>3</b> <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. <i>Note: If married, but legally separated, or spouse is a nonresident alien, check the Single box.</i></p> <p><b>4</b> If your last name differs from that on your social security card, check here and call 1-800-772-1213 for more information . . . . . <input type="checkbox"/></p>
<p><b>5</b> Total number of allowances you are claiming (from line G above or from the worksheets on page 2 if they apply) . . . . . <b>5</b> _____</p> <p><b>6</b> Additional amount, if any, you want withheld from each paycheck . . . . . <b>6</b> \$ _____</p> <p><b>7</b> I claim exemption from withholding for 1994 and I certify that I meet <b>BOTH</b> of the following conditions for exemption: • Last year I had a right to a refund of <b>ALL</b> Federal income tax withheld because I had <b>NO</b> tax liability; <b>AND</b> • This year I expect a refund of <b>ALL</b> Federal income tax withheld because I expect to have <b>NO</b> tax liability. If you meet both conditions, enter "EXEMPT" here . . . . . <b>7</b> _____</p>	<div style="border: 1px solid black; width: 100px; height: 100px; background-color: #cccccc;"></div>

Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate or entitled to claim exempt status.

<p><b>Employee's signature</b> ► _____</p> <p><b>8</b> Employer's name and address (Employer: Complete 8 and 10 only if sending to the IRS) _____</p>	<p><b>Date</b> ► _____, 19__</p>	<p><b>9</b> Office code (optional) _____</p> <p><b>10</b> Employer identification number _____</p>
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### Deductions and Adjustments Worksheet

**Note:** Use this worksheet only if you plan to itemize deductions or claim adjustments to income on your 1994 tax return.

- 1 Enter an estimate of your 1994 itemized deductions. These include: qualifying home mortgage interest, charitable contributions, state and local taxes (but not sales taxes), medical expenses in excess of 7.5% of your income, and miscellaneous deductions. (For 1994, you may have to reduce your itemized deductions if your income is over \$111,800 (\$55,900 if married filing separately). Get Pub. 919 for details.) 1 \$ \_\_\_\_\_
- 2 Enter: 

{	\$6,350 if married filing jointly or qualifying widow(er)	}	. . . . .	2	\$ _____
	\$5,600 if head of household				
	\$3,800 if single				
	\$3,175 if married filing separately				
- 3 Subtract line 2 from line 1. If line 2 is greater than line 1, enter -0- . . . . . 3 \$ \_\_\_\_\_
- 4 Enter an estimate of your 1994 adjustments to income. These include alimony paid and deductible IRA contributions 4 \$ \_\_\_\_\_
- 5 Add lines 3 and 4 and enter the total . . . . . 5 \$ \_\_\_\_\_
- 6 Enter an estimate of your 1994 nonwage income (such as dividends or interest) . . . . . 6 \$ \_\_\_\_\_
- 7 Subtract line 6 from line 5. Enter the result, but not less than -0- . . . . . 7 \$ \_\_\_\_\_
- 8 Divide the amount on line 7 by \$2,500 and enter the result here. Drop any fraction . . . . . 8 \_\_\_\_\_
- 9 Enter the number from Personal Allowances Worksheet, line G, on page 1 . . . . . 9 \_\_\_\_\_
- 10 Add lines 8 and 9 and enter the total here. If you plan to use the Two-Earner/Two-Job Worksheet, also enter this total on line 1, below. Otherwise, **stop here** and enter this total on Form W-4, line 5, on page 1. . . . . 10 \_\_\_\_\_

### Two-Earner/Two-Job Worksheet

**Note:** Use this worksheet only if the instructions for line G on page 1 direct you here.

- 1 Enter the number from line G on page 1 (or from line 10 above if you used the Deductions and Adjustments Worksheet) 1 \_\_\_\_\_
- 2 Find the number in **Table 1** below that applies to the **LOWEST** paying job and enter it here . . . . . 2 \_\_\_\_\_
- 3 If line 1 is **GREATER THAN OR EQUAL TO** line 2, subtract line 2 from line 1. Enter the result here (if zero, enter -0-) and on Form W-4, line 5, on page 1. **DO NOT** use the rest of this worksheet . . . . . 3 \_\_\_\_\_

**Note:** If line 1 is **LESS THAN** line 2, enter -0- on Form W-4, line 5, on page 1. Complete lines 4-9 to calculate the additional withholding amount necessary to avoid a year-end tax bill.

- 4 Enter the number from line 2 of this worksheet . . . . . 4 \_\_\_\_\_
- 5 Enter the number from line 1 of this worksheet . . . . . 5 \_\_\_\_\_
- 6 Subtract line 5 from line 4 . . . . . 6 \_\_\_\_\_
- 7 Find the amount in **Table 2** below that applies to the **HIGHEST** paying job and enter it here . . . . . 7 \$ \_\_\_\_\_
- 8 Multiply line 7 by line 6 and enter the result here. This is the additional annual withholding amount needed 8 \$ \_\_\_\_\_
- 9 Divide line 8 by the number of pay periods remaining in 1994. (For example, divide by 26 if you are paid every other week and you complete this form in December 1993.) Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck . . . . . 9 \$ \_\_\_\_\_

**Table 1: Two-Earner/Two-Job Worksheet**

Married Filing Jointly				All Others	
If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above	If wages from <b>LOWEST</b> paying job are—	Enter on line 2 above
0 - \$3,000 . . . . .	0	39,001 - 50,000 . . . . .	9	0 - \$4,000 . . . . .	0
3,001 - 6,000 . . . . .	1	50,001 - 55,000 . . . . .	10	4,001 - 10,000 . . . . .	1
6,001 - 11,000 . . . . .	2	55,001 - 60,000 . . . . .	11	10,001 - 14,000 . . . . .	2
11,001 - 16,000 . . . . .	3	60,001 - 70,000 . . . . .	12	14,001 - 19,000 . . . . .	3
16,001 - 21,000 . . . . .	4	70,001 - 80,000 . . . . .	13	19,001 - 23,000 . . . . .	4
21,001 - 27,000 . . . . .	5	80,001 - 90,000 . . . . .	14	23,001 - 45,000 . . . . .	5
27,001 - 31,000 . . . . .	6	90,001 and over . . . . .	15	45,001 - 60,000 . . . . .	6
31,001 - 34,000 . . . . .	7			60,001 - 70,000 . . . . .	7
34,001 - 39,000 . . . . .	8			70,001 and over . . . . .	8

**Table 2: Two-Earner/Two-Job Worksheet**

Married Filing Jointly		All Others	
If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above	If wages from <b>HIGHEST</b> paying job are—	Enter on line 7 above
0 - \$ 50,000 . . . . .	\$370	0 - \$ 30,000 . . . . .	\$370
50,001 - 100,000 . . . . .	690	30,001 - 60,000 . . . . .	690
100,001 - 130,000 . . . . .	760	60,001 - 110,000 . . . . .	760
130,001 - 220,000 . . . . .	880	110,001 - 220,000 . . . . .	880
220,001 and over . . . . .	970	220,001 and over . . . . .	970

**Privacy Act and Paperwork Reduction Act Notice.**—We ask for the information on this form to carry out the Internal Revenue laws of the United States. The Internal Revenue Code requires this information under sections 3402(f)(2)(A) and 6109 and their regulations. Failure to provide a completed form will result in your being treated as a single person who claims no withholding allowances. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, and the District of Columbia for use in administering their tax laws.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping** 46 min., **Learning about the law or the form** 10 min., **Preparing the form** 69 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Attention: Reports Clearance Officer, PC:FP, Washington, DC 20224; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0010), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, give it to your employer.

## SOCIAL SECURITY - FEDERAL

### Who must comply

Farm employers must make Social Security deductions if they pay more than \$2,500 to all employees for agricultural labor during the year. If the more than \$2,500 total payroll test is not met, then individual wages will be subject to FICA for any individual receiving more than \$150 during the year. This \$150 applies to each worker. For Social Security purposes, wages include only cash payments made to employees for farm labor and do not include food, lodging and other noncash items.

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 18 years of age in the employ of his father or mother or
- 2) 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 or
  - 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, or when the employer is a partnership, unless the family relationship exists between the employee and all the partners.

### Employers must comply with the following.

- 1) Pay social security taxes in the amount of 7.65% on wages up to \$60,600 in 1994. For wages more than \$60,600, they must pay 1.45%. These levels will change in subsequent years.
- 2) Deposit withheld income taxes and Social Security deductions 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

#### Monthly Depositor

An employer that reported employment taxes of \$50,000 or less per year generally must make only monthly deposits. The deposit for a month must be made on or before the 15th day of the following month.

#### Semi-Weekly Wednesday/Friday Depositor

An employer that reported employment taxes of more than \$50,000 per year is a semi-weekly depositor for the entire year. Such employers must make deposits on or before Wednesdays or Fridays depending on the timing of their payrolls. Employment taxes for



Wednesday, Thursday or Friday paydays must be deposited on or before the following Wednesday. Taxes from Saturday, Sunday, Monday or Tuesday paydays must be deposited by the following Friday.

**Employers also must:**

- 1) 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;
- 2) file Form W-3, Transmittal of Income and Tax Statements, with the Social Security Administration, Office of Central Records Operations, Baltimore, MD 21290, by February 28th of each year. Attach a copy of each employee's Form W-2;
- 3) 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 Form 511); and
- 4) maintain payroll records for at least 4 years for each employee. These records should include:
  - a) employee's name and social security number;
  - b) cash payments to the employee for farm work;
  - c) any amount deducted as employee Social Security tax;
  - d) the number of days the employee

did farm work for cash wages on a time basis;

- e) the amount, if any, of income tax withheld; and
- f) 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 their farming operations must contribute to Social Security. The contribution rate is 15.3% in 1994. This total is comprised of two percentage rates. The rate for Social Security is 12.4% and is paid on earnings up to \$60,600 in 1994. The rate for Medicare is 2.9% on all earnings greater than \$60,600 in 1993. The percentage rates and earnings levels are subject to change each year. If a farmer earns off farm income on which Social Security and Medicare taxes have been paid, he or she must still contribute to the income from farming operations at the levels outlined above until the Social Security and Medicare limits are reached.

**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

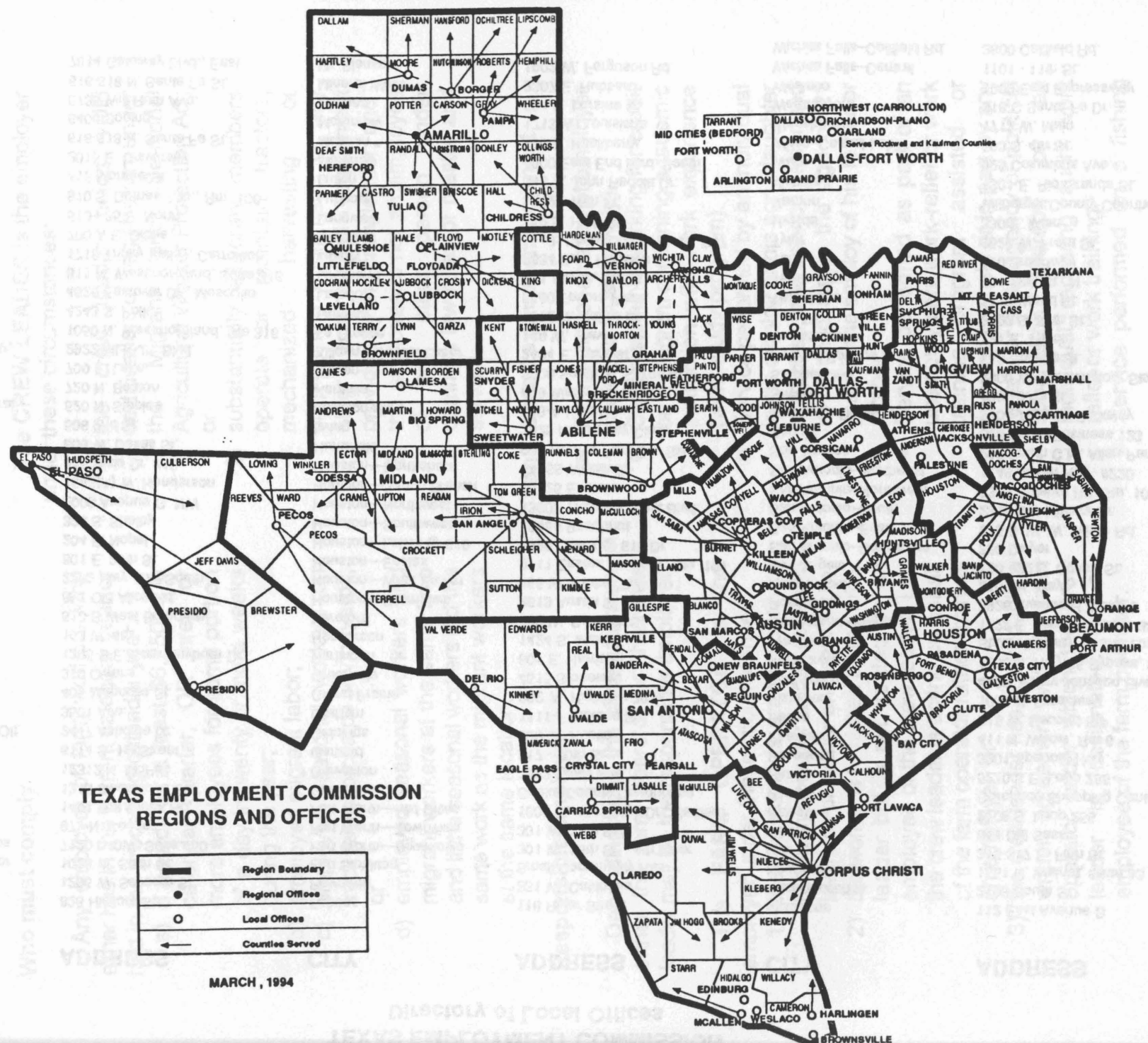
**Enforcement and Tax Collection:**

Department of the Treasury  
Internal Revenue Service





Local Social Security offices are  
normally listed in the telephone directory  
under:

U.S. Government  
Social Security Administration

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**TEXAS EMPLOYMENT COMMISSION  
REGIONS AND OFFICES**

	Region Boundary
	Regional Office
	Local Office
	Counties Served

MARCH, 1994

**TEXAS EMPLOYMENT COMMISSION**  
**Directory of Local Offices**

CITY	ADDRESS	CITY	ADDRESS	CITY	ADDRESS
Abilene	826 Hickory St.	Fabens	118 River Street	Muleshoe	112 East Avenue B
Amarillo	1206 W. Seventh St.	Floydada	231 W. California	Nacogdoches	2103 South St.
Amarillo—Casual Labor	1020 W. Sixth St.	Fort Stockton	Small Community Hall	New Braunfels	1551 N. Walnut, Suite #3
Amarillo—Food Stamps	7120 I-40W, Suite 450	Fort Worth—Downtown	301 W. 13th St. - 4th Floor	Odessa	315-317 E. Fifth St.
Arlington	979 N. Cooper	Fort Worth—Townview	301 W. 13th St.	Orange	841 Dal Sasso
Athens	1401 Flat Creek Rd.	Fort Worth—Mid Cities	1809 Forest Ridge Dr., Bedford	Palestine	2209 S. Loop 256
Austin—Central	1215 Guadalupe St.	Gainsville	Cooke County Courthouse	Pampa	Coronado Shopping Center
Austin—North	12312 N. MoPac	Galveston	1922 Sealy Ave.	Paris	5210 S.E. Loop 286
Austin—South	6114 S. 1st Street	Garland	217 - 10th St.	Pasadena	3201 Spencer Hwy.
Austin—Sp. Services Off.	2417 Ashdale Dr.	Giddings	200 W. Austin	Pearsall	411 N. Willow, Rm 6
Bay City	3501 Ave. F	Graham	1111-F Indiana St.	Pecos	215 W. Second St.
Beaumont	405 Magnolia St.	Grand Prairie	202 W. Highway 303	Plainview	1030 N. Broadway
Big Spring	310 Owens	Greenville	4515 Stonewall	Port Arthur	4430 Jimmy Johnson Blvd.
Bonham	1205-B E. Sam Rayburn Dr.	Harlingen	601 E. Harrison St.	Port Lavaca	1800 S. Hwy.35 Bypass, Ste. D
Borger	103 W. 4th	Henderson	1424 S. Main	Presidio	State Highway 17 and Louvain St.
Brownfield	510-B West Broadway	Hereford	403 W. Seventh St.	Richardson—Plano	1222 E. Arapaho, Suite 336
Brownsville	851 Old Alice Rd.	Houston—Downtown	2613 Austin St.	Rosenberg	3926 Avenue H, Suite 6
Brownwood	2202 Hwy. 377 South	Houston—West Parker	455 W. Parker Rd.	Round Rock	2107 N. Mays
Bryan	801 E. 29th St.	Houston—Eastex	9111 Eastex Freeway, Ste. 101	San Angelo	120-122 S. Oakes St.
Carrizo Springs	204 E. Nopal	Houston—Lakes @ 610	8990 Lakes @ 610 Dr.	San Antonio—Downtown	330 Dwyer
Carthage	323 S. Shelby	Houston—Southwest	12455 Beechnut	San Antonio—East	915 S. W. W. White Rd.
Childress	2000 Avenue G. NW	Houston—Northwest	13603 Westland East Blvd.	San Antonio—South	2310 SW Military Dr.
Cleburne	1643(A) W. Henderson	Houston—Spring Branch	10125 Emnora	San Antonio—Northwest	8323 Culebra Rd. Ste. 102
Clute	815 Dixie Dr. #15	Houston—Northshore	14355 Wallisville	San Antonio—Northeast	1248 Austin Hwy. #220
Conroe	808 W. Dallas St.	Huntsville	901 Normal Park Dr., Ste 7	San Marcos	202 South C.M. Allen Parkway
Copperas Cove	506 2nd St.	Irving	2925 N. Skyway Circle	Seguin	328 South Business 123
Corpus Christi—Central	520 N. Staples	Jacksonville	308-A Larissa	Sherman—Denison	5904 Texoma Parkway
Corsicana	720 N. Beaton	Kerrville	819 Water St., #116	Snyder	1902 37th St.
Crystal City	700 E. Lake	Killeen	3000 South W.S. Young	Stephenville	2900 W. Washington, Ste. 33
Dallas—King Com. Ctr.	2922 MLK Jr., Blvd.	Killeen—Casual Labor	2404 E. Rancier	Sulphur Springs	143 College St.
Dallas—Kessler Hills	1050 N. Westmoreland, Ste 316	La Grange	149 W. Travis	Sweetwater	121 E. Third
Dallas—Oak Cliff	4243 S. Polk	Lamesa	1012 N. Dallas St.	Temple	2420 S. 37th St.
Dallas—East	4625 Eastover Dr., Mesquite	Laredo	5500 Tesoro Plaza	Texarkana	1118 Wood St.
Dallas—West Labor	811 N. Westmoreland, Suite 316	Levelland	411 Austin, Ste. 2	Texas City	101 29th St., N
Dallas—Northwest	1718 Trinity Valley, Carrollton	Liberty	2034 Sam Houston	Tulia	310 Broadway
Del Rio	700-A E. Gibbs	Littlefield	Lamb County Courthouse, B07	Tyler	1520 W. Front St.
Denton	510 I-35 E. North	Longview	412 S. High St.	Uvalde	330 E. Main
Dumas	810 S. Dumas Ave., Rm. 100	Lubbock	1602 - 16th St.	Vernon	Wilbarger County Courthouse
Eagle Pass	415 Monroe St.	Lufkin	346 N. John Redditt Dr.	Victoria	1301 E. Rio Grande St.
Edinburg	2015 E. University	Marshall	4300 East End Blvd. South	Waco	925 Columbus Ave.
El Paso—Metro	616-618 N. Santa Fe St.	McAllen	400 E. Hackberry	Waco—Casual Labor	500 S. 4th St.
El Paso—Airport	6400 Boeing	McKinney	1713 W. Louisiana	Waxahachie	1712 W. Main
El Paso—Northeast	5735 Will Ruth Ave.	Midland	501 N. Loraine St.	Weatherford	318-C Santa Fe Dr.
El Paso—Downtown	616-618 N. Santa Fe St.	Mineral Wells	2307 E. Hubbard	Weslaco	1002 East Expressway
El Paso—East	7814 Gateway Blvd., East	Mt. Pleasant	1902 W. Ferguson Rd.	Wichita Falls—Central	1101 - 11th St.
				Wichita Falls—Callfield Rd.	3800 Callfield Rd.

## UNEMPLOYMENT COMPENSATION

### 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 \$6,250 in a calendar quarter, OR three or more employees for some portion of a day in twenty or more weeks during the year;
- b) employed migrant labor;
- c) employed seasonal workers on truck farms, orchards or vineyards; or
- d) employed seasonal workers and migrant workers at the same time and if the seasonal workers did the same work as the migrant workers at the same location.

### Responsible employer

Depending upon the circumstances, either the farm operator or the crew leader may be the responsible 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

- Farm work 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 by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of his father or mother.
- Service performed as part of an unemployment work-relief or work training program assisted or financed in whole or in part by any federal or state agency or political subdivision thereof, by an individual receiving such work relief or work training.
- Service performed on a fishing

vessel normally having a crew of fewer than ten if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act.

**Employers must comply with the following.**

1) Pay unemployment compensation tax on the first \$9,000 of annual payroll earnings for each employee. There are two parts to the tax: federal and state.

a) The effective FEDERAL tax is 0.8 percent of the first \$7,000 of the annual payroll of each employee. (The actual federal tax is 6.2 percent less a credit of 5.4 percent if the employer pays the state tax.)

b) 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 \$9,000 of the 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 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.

2) 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. The State reporting form (C-3) is due during the month after the quarter ends. The state may impose a penalty for reports that are filed late and an additional penalty because of taxes being paid after the due date.

3) 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 10 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 10 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.

- 4) 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).
- 5) Have records available for inspection at any reasonable hour during the business day and maintain records for a period of 5 calendar years.

### **Employee eligibility**

To be eligible for unemployment compensation, an individual must be employed less than full time, able to work, available for work, actively seeking work and not subject to any disqualification or ineligibility. A claimant must have the necessary wage credits during the base period. The base period consists of the first four of the last five completed calendar quarters preceding the effective date of the worker's initial claim. Claims are effective the Sunday preceding the filing date. Employers wishing to obtain tax forms or information pertaining to taxes or coverage under the Texas Unemployment Compensation Act should contact their local TEC office or write to the Texas Employment Commission, Tax Department, Austin, Texas 78778.

### **Weekly benefits**

The weekly benefit amount to which a claimant is entitled is based on the claimant's earnings during the base period. The maximum benefit amount can only be changed by an act of the Legislature. It is subject to change on an

annual basis.

### **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.

Farm workers may not be eligible for benefits if it is found that:

- 1) they voluntarily quit their job without good cause attributable to his employer;
- 2) they were discharged for misconduct connected with their work;
- 3) they fails to apply for or accept suitable work;
- 4) their unemployment is due to participation in a labor dispute;
- 5) they have willfully misrepresented their case. (This is also cause for fine and imprisonment);
- 6) they are receiving or are eligible to receive a retirement income—other than disability—from a base period employer;
- 7) they are receiving or is seeking unemployment benefits under an unemployment compensation law of another state or the United States; or
- 8) they are illegal aliens.

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

## WORKER'S COMPENSATION LAW

Worker's Compensation laws covering agricultural laborers took effect January 1, 1985. These laws address on-the-job injuries and the corresponding insurance benefits provided to those injured or disabled while performing these work-related functions.

### Who must comply

While the law does not require employers to purchase workers compensation insurance, all employers must comply with specific provisions within the law.

### Exemptions

Some agricultural workers are still exempted from coverage under the Worker's Compensation Law. An employer may, however, elect to obtain coverage for exempt employees. If an employer does not obtain coverage for exempt employees the employer is not deprived of their common law defenses.

The law covers three classes of agricultural employees: migrant, seasonal and other.

### Migrant workers

There are no exemptions under the law with regard to migrant workers regardless of the number employed or the gross annual payroll. For the purpose of this law, migrant workers are those persons employed in seasonal or temporary jobs and required to be away from their permanent residences

overnight.

If migrant labor is provided by a labor agent, the labor agent is responsible under this law as the employee of the migrant labor. The law mandates that labor agents who do have coverage present evidence of insurance to those with whom they contract. When the agent purchases the insurance, the person with whom the labor agent contracts is not responsible in a separate action should injury or death occur, except as provided by the law.

If the agent does not subscribe, however, the person with whom he has contracted is responsible along with the labor agent in any action to recover damages for injury or disability. The law does allow an employer to purchase worker's compensation insurance when faced with a situation in which the agent has not subscribed.

### Seasonal workers

These are employees working in a seasonal or temporary position but are not required to be gone from their permanent residences overnight. Seasonal workers employed on a truck farm, orchard or vineyard are not exempt by this law. A truck farm is a farm on which fruits, garden vegetables, potatoes, sugar beets or vegetable seeds are produced for market. There are no exemptions or exclusions for seasonal labor working in these three operations.

If a seasonal worker is working for an employer or labor agent who

employs migrant workers, and the seasonal worker is doing the same work at the same time at the same place as migrant workers, then the seasonal worker is considered to be a migrant worker. In these circumstances, there is no exemption from coverage.

Seasonal workers who do not fall into the above categories are exempt from the law if their employer's gross annual payroll was less than \$33,311 in 1993. For exemptions in subsequent years, the preceding year's payroll must be less than the prior year's required payroll amount adjusted for inflation. The Comptroller will provide an annual inflation multiplier before October of each year.

#### **All other farm and ranch laborers**

To be exempt, their agricultural employer must employ fewer than three persons who are not seasonal or migrant workers and had a payroll during the proceeding year that was less than the payroll exemption threshold outlined under the seasonal worker provision. For 1993, the threshold was \$33,311. Subsequent threshold figures are determined by the state and released in October of each year.

The gross annual payroll, referred to in the latter two sections, includes amounts paid directly to farm and ranch laborers, seasonal and migrant workers and to labor agents for their services and the services of migrant or seasonal workers. It does not include wages paid to the employer or his family (if a sole proprietorship), a partner or partner's family (if a partnership), a shareholder or

member of his family (if a corporation and all shareholders are family members).

Employers who subscribe to the insurance to cover their workers may also cover themselves, a partner, a corporate officer or a family member. When these individuals are to be covered, they must be specifically named and the coverage continues as long as the policy is in effect and the named individual(s) is endorsed on the policy.

#### **Rates**

The cost of workman's compensation insurance is set by the State Insurance Board. It is stated in dollars per \$100 of gross payroll. There are currently several classifications in effect that include persons working in agricultural jobs.

Rates are established through an experience factor system, which tends to equate the claims made in each classification with income generated through the rate structure. Each year the rate is subject to change if the claims and income are not on a somewhat equal basis. Those who wish to purchase insurance should contact an insurance carrier to determine the exact classification of their employees and the cost of coverage.

#### **General Information for Employers Who Choose Not To Have Coverage**

Workers Compensation insurance is not mandatory. If you choose not to purchase workers compensation insurance, there are certain things you still must do to comply with the law. They are:

- 1) display posters in both English and Spanish stating that workers are not covered by any workers compensation insurance;
- 2) provide a written statement to all new employees at the time of hiring that they will not be covered by a workers compensation policy;
- 3) file notice with the Texas Workers' Compensation Commission each year that you do not have workers compensation insurance. This notice must be filed by May 15th of each year.

### **General Information for Employers Who Choose to Provide Insurance**

Employers who provide workers' compensation insurance have additional responsibilities with regard to providing information about the program. Employers must:

- 1) display posters in both English and Spanish informing employees that they are covered by workers' compensation insurance;
- 2) allow new employees who do not wish to be covered under the employer's insurance company to sign a waiver indicating so;
- 3) display posters in both English and Spanish informing employees of the Ombudsman program;
- 4) file an injury report within 8 days of an accident that leads to at least 1 day of lost time, or of notification of an occupational disease; and
- 5) have a "drug free work place"

policy in force if 15 or more persons are employed.

More detailed information and examples of all signs needed can be found in the booklets "Guide To Workers' Compensation" and "Drug Free Workplace Resource Guide," which are available from the Texas Workers' Compensation Commission.

### **Responsible agency**

Texas Workers' Compensation Commission  
 Southfield Building, 4000 South IH-35  
 Austin, TX 78704.

## ADVANCED EARNED INCOME CREDIT - FEDERAL

Certain qualifying individuals are entitled to a basic tax credit of up to \$2,528 for calendar year 1994. Employees who qualify for this credit may choose to receive the basic portion of the tax credit in advance from their employers. Payment is made by using a specific table designed for this purpose and is reflected as a separate item on the employee's 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.

### Employers must comply with the following.

- 1) Inform employees whose wages are not subject to income tax withholding that they may be eligible for the refundable earned income credit.
- 2) Provide the Form W-5, Earned Income Credit, Advanced Payment Certificate, to the employee upon request (available at the nearest IRS office or post office).

### 3) When a Form W-5 is filed:

- a) compute the employee's gross pay (for agricultural employees gross pay is interpreted to mean those wages subject to Social Security taxes);
  - b) compute the employee's Social Security and Withholding Tax (withholding tax is not applicable to agricultural employees unless the worker has voluntarily asked the employer to withhold income tax);
  - c) refer to tables in IRS Circular E (Supplement), Employer's Payment Guide, and compute the Advanced Earned Income Credit payment based on the employee's gross pay for the pay period;
  - d) add the Advanced Earned Income Credit to the worker's net pay for the pay period; and
  - e) retain all records of Advanced Earned Income Credit payments for 4 years. These records should include the following information:
    - copy of employee's Form W-5;
    - amount and date of employee's earnings;
    - dates of each employee's employment;
    - dates and amount of tax deposits made; and
    - copies of returns filed.
- 4) File the appropriate forms with the Internal Revenue Service: Form 941, Employer's Quarterly Tax

Return (for non-farm packinghouses, canners and processors) Form 943, Annual Tax Return for Agricultural Employers (for farm employers).

- 5) File Form 2-3, Transmittal of Income and Tax Statement, to the Social Security Administration in Baltimore annually by February 28th, accompanied by a W-2 form for each individual employee (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 Advanced Earned Income Credit payment from his/her total liability for withholding taxes (non-farm employers only) as he/she periodically remits funds to the Internal Revenue Service.
- If the taxes withheld are not sufficient to cover the amount of the Advanced Earned Income Credit payments to his/her employees, the employer may deduct the excess from the employee contribution to Social Security.
- If there is still an excess of Advanced Earned Income Credit payments, the employer may deduct the excess from the employer's contribution to Social Security.

#### Employee eligibility

- 1) The employee's expected yearly income and adjusted gross income must each be less than \$23,050.
- 2) If married, the employee must not file as married filing separately.

The employee must file a joint return or qualify to file as head of household.

- 3) The employee must not claim the foreign earned income or housing expense exclusion, or the foreign housing expense deduction.
- 4) The employee cannot be a qualifying child of another person.
- 5) The employee must have a qualifying child as defined in Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit.
- 6) A married child generally must be claimed as a dependent by the employee. However, there are special rules that may apply if the child is the child of divorced or separated parents.

#### Additional information (obtainable from the responsible agency)

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

## WORKER PROTECTION STANDARD

The new Worker Protection Standard (WPS) contains requirements designed to reduce the risks of illness or injury resulting from pesticide handlers and agricultural workers occupational exposures.

Although full enforcement of the Worker Protection Standard (WPS) for Agricultural Pesticides is postponed to January 1, 1995, certain requirements remain in effect.

During 1994, you must comply with any WPS requirement spelled out on a pesticide product label. This includes statements regarding personal protective equipment (PPE), restricted-entry interval (REI) and "double notification."

### Who must comply

Agricultural employees who are using pesticides in the production of agricultural plants on farms, forests, nurseries, and greenhouses.

### Exceptions

WPS does not cover pesticides applied:

- on pasture/rangeland, rights-of-way and in structural pest control;
- on livestock or in and around livestock premises;
- in post-harvest activity;
- in control of vertebrate pests;
- as attractants/repellents in traps;
- in habitations, gardens, lawns, etc.;
- in government-sponsored public pest control programs; or
- for research uses of unregistered pesticides.

### Exemptions

The owner and his/her immediate family are exempt from generic provisions, principally training, notification, decontamination and emergency assistance. They must comply with pesticide-specific requirements, such as personal protective equipment (PPE) and restricted-entry intervals (REIs).

### Key definitions

Under the WPS there are two types of agricultural employers:

- one who hires or contracts for the services of agricultural workers and
- one who owns or is responsible for the management and condition of an agricultural establishment that uses such workers.

A handler is one who:

- mixes, loads, transfers or applies pesticides;
- disposes of pesticides or unrinsed containers;
- handles open containers;
- flags;
- cleans, adjusts, handles or repairs contaminated equipment;
- assists with applications;
- enters enclosed area after use of airborne pesticide before PEL or ventilation criteria are met;
- enters area treated with soil fumigant to adjust or remove tarps; and/or
- performs task as a crop advisor during application or an REI.

A worker performs tasks (other than handler tasks) related to the production of agricultural plants on an agricultural establishment.

### Employers must

Make sure that the following protections are provided to workers/handlers that they employ.

1) Establish a central location to:

- a) display a poster containing WPS-specified information;
- b) list the location and the pertinent information about the nearest emergency medical facility; and
- c) post information about each pesticide application in the establishment, including:
  - location and description of treated area,
  - product name, EPA registration number and active ingredient(s),
  - time and date of the application, and
  - restricted entry interval for the pesticide.

2) Keep information about applications posted until at least 30 days after the REI expires and inform workers/handlers where the poster is located and allow them access.

3) In the case of a suspected pesticide poisoning the employer must

- make available prompt transportation to an appropriate medical facility and
- provide the worker or handler or the treating medical personnel with information from the pesticide label and information about how the suspected exposure occurred.

4) Provide workers with a decontamination site while the workers are performing permitted activities in a treated area where an REI is in effect or performing any activities in a treated area where an REI has expired within the past 30 days.

5) Provide pesticide handlers with a decontamination site while handlers are performing handling activities.

6) Supplies for washing pesticides from the skin and eyes must be provided within 1/4 mile of all workers and handlers. For mixing activities, supplies for decontamination must be in the immediate mixing area of handlers. These supplies include:

- enough water for washing (water must be of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed);
- an adequate supply of soap and single-use towels; and
- clean coveralls (at handler sites).

7) Eyeflush water must be made immediately available to handlers and early-entry workers if they are required to wear protective eyewear.

8) An agricultural employer must be informed when a pesticide is to be applied on the agricultural establishment by a commercial handler and must be provided the information needed to be posted at the central location plus:

- whether both oral warnings and treated area posting are required and
- any other protection requirements



on the label for the workers or other people.

### **Protection for workers**

- 1) The employer must keep workers other than trained and protected pesticide handlers out of an area being treated.
- 2) Under some application conditions, employers must keep nursery or greenhouse workers out of locations that are near an area being treated.
- 3) If contact with pesticides is possible, the employer must keep workers from entering a treated area until the REI is over.

### **Exceptions:**

- Non-hand labor tasks can take place up to 1 hour/week/day.
- Tasks can take place if necessary due to a declared agricultural emergency.
- Additional exceptions can be requested of EPA.

- 4) Employers must protect early-entry workers by making sure of the following:

- a) No entry for the first 4 hours following the end of the application and until any label-specified inhalation exposure level or the WPS ventilation criteria have been met.
- b) Workers are informed about health effects and safety information from pesticide labeling.
- c) PPE are provided, cleaned and maintained for the worker.
- d) Worker wears and uses PPE correctly.

e) Workers are instructed how to put on, use and remove the PPE and about the importance of washing thoroughly after removing PPE.

f) Workers are provided a clean place to put on and take off PPE and to store personal clothing.

g) Action is taken, if necessary, to prevent heat-related illness while wearing PPE.

h) Soap, towels and water are provided when PPE is removed.

i) Make sure no contaminated PPE are worn or taken home.

- 5) Each worker and handler must be trained. This requirement is met if the worker or handler:

a) has been trained within the last 5 years as a worker or handler even if they have changed employers or

b) is currently a certified applicator of restricted use pesticides or

c) is currently trained as a handler who works under the supervisor of a certified applicator.

### **Who can conduct the training**

- 1) Those who conduct handler training must:

a) currently be a certified applicator of restricted-use pesticides (in any category of certification), OR

b) currently be designated as a trainer of certified pesticide applicators of pesticide handlers by a state, federal, or tribal agency having jurisdiction, OR

c) have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

- 2) Those who conduct worker training

must:

- a) currently be qualified to present handler training, as described immediately above, OR
- b) currently be trained (as specified in EPA's certification and training regulations) as a handler who works under the supervision of a certified pesticide applicator, OR
- c) currently be trained as a WPS handler, OR
- d) have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

### Notice of applications

- 1) On farms, nurseries and forests, each worker who might enter a treated area or walk within 1/4 mile of a treated area during application or an REI must be warned orally or by posting warning signs at the treated area.
- 2) In green houses, each worker who might enter a greenhouse during an application or an REI must be warned by posted warning signs at entrances to treated areas.
- 3) Some pesticides will have a statement on the product labeling requiring both posting of warning signs and oral warnings to workers.

The posted warning sign must:

- include the words: "Pesticides/Pesticidas - Danger/Peligro - Keep Out/No Entre";
- contain the WPS warning-sign symbol (a stern face and an upraised hand);

- meet size and color requirements; and
- be visible at all usual entrances to the treated area.

The oral warning must:

- give the location and description of treated areas;
- state the time during which entry is restricted; and
- instruct workers not to enter the treated area until the REI is over.

### Prohibition Statement

All product labeling must include a statement prohibiting application of the product in a way that will contact workers or other persons directly through drift.

### Restricted entry intervals (REI)

- 1) All product labeling must include a statement prohibiting entry during the restricted entry interval.
- 2) All product labeling must specify a restricted entry interval(s). Minimum interim restricted entry intervals based on the acute toxicity of the active ingredient by the dermal, skin irritation and ocular routes of exposure are established.
- 3) Previously established entry intervals will be retained if they are based on entry data that meets Agency guidelines. Any other previously established entry guideline is "interim" and would only be retained if it is longer than the interim REI established by the WPS.
- 4) A 48 hour REI is established for any product containing an active

ingredient in Toxicity Category I (highly toxic). [The REI for organophosphate is extended by 72 hours if these products are applied outdoors in areas with less than 25 inches rainfall/year.]

- 5) A 24 hour REI is established for any product containing an active ingredient in Toxicity Category II.
- 6) A 12 hour REI is established for all other products.

### **Personal protective equipment**

1) All product labeling must specify required personal protective equipment (PPE). Minimum PPE and work clothing requirements for pesticide handlers and for early-entry workers are established. (Long-sleeved shirts, long pants, shoes, and socks are defined as work clothing and not PPE.)

2) Minimum PPE requirements for handlers are based on the acute toxicity of the formulated pesticide product by dermal, ocular and inhalation routes of entry.

a) **Ocular:** Protective eyewear is required for Toxicity Category I and II products.

b) **Inhalation:** A respirator is required for Toxicity I and II products. The labeling must specify whether the required respirator is a dust/mist filtering respirator, or organic-vapor-removing respirator with a dust/mist prefilter or air-supplying respirator. Registrants must base this specification on the criteria in the WPS and in the guidance that will be issued to registrants.

c) **Dermal:** Chemical-resistant

gloves are required for Toxicity I, II and III products. The labeling must specify a particular type of chemical-resistant glove. Registrants must base this specification on the criteria in the WPS and in the guidance that will be issued to registrants. Chemical-resistant footwear and socks are required for Toxicity I and II products; shoes and socks are required for all other products. Coveralls worn over another layer of clothing are required for Toxicity I and II products; long-sleeved shirt and long pants are required for all other products.

3) Additional PPE based on exposure pattern are specified:

a) Handlers and early entry workers with overhead exposure also must wear chemical-resistant headgear.

b) Mixers, loaders and equipment cleaners also must wear a chemical-resistant apron.

4) Early Entry PPE requirements are the same as the PPE required for applicators, except any respirator requirement is waived and coveralls and chemical-resistant (or waterproof) gloves are the minimum allowed attire for early entry workers.

### **PPE substitutions and exceptions**

1) Handlers using closed systems for mixing and loading are exempted from all PPE except chemical-resistant gloves and aprons; long-sleeved shirt, long pants, shoes and socks are required. If the closed

system is pressurized, protective eyewear is also required.

- 2) Handlers using enclosed cabs are exempted from all PPE except for any respirator requirement; long-sleeved shirt, long pants, shoes and socks are required. Respirators are waived if the enclosed cab offers respiratory protection equal or greater than the type of respirator specified.
- 3) Handlers or early entry workers working with plants with sharp thorns may wear leather gloves over chemical-resistant glove liners.
- 4) Handlers or early entry workers working in rough terrain may wear leather boots instead of chemical resistant footwear.

#### **Providing hazard information**

- 1) The employer must provide hazard information to any worker who enters a pesticide-treated area on an agricultural establishment where, within the last 30 days, a pesticide has been applied or a restricted entry interval (REI) has been in effect.
- 2) The employer must provide hazard information to any handler of a pesticide that is being handled or that has been handled within the past 30 days.
- 3) The employer must provide hazard information to any handler or worker who may be exposed to the pesticide during its normal conditions of use or in a foreseeable emergency.
- 4) The information must be provided at a central location: accessible to workers and handlers during

working hours and readily obtainable in an emergency.

- 5) The information must be provided in written form within a reasonable amount of time, on request from the worker or handler, the worker's or handler's representative, or medical personnel treating the worker or handler.

#### **Format of hazard information**

Hazard information must be either:

- 1) A Material Safety Data Sheet for the product, or for each active and inert ingredient listed on the label of each product, or
- 2) A Fact Sheet that has been prepared or approved by a state or federal agency for the pesticide.

#### **Content of fact sheets**

- 1) Each fact sheet shall contain information, expressed in nontechnical terms, except for items specifically targeted towards medical personnel, such as antidotes or emergency treatment.
- 2) Fact sheet information must be accurate and updated as necessary.
- 3) The information shall include the following.
  - a) Typical brand name(s) of the pesticide, and the chemical name and common name of the pesticide.
  - b) Information on the physical characteristics of the pesticide.
  - c) Information on the comparative toxicity of the pesticide, including acute, allergic, chronic and delayed-onset effects.

- d) Information on any special protection needed in handling the product.
- e) Information on spill or leak cleanup procedures and disposal methods for excess chemical and for containers.
- f) The date the fact sheet was prepared or revised to its present form.
- g) The telephone number of the National Pesticide Telecommunication Network and the name, address and telephone number of any responsible party who could provide more information about the product or ingredients or about emergency procedures.
- h) If certain information is not obtainable, the fact sheet will so indicate.

**Notification to workers**

The labeling of any product containing an active ingredient that is in Toxicity Category I because of dermal toxicity or skin irritation potential and of any product that is a fumigant that may be applied in a greenhouse must have a statement requiring both posting of warning signs and oral warnings to workers.

**Responsible agency:**

Texas Department of Agriculture  
P.O. Box 12847  
Austin, TX 78711

# AGRICULTURAL HAZARD COMMUNICATION ACT OF TEXAS (Right to Know)

The Agricultural Hazard Communication (Right to Know) Act of 1987 was enacted to provide farm operators and agricultural workers with information about hazardous chemicals that they will work with. The main purpose is to provide better information about working safely with agricultural chemicals.

## Who must comply

The following employees are subject to the Emergency Reporting Requirement.

- 1) agricultural employers who themselves or through labor agents hire migrant or seasonal workers and whose gross annual payroll for those workers is \$15,000 or more and who annually use or store 55 gallons or 500 pounds of any pesticide;
- 2) agricultural employers who themselves or through labor agents hire permanent agricultural workers (other than migrant or seasonal workers) whose gross annual payroll is \$50,000 or more and who annually use or store 55 gallons or 500 pounds of any pesticide;
- 3) agricultural workers who plant, cultivate, harvest or handle an agricultural or horticultural commodity in its unmanufactured state or who handle a chemical covered by this law; and other entities that normally store pesticides in an

amount in excess of 55 gallons or 500 pounds are subject to the Emergency Reporting Requirement.

An agricultural laborer is a person who plants, cultivates, harvests or handles an agricultural commodity, and this includes a laborer who handles chemicals covered by this Act. With regard to payroll, thresholds for seasonal, migrant, permanent workers and all such employees, regardless of their duties, are to be included in the gross payroll calculation.

## Responsibilities

Covered agricultural employers will be responsible for collecting, storing and making available to agricultural workers information about pesticide use. The law requires agricultural employers to:

- 1) provide workers with relevant crop sheets and ensure that they are read aloud to workers at least once each work season;
- 2) inform workers about relevant pesticide reentry intervals;
- 3) maintain Workplace Chemical Lists and Material Safety Data Sheets and make these accessible to workers, treating medical personnel, or a member of the community upon request;
- 4) provide other basic health and safety information, approved by the Texas Department of Agriculture, to their workers on the first pay day of each work

- season; and
- 5) provide emergency information to their workers, local fire chiefs, medical personnel and designated farmworker representatives, upon request.

### **Crop sheets**

The Texas Department of Agriculture (TDA), in coordination with the Texas Agricultural Extension Service (TAEX) develops crop sheets for most major Texas crops. The crop sheets are in Spanish and English and contain:

- 1) a list of the most commonly used pesticides;
- 2) the months of pesticide application;
- 3) the reentry interval or length of time that farmers are required to wait before allowing workers to enter a pesticide-treated field;
- 4) the acute or short-term symptoms of pesticide exposures, as well as their chronic or long-term health effects;
- 5) a summary of agricultural workers' rights under the law;
- 6) emergency procedures for pesticide poisoning;
- 7) summary of basic safety measures to prevent pesticide poisoning;
- 8) information about the availability of Material Safety Data Sheets and Workplace Chemical lists;
- 9) information about training programs to be provided statewide by TDA and TAEX;
- 10) a space for the name and phone number of the employer to be contacted for more information.

Copies of the crop sheets will be provided on request by TDA or TAEX to agricultural employers for reproduction and distribution to workers in their employment. The sheets will be updated periodically to reflect changes in use patterns and health information.

### **Workplace Chemical Lists:**

The Workplace Chemical List is a form provided to agricultural employers by TDA and is to be used for recording information about the pesticides used or stored in the workplace. The employer shall maintain one form for each crop, workplace or work area, whichever is most practical, and keep these records annually for chemicals in excess of 55 gallons or 500 pounds used or stored in the workplace. The following information is to be included on the Workplace Chemical List:

- 1) employer's name, address and other means of identification;
- 2) name of crop;
- 3) date of each pesticide application or storage;
- 4) product name of pesticide;
- 5) environmental Protection Agency (EPA) registration number from the label;
- 6) location(s) or site(s) treated or where stored;
- 7) number of acres treated;
- 8) an estimate of the total quantity of pesticide used; and
- 9) location of pesticide storage area.

The law requires that the lists be updated as pesticides are applied or stored and shall be maintained by the employer for 30 years. Or, employers may file these lists with TDA annually by

January 31, and TDA shall store the data and make them available upon request.

### **Material Safety Data Sheets**

A Material Safety Data Sheet (MSDS) is a document that specifically identifies the chemical and its ingredients and gives health, safety and emergency information about the pesticide. Material Safety Data Sheets are provided by chemical manufacturers and distributors to purchasers in the state. Dealers are required to provide MSDS, if available, on request. The employer must keep the most current MSDS available on file for each pesticide listed on the Workplace Chemical List.

### **Emergency reporting requirement**

This clause applies to operations that normally store more than 55 gallons or 500 pounds of pesticides at a location within 1/4 of a mile of a residential area with three or more private dwellings. Those covered by this clause are required to notify their local fire chief of the name(s) and phone number(s) of responsible person(s) who can be contacted for further information. Upon request by the fire chief, they must:

- 1) provide copies of the Workplace Chemical Lists and Material Safety Data Sheets; and
- 2) allow inspection of the storage area.

### **Agricultural workers' rights**

Agricultural workers are entitled to:

- 1) receive copies of crop sheets and to have this information read to them by the covered agricultural employers or their

representatives;

- 2) have access to Material Safety Data Sheets and Workplace Chemical Lists, upon request;
- 3) be informed of the last and future dates of pesticide applications and applicable reentry periods;
- 4) be provided with other basic health and safety information on the first pay day of the work season as approved by TDA;
- 5) contact TDA to report suspected violations of this law without fear of retaliation or any disciplinary action, and to request anonymity, when necessary; and
- 6) designate a representative to act on their behalf.

### **Designated representatives**

A designated representative is an individual or an organization to whom an agricultural worker gives written authorization to exercise the worker's rights under this law. A certified union representative is not required to have written authorization.

### **Member of the community**

Anyone who lives, works or attends school, or is treated in a hospital, or is in a nursing home within a 1/2-mile radius of a nursery operation, or 3-mile radius of any other workplace.

### **Legal ramifications**

Upon receiving a complaint, the Texas Department of Agriculture will complete an investigation within 90 days.

- Employers who knowingly



disclose false information or negligently fail to disclose a hazard are subject to a civil penalty of not more than \$5,000 per violation.

- Employers who cause an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information are subject to a criminal fine of not more than \$25,000.

**Responsible agency**

Texas Department of Agriculture  
PO Box 12847  
Austin, Texas 78711  
(512) 475-4457

## FA **MIGRANT LABOR HOUSING FACILITY ACT**

### **Objective**

The objective of these state regulations is to ensure 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/she is providing free or rental housing to two or more seasonal, temporary, migrant families or three or more seasonal, temporary, migrant workers and their accompanying dependents for more than 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. This application shall be made to the department at least 45 days prior to and not more than 60 days before the intended operation of the facility. The application shall state the ownership and location of the proposed labor housing

facility. The application shall be accompanied by a license fee not exceeding \$100. An inspection will be made within 30 days of the receipt of the application and fee. If the housing facility meets the reasonable minimum standards of construction, sanitation, equipment and operation required by the rules of this Act, a permanent license is entered. Unless otherwise revoked, the license is good for 1 year and it is not transferable. Renewal shall be made not less than 30 days prior to expiration.

If the migrant labor housing facility does not pass inspection, the department shall give notice to the applicant of the reason why the housing facility does not meet the standards. The applicant may request the department to reinspect the housing facility within 60 days of the notice. However, if the facility does not meet the standards upon reinspection, a new application must be filed with the department.

Licenses may be suspended or revoked by the department for violation of any of the provisions of this Act.

The regulations allow investigations of the housing facility by representatives of the health department, upon proper notice, to determine whether provisions of the act have been or are being violated. Investigations are to be made at reasonable hours. Violations of this Act shall be subject to civil penalty of \$200 for each day of the violation. A district court injunction may be obtained to restrain any person from operating a housing facility found in violation of this Act.

## Employee 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 of 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 department's regional offices in the respective areas of coverage.

Texas Department of Health  
General Sanitation Division  
1100 West 29th Street  
Austin, Texas 78756

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## FARM LABOR CAMPS - TEMPORARY - FEDERAL

There are currently two laws that 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).

### Migrant labor housing regulations

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

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

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 variations in inspection requirements.

### 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. Temporary farm labor housing constructed after April 3, 1980 must comply with OSHA standards. Farm labor housing built to the earlier, less restrictive ETA standards may be operated under these standards until the housing undergoes major modifications.

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 a practical necessity. Differences between OSHA and employers develop when the employer 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 employer 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 employers 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 that 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 through state employment service agencies, will continue to conduct pre-occupancy inspections of facilities on farms that it supplies with workers. ESA (Employment Standards Administration) will inspect facilities, owned or operated by crew leaders that have not already been inspected by ETA. OSHA 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 comply with the following.**

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;



## OSHA TEMPORARY LABOR CAMP REGULATIONS

### Objective

The general purpose of the Occupational Safety and Health Act is to ensure, as far as possible, that every working man and woman in the nation has safe and healthful working conditions and to preserve our human resources.

### Coverage

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 or injury, 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 specific provisions for employees.

## STANDARDS FOR SANITATION AT TEMPORARY PLACES OF EMPLOYMENT

The purpose of this Act is to set standards for the protection of the employee and the public welfare. This Act also provides for sanitary facilities at temporary places of employment. These facilities are for the dispensing of drinking water, washing the hands, collecting refuse or eliminating body wastes.

### Who must comply

Any employer who employs two or more persons directly or indirectly in work that is performed in the field away from a permanent structure must comply.

### Employer's responsibility

- 1) Each employer shall provide and maintain sanitary facilities at any temporary work place.
- 2) Where employees of more than one employer work at a temporary place of employment it is the responsibility of each employer to furnish sanitary facilities for these employees.
- 3) The sanitary facilities are provided at no cost to employees.
- 4) Employers are to inform employees of the location of the sanitary facilities.
- 5) Employers with six or fewer employees on any work day can arrange for transportation to toilet and handwashing facilities instead of providing temporary facilities. Nearby facilities must meet minimum sanitary standards and be accessible for employee use.

6) Potable drinking water, suitably cool and in sufficient amounts, must be readily accessible to all employees.

7) One toilet and a handwashing facility must be provided for every 20 employees. These facilities must be located within a 1/4-mile walk or at the closest point of vehicular access. Such facilities are not required for employees who do field work for 3 hours or less each day.

8) Maintenance of the toilet and handwashing facilities must be in accordance with public health sanitation practices. Water should be changed daily or as often as needed, toilets kept clean and potable water kept sanitary.

9) The employer must inform the employee of the relevant health hazards in the field and the practices necessary to minimize exposure to them.

Employees are to make proper use of the sanitary facilities that are provided to them.

Each temporary work site should be kept clean and free of obstructions, have proper waste collection and disposal operations, along with proper lighting and ventilation in the sanitary facilities. Employers should also supply adequate amounts of drinking water for the employees and have it clearly marked as such.

This Act requires that employers supply toilet facilities or access to



facilities for the employees. At the work site, the toilet facilities can be portable or fixed at a location. Where both sexes are employed, these shall be separate toilet facilities. At a work site with 15 or fewer employees, there should be at least one toilet for both men and women. As the number of employees increase, the number of toilet facilities should increase to an adequate number. These facilities should always be kept sanitary.

At temporary work sites where employees are permitted to eat lunch, employers shall provide or designate an area for that purpose. At this site, an adequate number of containers shall be provided for the disposal of all waste products.

### **Penalties**

An offense under this Act can either be a misdemeanor or a civil penalty. A misdemeanor is punishable by a fine of not less than \$10.00 or more than \$200 for each violation and for each day the violation continues. If the defendant has previously violated these statutes, the fine shall not be less than \$10 and not more than \$1,000.

### **Responsible agency**

Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199  
(512) 458-7111

## 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/her. 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 nonserious, 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.

An employer 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 comply with the following.

- 1) Inform employees of safety regulations and display prescribed posters in a place where employees will see them.
- 2) Report any accident that results in one or more deaths or in hospitalization of five or more employees. This report must be made within 48 hours. (Also see reporting requirements under Worker's Compensation.)
- 3) Maintain a log of occupational injuries and illnesses and make reports if selected to participate in an OSHA survey of injuries and illnesses.

### Employers of 11 or more workers must:

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

- Slow moving vehicle emblems.
- Logging and pulpwood operations.
- Roll-over protection structures (ROPS) and seatbelts on certain tractors.
- Temporary labor camps.
- Storing and handling anhydrous ammonia.
- Guarding of farm machinery.
- Retaining all records for a period of 5 years.
- Hazard communications.

**Employees must comply with the following.**

Each employee must comply with all safety and health regulations that are applicable to his/her own actions and conduct. He/she must obey all rules, regulations and safety procedures required by his/her employer to comply with the law, including participation in safety training and certifying that he/she has received such training. The employee is not subject to fines for noncompliance as is his/her 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 ensure the ready availability of medical

persons for advice and consultation on matters of workplace health.

- 2) In the absence of a nearby infirmary, clinic or hospital, 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) Persons in charge of such facilities shall be trained to administer first aid and shall be readily accessible 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 and 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 the 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/she 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 the 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 that 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/she 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 walk-around inspections.

#### Additional information (obtainable from the responsible agency)

- 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) Seguaridad 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**

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

## MOTOR CARRIER REGULATIONS - FEDERAL

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 that 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 within the state is exempt from the Commercial Drivers License provisions of the Federal Motor Carrier Safety Regulations if:

- 1) the vehicle is controlled or operated by a farmer;
- 2) the vehicle is operated within 150 miles of the farm;
- 3) the vehicle is used to transport agricultural products, farm machinery or farm supplies to or from a farm; and
- 4) the vehicle is not used in the operations of a common or contract motor carrier.

To receive this exemption, drivers must complete form CDL-2(4190).

The exemptions listed above are for Classes A and B of the Commercial Drivers License Code. The Class C license has no exemptions. A Class C license is required if:

- 1) the vehicle is designed to transport 16 or more passengers including the driver or

- 2) the vehicle is used in the transportation of hazardous materials that require the vehicle to be placarded under 49 CFR, Part 172, Subpart F.

### 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 that interferes with prehension or power grasping, or an arm, foot or leg that 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, 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 Highway 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/herself and his/her 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 or 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; and
- 10) possess a valid driving permit applicable to the type of vehicle being driven.

### **Operator regulations**

Regulations governing the driving of motor vehicles carrying migrant farm workers include the following.

- 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.
- g) Gate and doors.
  - h) Ladders and steps.
  - i) Hand holds.
  - j) Emergency exits.
  - k) Communication with driver.
- 6) Prohibited heaters, including:
    - 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.

#### Vehicle specifications

The regulations also have requirements for certain parts and accessories, including the following.

- 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.



## MOTOR CARRIER REGULATIONS -- TEXAS

### Coverage

Any company or person who transports five or more migrant workers to or from a work place for a distance of more than 50 miles must comply 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 must: 1) carry a medical statement certifying that he is in good physical condition; 2) have a valid permit, have driving experience and knowledge of traffic rules; and 3) follow safe driving

practices, including limitations on hours of driving. Vehicles must: 1) have proper lighting and safety equipment; 2) be in good, safe condition; and 3) protect passengers from the cold and rain.

At least every 6 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 may be obtained from the Texas Department of Public Safety, Austin, Texas 78773, the agency is responsible for enforcement of the state regulations.

## EQUAL EMPLOYMENT LEGISLATION - 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. The amount of litigation in this area has increased dramatically in recent years. The following are brief summaries of some of the laws addressing this issue.

### 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. 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.

Employers should be careful about the questions asked on an employment application form and in the interview. Questions that 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 several similar 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 against employees who are subject to the minimum wage provisions of the act. Exceptions are permitted when wages are based on: (1) a seniority system; (2) a merit system; or (3) a system that measures earnings by quantity or quality of 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 Act 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 because of age, in matters of hiring, discharging, wages and terms, conditions or privileges of employment.

The law prohibits any statement in advertisements that indicates 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 ensure 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 older."

Some exceptions to the rules are permitted, but they should be used with care. An exception is permitted where

age is a bona fide occupational qualification 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 the test cannot be related to job performance, it is unlawful. A vital factor in employee testing as it relates to the 40 to 70 age group is the "test-sophistication" or "test-wiseness" of the individual. Younger persons, because of 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.

## **Civil Rights Acts of 1991**

This law clarifies several issues that were seemingly left unresolved or were not addressed in preceding Civil Rights Acts. One provision of this Act that should be of interest to agricultural employers is a clause that allows compensatory and punitive damages for intentional acts of discrimination and unlawful harassment. Such damages were not authorized in Title VII of the

1964 Civil Rights Act or the Americans with Disabilities Act.

## **Americans with Disabilities Act**

This Act addresses the special needs of persons who may have one or more physical or mental disabilities. With regard to employment, the Act requires the following.

- 1) Employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise qualified for the job.
- 2) Employers can ask about one's ability to perform a job, but cannot inquire if someone has a disability or subject a person to tests that tend to screen out people with disabilities.
- 3) Employers will need to provide "reasonable accommodation" to individuals with disabilities. This includes steps such as job reconstructing and modification of equipment.
- 4) Employers do not need to provide accommodations that impose an "undue hardship" on business operations.
- 5) All employers with 15 or more employees must comply, effective July 26, 1994.

### **Remedies:**

Individuals may seek legal assistance to remedy any perceived discrimination under this Act. Those seeking legal action may ask for monetary damages and penalties.

## Enforcement

Enforcement 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, DC, January 1981.

## Family and Medical Leave Act of 1993

The Family Medical Leave Act (FMLA) requires employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months.

## Coverage

Employers with 50 or more employees for each working day during

each of 20 or more calendar work weeks in the current or preceding year must comply.

## Reasons for taking leave

Unpaid leave must be granted for any of the following reasons:

- 1) to care for the employee's child after birth, or placement for adoption or foster care;
- 2) to care for the employee's spouse, son, or daughter, or parent, who has a serious health condition; or
- 3) for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

## Advance notice and medical certification

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- 1) The employee ordinarily must provide 30 days advance leave notice when the leave is "foreseeable."
- 2) An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

## Job benefits and protection

- 1) For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- 2) Upon return from the FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.
- 3) The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## Unlawful acts by employers

FMLA makes it unlawful for any employer to:

- 1) interfere with, restrain or deny the exercise of any right provided under the FMLA or
- 2) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## Enforcement

- 1) The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- 2) An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any federal or

state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

## Related Information

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

- 2) The employer has the right to discharge the individual.
- 3) The employer furnishes the individual tools or implements, equipment, etc. for doing his/her job.
- 4) The employer furnishes the individual a place in which the individual regularly and normally works.
- 5) The individual is required or allowed to provide services to others under the name of the employer.
- 6) The individual provides his/her services on a continuous and/or exclusive basis.

The individual will probably be held to be performing contract labor if:

- 1) The laborer works off the farmer's premises.
- 2) The laborer provides his/her own materials and equipment.
- 3) The laborer can negotiate his/her own salary and compensation.
- 4) The laborer has to redo the work for no additional compensation if it is not properly performed.
- 5) The laborer is paid by the job and not by the hour and submits a bill for work done.
- 6) The laborer sets his/her own

## EMPLOYER/EMPLOYEE COLLECTIVE BARGAINING IN AGRICULTURE

There are no 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.

### Related information

- \* Eliminating Discrimination in Employment: A Compelling National Priority. The U.S. Equal Employment Opportunity Commission, July 1976.
- \* Laws Administered by EEOC, Equal Employment Opportunity Commission, Washington, DC, January 1981.

### Family and Medical Leave Act of 1993

The Family Medical Leave Act (FMLA) requires employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months.

### Coverage

Employers with 50 or more employees for each working day during

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.

## CONTRACT LABOR

### What is contract labor?

This question has come up time and time again as it pertains to several areas of law and regulations. Unfortunately, there is no clear cut, specific definition that can be used. Each case must be analyzed individually.

However, the one common theme that continues to surface, whether it be in Workers' Compensation, Unemployment Compensation or for tax purposes, is: Who has control and direction of the performance of the work? If the farmer or rancher retains control and direction, more than likely the worker is his/her employee and a contract labor situation does not exist.

The Texas Employment Commission (TEC) has the responsibility of distinguishing an employee from an independent contractor. The general theme of this distinction is that the employer has direct control over the employee's work, and is responsible for extensive wage reporting and tax liabilities of the employee, but not so for an independent contractor. However, if the TEC identifies some individuals who are otherwise treated as independent contractors as employees, then back taxes, penalties and interest are levied on the employer by the IRS.

### Criteria used to determine employee vs. contract labor

The individual is normally held to be an employee if:

- 1) The employer has the right to direct and control the individual's performance, both as to results and as to means and details of accomplishing the results. The employer need not actually exercise such control; it is enough if the employer merely has the right to do so.
- 2) The employer has the right to discharge the individual.
- 3) The employer furnishes the individual tools or other implements, equipment, etc., for doing his/her job.
- 4) The employer furnishes the individual a place in which the individual regularly and normally works.
- 5) The individual is required or allowed to provide services to others under the name of the employer.
- 6) The individual provides his/her services on a continuous and/or exclusive basis.

The individual will probably be held to be performing contract labor if:

- 1) The laborer works off the farmer's premises.
- 2) The laborer provides his/her own materials and equipment.
- 3) The laborer can negotiate his/her own salary and compensation.
- 4) The laborer has to redo the work for no additional compensation if it is not properly performed.
- 5) The laborer is paid by the job and not by the hour and submits a bill for work done.
- 6) The laborer sets his/her own



schedule.

- 7) The laborer advertises his/her services independently, i.e., Yellow Pages advertisements.
- 8) The laborer is free to work for other entities.
- 9) The laborer in fact works for other businesses.
- 10) The laborer hires other individuals to perform the work or assist him/her in performing the work.
- 11) The laborer is free from supervision from the farmer in the performance of the laborer's work.
- 12) The service the laborer performs is fairly unrelated to the primary service of the farmer's business.
- 13) The individual has a contractual relationship with the employer, which cannot be arbitrarily canceled.
- 14) The individual runs the risk of losing money as well as a chance of making money on the job.
- 15) The individual has investments other than his/her own time in the job.

If most of these factors are true, it is likely that a contract labor situation exists.

#### **Specific jobs considered contract labor may include**

- 1) Custom harvesters
- 2) Crop dusters
- 3) Sheep shearers
- 4) Veterinarians
- 5) Construction contractors
- 6) Labor agents who direct and control workers compensation
- 7) Crew leaders who direct and control unemployment compensation

#### **Reminder**

If a contract labor situation does exist, employers are obligated to file a form 1099-MISC with the IRS for each contractor that is paid more than \$600 during the year.

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