

Recent Developments In Labor Regulations

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Increasingly agricultural employers are being brought into the mainstream of the total U.S. labor market. In many agricultural jobs the needed skills are indistinguishable from non-agricultural employment. Hardly a legislative session, state or national, goes by without some of the traditional differences between agricultural employment and non-agricultural employment being reduced. As most nurserymen know there are some benefits which accrue from this process but at the same time it increases the cost of doing business.

The growing profusion of laws and regulations which face farm employers, particularly smaller employers who cannot afford a labor relations or labor management specialist, makes it difficult if not impossible to stay abreast of the labor laws and regulations which govern their relationship with their employees.

Since 1976 when the first "Handbook of Regulations Affecting Florida Farm Employers and Employees" was published, IFAS has attempted to provide a ready reference and guide to the employer's responsibilities under each of the several state and federal laws which affect farm employers. More than 20,000 copies of this publication are distributed every two years.

Most labor related laws and regulations are enacted to protect the health and welfare of agricultural workers. In order that agricultural workers who do not understand English have access to the provisions of the laws designed to protect them, the "Handbook of Regulations Affecting Florida Farm Employers and Employees," is published in Spanish as well as English.

Laws and regulations which deal with the agricultural employer-worker relationship address such issues as safety in the workplace, wages and working conditions, child labor, unemployment compensation, terms and conditions of employment, transportation and housing of farmworkers, illegal aliens, discrimination, field sanitation and drinking water, medical and health care and several programs to encourage employers to hire certain disadvantaged groups.

In several of these areas of legal concern agricultural employers are faced with double jeopardy by federal and state laws which deal with the same problem. This is the case in child labor, farm labor contractor (crew leader) registration, illegal aliens, farm labor camps, human rights, and currently the U.S. Department of Labor is developing Field Sanitation and Drinking Water regulations which would duplicate Florida law.

Probably the most significant recent development in agricultural employment was the implementation on April 14, 1983 of the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSPA). Prior to this date

many of the relationships between agricultural workers and registered crew leaders (labor contractors) were governed by the Farm Labor Contractor Registration Act (FLCRA). Many agricultural employers were required to register as labor contractors under FLCRA and most growers felt this was an overly vigorous enforcement policy by the Department of Labor.

MSPA eliminated most of the registration requirements for agricultural employers but at the same time it imposed on almost all agricultural employers the same requirements that were reserved only for labor contractors under the earlier FLCRA. As a result, with some few exceptions, any agricultural employer who hires 500 man-days of labor during any calendar quarter of the preceding calendar year is subject to the provisions of MSPA.

500 man-days during a calendar quarter is the equivalent of approximately seven full-time employees working five days per week.

At the time of MSPA implementation on April 14, 1983, the U.S. Department of Labor (USDOL), Wage and Hour Division announced a "Year of Grace" for farm employers to study, understand, and comply with MSPA. Now the USDOL has made it clear that the "Year of Grace" is over and the summer of 1984 will be a summer of enforcement. Agricultural employers should be particularly careful in the following areas: (1) Vehicle safety when transporting workers, (2) housing which is not in compliance with federal and state safety and health standards, (3) disclosure to employees of wages, hours and other conditions of employment, and (4) maintaining proper records.

If you employ a labor contractor, under most circumstances MSPA makes you a "joint employer" hence jointly liable if the labor contractor does not comply with the provisions of MSPA. If housing is owned by you as an agricultural employer, you are responsible for meeting the appropriate standards and seeing that the terms and conditions of occupancy are posted, including any and all charges associated with the housing. The USDOL considers meal charges to be a term or condition of occupancy.

Money and civil penalties for knowingly hiring illegal aliens is limited only to registered labor contractors under MSPA. However, agricultural employers should not ignore the Florida law which prohibits knowingly hiring illegal aliens. Also agricultural employers should not lose sight of the fact that the U.S. Border Patrol has extraordinary powers anywhere in Florida to arrest employers and impound vehicles in connection with harboring, concealing or transporting illegal aliens. A recent Supreme Court decision confirmed the Border Patrol's authority to enter open fields and interrogate workers without a search warrant.

Congress is currently restructuring America's immigration policies and practices. As this issue goes to press a joint committee of Congress is working out the differences between the House and Senate versions of the Simpson-Mazzoli Bill.

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As a nation we have become dependent upon a large group of illegal aliens (estimated as high as 12-13 million by some, but no one knows for sure). These people make hotel beds; cook, serve and wash dishes in restaurants; sew clothing in garment factories and harvest fresh fruits industry, in fact, produces a much larger favorable impact on Florida's economy than might be realized.

The Immigration Reform and Control Act (IRCA) of 1983 currently passed by both Houses of Congress would place the employer as the principal enforcer of the nation's immigration reform policy. By making it unlawful to hire, recruit or refer for employment any illegal alien, and establishing heavy fines and jail terms for employers who do violate the act, it is felt that the economic attractiveness of jobs in the U.S. will be eliminated. The rationale is that if there are no jobs in the U.S. for illegal workers because employers are afraid to hire them, illegal workers would not come to the U.S.

Other provisions of the IRCA call for increased resources for the Immigration and Naturalization Service to provide for increased border enforcement; amnesty for illegal workers who "have resided continuously" in the U.S. since a specified date; worker identification which is nontransferable, difficult to counterfeit and applicable to all workers; substantial reform of the H-2 program which permits the importation of foreign workers to perform seasonal agricultural labor when American workers cannot be found; and finally a three year transition period to allow U.S. agricultural to convert to a legal workforce.

Dependence on an illegal workforce has negative consequences for farmers, for workers and for society. Farmers are vulnerable to crop losses as critical harvest workers disappear when Border Patrol raids scatter workers destroying crops in the ensuing chase. Illegal workers are particularly vulnerable to exploitation by unscrupulous employers or third parties trying to gain an advantage over employers who conform to legal labor standards. Furthermore, illegals are reluctant to report crimes against them and often pay exorbitant prices for credentials, transportation and housing.

Immigration reform is a reality. By the time this publication reaches you, it will probably be the law of the land. As employers of agricultural labor you need to be aware of how to assure that your work force is legal. Employers of seasonal and even full-time workers should begin now to prepare for the time when acceptable numbers of legal workers will be available only under conditions of strict labor standards and enlightened personnel management practices. Do you have your house in order.

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