



The Changing Landscape – Everything Agricultural Employers Should Understand about Farm Labor Law

Presented by Brandon Davis

Agenda

- A. Labor Rights and Protections
- B. Housing and Living Conditions
- C. Migrant and Seasonal Worker Rights
- D. Health and Safety
- E. Child Labor
- F. Immigration Policy and Labor
- G. Workplace Discrimination
- H. Significant Employment Law Changes of 2023

A. Labor Rights and Protections

Agricultural workers have historically been **excluded** from some federal labor laws, such as the Fair Labor Standards Act (FLSA) and the National Labor Relations Act (NLRA). Ensuring basic labor rights and protections for these workers, such as minimum wage, overtime pay, and the right to organize, remains a significant concern. **We need to know the laws that apply to agricultural workers.**

Labor Rights and Protections – FLSA

1. Fair Labor Standards Act (FLSA)

The FLSA establishes minimum wage, overtime pay and child labor standards.

However, certain exemptions apply to agricultural workers, allowing employers to pay lower minimum wages to some workers and providing more lenient regulations regarding child labor in certain circumstances.

Labor Rights and Protections - MSPA

2. Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

The MSPA protects the rights of migrant and seasonal agricultural workers, requiring farm labor contractors and agricultural employers to meet specific registration and disclosure requirements.

The law also covers issues related to wages, working conditions, and transportation.

Labor Rights and Protections - OSHA

3. Occupational Safety and Health Act (OSHA)

OSHA sets health and safety standards for workplaces, including agricultural settings.

Agricultural employers are required to comply with OSHA regulations to ensure the safety of their workers.

Labor Rights and Protections – Title VII

4. Title VII of the Civil Rights Act

Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin.

It covers agricultural workers in cases of discrimination based on these protected characteristics.

Labor Rights and Protections - INA

5. Immigration and Nationality Act (INA)

The INA regulates the employment of foreign workers in the United States, including agricultural workers.

It sets requirements for obtaining temporary work visas, such as the H-2A visa, which is specific to agricultural labor.

Labor Rights and Protections - NLRA

6. National Labor Relations Act (NLRA)

While the NLRA generally protects the right of employees to form labor unions and engage in collective bargaining, it excludes certain agricultural workers from its coverage.

Labor Rights and Protections - EPA

7. Equal Pay Act (EPA)

The EPA prohibits wage discrimination based on gender.

Agricultural workers are covered by this law, but exceptions may apply based on job duties and other factors.

Labor Rights and Protections - FMLA

8. Family and Medical Leave Act (FMLA)

The FMLA allows eligible employees to take unpaid leave for certain family or medical reasons.

However, smaller agricultural employers with fewer than 50 employees may be exempt from the FMLA requirements.

B. Housing and Living Conditions

Many agricultural workers face substandard housing and living conditions, often provided by their employers. Ensuring access to safe and decent housing for these workers is a crucial issue.

Housing and Living Conditions

1. OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(a)
2. H-2A Housing Standards for Rental and Public Accommodations
3. MSPA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(a)

- 1910.142(a)(1): All sites used for camps shall be adequately drained. They shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water unless such quiescent water surfaces can be subjected to mosquito control measures. The camp shall be located so the drainage from and through the camp will not endanger any domestic or public water supply. All sites shall be graded, ditched, and rendered free from depressions in which water may become a nuisance.
- 1910.142(a)(2): All sites shall be adequate in size to prevent overcrowding of necessary structures. The principal camp area in which food is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept.
- 1910.142(a)(3): The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(b)

- 1910.142(b)(1): Every shelter in the camp shall be constructed in a manner which will provide protection against the elements.
- 1910.142(b)(2): Each room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling shall be provided.
- 1910.142(b)(3): Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(b)

- 1910.142(b)(4) : The floors of each shelter shall be constructed of wood, asphalt, or concrete. Wooden floors shall be of smooth and tight construction. The floors shall be kept in good repair.
- 1910.142(b)(7): All living quarters shall be provided with windows the total of which shall be not less than one-tenth of the floor area. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation.
- 1910.142(b)(9): In a room where workers cook, live, and sleep a minimum of 100 square feet per person shall be provided. Sanitary facilities shall be provided for storing and preparing food.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(c)

- 1910.142(c)(1): An adequate and convenient water supply, approved by the appropriate health authority, shall be provided in each camp for drinking, cooking, bathing, and laundry purposes. A water supply shall be deemed adequate if it is capable of delivering 35 gallons per person per day to the campsite at a peak rate of 2½ times the average hourly demand.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(d)

- 1910-.142(d)(1): Toilet facilities adequate for the capacity of the camp shall be provided. Each toilet room shall be located so as to be accessible without any individual passing through any sleeping room. Toilet rooms shall have a window not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for other than toilet purposes. A toilet room shall be located within 200 feet of the door of each sleeping room. No privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen.
- 1910.142(d)(5): Where toilet facilities are shared, the number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the camp is designed to house at any one time, in the ratio of one such unit to each 15 persons, with a minimum of two units for any shared facility.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(d)

- 1910.142(d)(6): Urinals shall be provided on the basis of one unit or 2 linear feet of urinal trough for each 25 men. The floor from the wall and for a distance not less than 15 inches measured from the outward edge of the urinals shall be constructed of materials impervious to moisture. Where water under pressure is available, urinals shall be provided with an adequate water flush. Urinal troughs in privies shall drain freely into the pit or vault and the construction of this drain shall be such as to exclude flies and rodents from the pit.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(f)

- 1910.142(f)(1)(i): Handwash basin per family shelter or per six persons in shared facilities.
- 1910.142(f)(1)(ii): Shower head for every 10 persons.
- 1910.142(f)(1)(iii): Laundry tray or tub for every 30 persons.
- 1910.142(f)(1)(iv): Slop sink in each building used for laundry, hand washing, and bathing.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(i)

- 1910.142(i)(2): A properly constructed kitchen and dining hall adequate in size, separate from the sleeping quarters of any of the workers or their families, shall be provided in connection with all food handling facilities. There shall be no direct opening from living or sleeping quarters into a kitchen or dining hall.
- 1910.142(i)(3): No person with any communicable disease shall be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in any kitchen or dining room operated in connection with a camp or regularly used by persons living in a camp.

OSHA Housing Standards for Rental and Public Accommodations

OSHA Housing Standards for Rental and Public Accommodations – Section 1910.142(I)

- 1910.142(I)(1): It shall be the duty of the camp superintendent to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease.

H-2A Housing Standards for Rental and Public Accommodations

As explained in DOL Fact Sheet #26G, **H-2A employers must provide housing at no cost to H-2A workers and to those workers in corresponding employment** who are not reasonably able to return to their residence within the same day.

H-2A employers may house workers in temporary labor camps that they own or control, or they may use rental or public accommodations, such as hotels or motels.

H-2A employers that use hotels, motels, or other similar public accommodations to house workers must ensure that those accommodations meet certain essential health and safety concerns.

Where local health and safety standards for rental and/or public accommodations exist, all of those local standards will apply. If, however, the local standards do not address any one or more of these essential concerns, then any state standards addressing those concerns will apply on that issue. If neither local nor state standards address any one or more of these essential concerns, then the relevant OSHA standards that pertain to those concerns will apply.

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards - Square Footage and Storage Facilities

- Each room where workers sleep must contain at least 50 square feet per person. Ceilings must be at least 7 feet high. (29 CFR 1910.142(b)(2))
- Each room where workers sleep must have beds, cots, or bunks, as well as storage facilities such as wall lockers for clothing and personal items. Beds or similar facilities must be at least 36 inches apart, both side-to-side and end-to-end, and must be at least 12 inches off the floor. If double-deck bunkbeds are used, they must be at least 48 inches apart, both side-to-side and end-to-end. Minimum clearance between the lower and upper bunk must be at least 27 inches. Triple-deck bunks are prohibited. (29 CFR 1910.142(b)(3))
- At least 100 square feet per person must be provided in a room where workers cook, live, and sleep. (29 CFR 1910.142(b)(9))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Sufficient and Sanitary Cooking and Kitchen Facilities

- When an H-2A employer using rental or public accommodations chooses to meet its meal obligations by providing free and convenient cooking and kitchen facilities to workers, the following concerns must be addressed:
 - Where stoves are shared, they must be provided in a ratio of at least one stove per 10 persons or one stove per two families. Sanitary facilities must be provided for storing and preparing food. (29 CFR 1910.142(b)(10))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Heating, Cooking and Water Heating Equipment

- All heating, cooking, and water heating equipment must be installed in accordance with State and local ordinances, codes, and regulations. If the housing is used during cold weather, adequate heating equipment must be provided. (29 CFR 1910.142(b)(11))
- An adequate and convenient water supply, approved by the appropriate health authority, must be provided in each housing location for drinking, cooking, bathing, and laundry purposes. (29 CFR 1910.142(c)(1))
- A water supply is considered adequate if it can deliver 35 gallons per person per day to the housing location at a peak rate of 2 1/2 times the average demand required each hour of the day. (29 CFR 1910.142(c)(2))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Heating, Cooking and Water Heating Equipment

- The distribution lines must be able to supply water at normal operating pressures to all fixtures when operated at the same time. (29 CFR 1910.142(c)(3))
- One or more drinking fountains must be provided for every 100 occupants. If the number of occupants is between 101 to 200, an additional drinking fountain is required, and so on. Common drinking cups are prohibited. (29 CFR 1910.142(c)(4))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Adequate and Sanitary Toilet, Laundry, Handwashing, and Bathing Facilities

- Toilet facilities adequate for the capacity of the housing facility must be provided. (29 CFR 1910.142(d)(1))
- An adequate supply of toilet paper must be provided in each bathroom. (29 CFR 1910.142(d)(9))
- Bathrooms must be kept in a sanitary condition and must be cleaned at least daily. (29 CFR 1910.142(d)(10))
- Laundry, handwashing, and bathing facilities must be provided in the following ratio: one handwashing sink per family or one per six persons in shared facilities; one shower head for every 10 persons; one laundry facility for each 30 persons. (29 CFR 1910.142(f)(1))
- Bathroom floors must be of smooth finish but not slippery materials; they must be waterproof. Floor drains must be provided in all shower baths, shower rooms, or laundry rooms. (29 CFR 1910.142(f)(2))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Adequate and Sanitary Toilet, Laundry, Handwashing, and Bathing Facilities

- An adequate supply of hot and cold running water must be provided for bathing and laundry purposes. (29 CFR 1910.142(f)(3))
- Every service building must be provided with equipment capable of maintaining a temperature of at least 70 degrees Fahrenheit during cold weather. (29 CFR 1910.142(f)(4))
- Facilities for drying clothes must be provided. (29 CFR 1910.142(f)(5))
- All service buildings must be kept clean. (29 CFR 1910.142(f)(6))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Sufficient Lighting

- Where electricity is available, each habitable room must be provided with at least one ceiling-type light fixture and at least one separate floor- or wall-type convenience outlet. Laundry and toilet rooms and rooms where people congregate must contain at least one ceiling- or wall-type light fixture. Light levels in toilet and storage rooms must be at least 20 foot-candles 30 inches from the floor. In other rooms, including kitchens and living quarters, light levels must be at least 30 foot-candles 30 inches from the floor. (29 CFR 1910.142(g))

H-2A Housing Standards for Rental and Public Accommodations

H2A Housing Standards – Refuse Disposal

- Garbage containers must be kept clean. (29 CFR 1910.142(h)(2))
- Garbage containers must be emptied when full, and at least twice a week. (29 CFR 1910.142(h)(3))
- Effective measures must be taken to prevent animals, insect vectors, and pests from residing in or infesting the facility. (29 CFR 1910.142(j))

MSPA Housing Standards for Rental and Public Accommodations

- Each person or organization which owns or controls a facility or real property used for housing migrant workers must comply with federal and state safety and health standards. A written statement of the terms and conditions of occupancy must be posted at the housing site where it can be seen or be given to the workers.

Migrant and Seasonal Worker Rights

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) is a federal labor law in the United States designed to protect the rights and welfare of migrant and seasonal agricultural workers. Enacted in 1983, **the MSPA aims to address the unique challenges faced by these workers, who often work in temporary or seasonal agricultural jobs and may migrate across different states to follow crop harvesting and planting seasons.** The MSPA is enforced by the Wage and Hour Division of the U.S. Department of Labor, which conducts investigations and inspections to ensure compliance with the law. Workers who believe their rights under the MSPA have been violated can file complaints with the Department of Labor for investigation and possible enforcement action.

Migrant and Seasonal Agricultural Worker Protection Act

1. **Disclosure Requirements:** Agricultural employers and farm labor contractors are required to provide workers with written information about the terms and conditions of their employment. This includes details about wages, working conditions, job duties, housing arrangements (if provided), transportation, and any costs that may be deducted from their pay.
2. **Worker Protections:** The MSPA establishes certain basic rights and protections for agricultural workers, including the right to a safe working environment and the right to be free from discrimination based on race, color, national origin, religion, or sex.
3. **Farm Labor Contractor Registration:** Anyone who recruits, solicits, hires, employs, or furnishes workers to perform agricultural labor must register as a farm labor contractor with the U.S. Department of Labor (DOL).
4. **Mandatory Recordkeeping:** Employers and contractors are required to maintain accurate and detailed records of each worker's pay, hours worked, and other employment-related information. These records must be available for inspection by the DOL.

Migrant and Seasonal Agricultural Worker Protection Act

5. Transportation Protections: If an employer provides transportation for workers, certain safety standards must be met to ensure the safety and well-being of the workers during transport.

6. Housing Standards: When employers provide housing to agricultural workers, they must meet specific minimum housing standards to ensure the living conditions are safe, sanitary, and meet certain health requirements.

7. Agricultural Labor Contractor Surety Bond: Farm labor contractors are required to obtain a surety bond, which serves as financial protection for workers in case the contractor fails to meet their contractual obligations, such as paying wages.

8. Anti-Retaliation Provisions: The MSPA prohibits employers from retaliating against workers who assert their rights under the law or cooperate with DOL investigations.

D. Health and Safety

Agricultural work can be physical demanding and expose workers to various health and safety risks.

Farmworkers are exposed to numerous safety, health, environmental, biological and respiratory hazards.

Establishing and enforcing safety standards is a pressing concern.

Health and Safety – Heat illness can be deadly

Workers exposed to hot and humid conditions are at a high risk of heat illness, especially if they are doing heavy work tasks or using bulky protective clothing and equipment.

New workers may also be at greater risk than others if they have not built up a tolerance to hot conditions. Employers must take steps to help workers become acclimated.

Heat-related illnesses, while potentially deadly, are easily preventable.

When working in hot conditions, remember "WATER, REST, SHADE."

Drink water every 15 minutes, even when not thirsty.

Wear a hat and light-colored clothing.

Rest in the shade.

Be sure to watch out for fellow workers and know your location in case you need to call for assistance.

Get help right away if there are any signs of illness.

Health and Safety – Holler if you hear me

Thousands of workers every year suffer from preventable hearing loss due to high workplace noise levels, and research has shown that those who live and work on farms have had significantly higher rates of hearing loss than the general population. In fact, farming is among the occupations recognized as having the highest risks for hearing loss.

Health and Safety – Holler if you hear me

Employers can achieve noise reduction in several ways - usually related to the maintenance of the equipment:

- Worn, loose, or unbalanced machine parts can increase decibel levels during operation. Regular lubrication and parts replacement (bearings, mufflers, silencers, etc.,) reduce friction and lower noise levels.
- Larger engines that can be operated at lower speeds reduce noise levels, and may even conserve fuel.
- Vibration isolation pads may be installed under the legs of noisy equipment to reduce noise generated by the equipment vibrating on a cement floor.
- Newer chainsaws and leaf blowers have flexible mountings to reduce vibration-induced noise as well.
- Tractor and skid-steers can be purchased with sound reducing cabs and tightly fitted cab doors and windows to reduce how much outside noise reaches the operator.
- Acoustical materials may be installed on walls and ceilings to enclose sound.
- In addition, employers may provide workers with personal protective equipment (PPE) but must train them in using the PPE correctly.

Health and Safety – Take a breath

Respiratory hazards.

Respiratory hazards in barns, manure pits, machinery and silos range from acute to chronic air contaminants.

Farmworkers' most common respiratory hazards are bioaerosols, such as organic dusts, microorganisms, and endotoxins and chemical toxicants from the breakdown of grain and animal waste.

Inorganic dust, from silicates in harvesting and tilling, is prevalent but less significant.

Control of aerosols might include the enclosure and ventilation of tractors, applying moisture to friable material, and respirators.

Health and Safety – Pump your breaks

Proper operation of farm vehicles can reduce accidents, injuries and fatalities in agricultural operations.

- General vehicle safety
 - Do not allow passengers to ride in the vehicle.
 - Remove persons not involved in the activity from the site.
 - Shut off vehicle for refueling.
 - Park the vehicle whenever there is no driver inside, so that the motor is shut off, the brakes are engaged, the transmission is in park-lock or in gear, the keys are removed, and the attachments are disengaged.
 - All farm equipment traveling on any roadway should be equipped with an approved Slow Moving Vehicle (SMV) emblem. Emblems should be clean and in good shape.
 - Use a standardized system of hand signals to communicate when noise and or distance does not allow for verbal communication.
 - Falling Object Protective Structures (FOPS) should be installed on equipment where the user runs the risk of being struck by falling debris.
 - Never tow an implement that is improperly hitched.

Health and Safety – Pump your breaks

Proper operation of farm vehicles can reduce accidents, injuries and fatalities in agricultural operations.

- Vehicle Storage
 - Store away from structures housing livestock-to reduce the likelihood of fire.
 - Do not store with fuel storage tanks.
 - Do not store with debris.
 - Ensure that electrical lines are high enough for vehicles to pass below.
 - Ensure there is an easy exit from the storage structure.
 - Ensure the storage structure is lockable.
 - Ensure the floor surfaces are smooth and clean.
 - Remove keys from all vehicles.
 - Do not allow non-employees or children into storage structures.

Health and Safety – Pump your breaks

Proper operation of farm vehicles can reduce accidents, injuries and fatalities in agricultural operations.

- Rollovers
 - The OSH Act requires an approved Roll-over Protective Structure (ROPs) for all agricultural tractors over 20 horsepower that were manufactured after October 25, 1976, and which are operated by a hired worker. See 1928.51(b)(1).

Health and Safety – Pump your breaks

Proper operation of farm vehicles can reduce accidents, injuries and fatalities in agricultural operations.

- Tractor Hazards

- Dangers exist from improperly hitching a tractor, using steer skidders incorrectly, carbon monoxide poisoning, and clothing and hair entanglement in improperly guarded moving parts.
- Given that harvesting equipment may be used once a year over relatively few days, the operator should re-familiarize themselves with the piece of equipment, by inspecting it and reviewing proper operating procedures.
- The addition of harvesting equipment to tractors can change the balance of the vehicle and requires farmworkers' constant attention.
- Plan harvesting so equipment travels downhill on steep slopes to avoid overturns.
- Space tractor wheels as far apart as possible when operating on slopes.
- The National Agricultural Tractor Safety Initiative provides information on research and resources available to help reduce tractor hazards.

Health and Safety – Pump your breaks

Proper operation of farm vehicles can reduce accidents, injuries and fatalities in agricultural operations.

- Power Take-Off (PTO) Shafts

- The PTO is a driveshaft, usually on a tractor, that can be used to provide power to an attachment or separate machine. It is designed to be easily connected and disconnected. The PTO allows implements to draw energy from the tractor's engine.
- Tractors and harvesters should be inspected before they are operated and all operators should be trained in the safe operation. Farmworkers should understand the dangers of the PTO shaft.
- Clothing can get caught in PTOs and the associated shafts and joints. The worker may be pulled into the shaft, which often results in loss of a limb or death.
- All shielding should remain in place and any damaged or missing shields should be replaced. Some implements do use plastic guards to try to keep a person from becoming entangled in a PTO shaft, but even with guards, farmworkers need to exercise caution around PTO shafts when they are connected into a tractor or truck.
- Farmworkers should not wear loose clothing or have long hair while working around a running machine. Hair and clothing can be caught by the machinery.
- Farmworkers should stop the PTO when dismounting from the vehicle.

Health and Safety – Pump your breaks

Proper operation of farm vehicles can reduce accidents, injuries and fatalities in agricultural operations.

- All Terrain Vehicles (ATVs)
 - The National Safety Council has developed recommendations for using ATVs. The recommendations include:
 - ATVs with an engine size of 70cc to 90cc should be operated by people at least 12 years of age.
 - ATVs with an engine size of greater than 90cc should only be operated by people at least 16 years of age.
 - Wear appropriate riding gear: DOT-, Snell ANSI-approved helmet, goggles, gloves, over-the-ankle boots, long-sleeve shirt and long pants.
 - Read owners' manuals carefully.
 - ATVs are not made for multiple riders. Never carry anyone else on the ATV.
 - Any added attachments affect the stability, operating and braking of the ATV.
 - Just because an attachment is available doesn't mean that it can be used without increasing your risk of being injured.
 - Do not operate the ATV on streets, highways or paved roads.

E. Child Labor

Despite federal restrictions on child labor, there are exemptions for children working in agriculture. It is common practice in the agricultural community for children and teens to work on a farm or ranch.

Ensuring that child labor laws are effectively enforced and protecting young workers from hazardous conditions are critical issues.

Child Labor - FLSA

The FLSA established child labor laws to ensure that children are safe in the workplace and that their work does not interfere with their health or education.

For situations in which the agricultural exemptions do not apply the minimum work age for most occupations is 16.

For children working in the agricultural industry the FLSA allows children under 16 to be lawfully employed under certain circumstances.

Twelve is generally the minimum age for employment in agriculture.

However, children under 12 can be employed in any non-hazardous agricultural job on a small farm outside of school hours with parental consent.

Once children reach age 14, they may work any job on the farm that's defined as non-hazardous.

Under the FLSA, if a child is working on a family-owned farm for their parents or working for a person standing in place of their parents, neither the minimum age or the hazardous occupation requirement of the FLSA apply.

Child Labor – Part 570

Child Labor Regulations identifies eleven farm jobs that are considered hazardous activities and children under 16 are prohibited from working them:

- Operating a tractor over 20 PTO horsepower, or connecting or disconnecting implements to such a tractor.
- Operating or helping to operate:
 - Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
 - Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading wagon or trailer; or,
 - Power post-hole digger, power post driver, or nonwalking-type rotary tiller.

Child Labor – Part 570

Child Labor Regulations identifies eleven farm jobs that are considered hazardous activities and children under 16 are prohibited from working them:

- Operating or assisting to operate:
 - Trencher or earthmoving equipment;
 - Fork lift;
 - Potato combine; or,
 - Power-driven circular, band, or chain saw.
- Working on a farm in a yard, pen, or stall occupied by a:
 - Bull, boar, or stud horse maintained for breeding purposes; or
 - Sow with suckling pigs, or cow with newborn calf with umbilical cord present.
- Loading, unloading, felling, bucking, or skidding timber with a butt diameter of more than 6 inches.

Child Labor – Part 570

Child Labor Regulations identifies eleven farm jobs that are considered hazardous activities and children under 16 are prohibited from working them:

- Working from a ladder or scaffold at a height of over 20 feet.
- Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
- Working inside:
 - A fruit, forage (feed), or grain storage structure designed to retain an oxygen deficient or toxic atmosphere – for example, a silo where fruit is left to ferment;
 - An upright silo within 2 weeks after silage (fodder) has been added or when a top unloading device is in operating position;
 - A manure pit; or,
 - A horizontal silo while operating a tractor for packing purposes.

Child Labor – Part 570

Child Labor Regulations identifies eleven farm jobs that are considered hazardous activities and children under 16 are prohibited from working them:

- Handling or applying agricultural chemicals if the chemicals are classified under the Federal Insecticide, Fungicide and Rodenticide Act as Toxicity Category I (identified by the word “Danger” and/or “Poison” with skull and crossbones); or Toxicity Category II (identified by the word “Warning” on the label).
- Handling or using a blasting agent.
- Transporting, transferring, moving, or applying anhydrous ammonia (dry fertilizer).

F. Immigration Policy and Labor

The agricultural industry heavily relies on immigrant labor, both documented and undocumented.

Immigration policy reforms and finding a path to legal status for undocumented agricultural workers are ongoing concerns.

The H-2A visa program is a temporary work visa program in the United States that allows agricultural employers to hire foreign workers for seasonal or temporary agricultural jobs when there is a shortage of available domestic workers.

Immigration Policy and Labor – H2-A Visa Program

Here's how the H-2A visa program works:

1. **Employer Application:** To participate in the H-2A program, the agricultural employer must first submit a temporary labor certification application to the U.S. Department of Labor (DOL). This application must demonstrate that there are not enough available and qualified U.S. workers willing to do the agricultural work during the specified period.
2. **Advertise Job Openings:** As part of the application process, the employer is required to advertise the job openings in the local area to attract potential U.S. workers. The advertisements must meet specific requirements and timeframes set by the DOL.
3. **Approval of Labor Certification:** If the DOL determines that there is a shortage of domestic workers, they may issue a labor certification to the employer. This certification serves as evidence that the need for foreign workers is justified.
4. **Petition with USCIS:** After obtaining the labor certification, the employer can file a petition with U.S. Citizenship and Immigration Services (USCIS) to request H-2A visas for the foreign workers they plan to hire. The petition must include information about the job, the number of workers needed, and the terms and conditions of employment.

Immigration Policy and Labor – H2-A Visa Program

5. **Consular Processing:** Once the petition is approved by USCIS, the foreign workers must apply for H-2A visas at a U.S. consulate or embassy in their home countries. They will need to provide documentation to demonstrate that they meet the requirements for the visa and have a job offer from a U.S. employer.
6. **Arrival in the U.S.:** Once the H-2A visa is approved, the foreign workers can enter the United States and work for the specified employer and job during the approved period.
7. **Employer Responsibilities:** Employers are responsible for providing H-2A workers with the same wages, benefits, and working conditions that are offered to U.S. workers. They must also cover the costs of transportation to and from the U.S. for the workers and provide or arrange suitable housing for them during their employment.
8. **Duration of Stay:** H-2A visas are typically issued for the duration of the agricultural job, up to a maximum of approximately 10 months.
9. **Feasibility:** The H-2A visa program is a very efficient, high-value way to connect stable and high quality labor supply with grower production in the United States. Labor certification fees are typically \$7,750.00 per season, exclusive of costs.

G. Workplace Discrimination

Agricultural workers, especially migrant and seasonal laborers, may face discrimination based on their ethnicity, national origin, or immigration status.

Enforcing anti-discrimination laws is essential to protect their rights.

Workplace Discrimination

Here are important developments in the workplace discrimination space:

1. Agricultural Employers Should Know About the Updated Form I-9

United States Citizenship and Immigration Services (USCIS) announced a new Form I-9 that has been streamlined and shortened and that employers should use beginning Aug. 1, 2023. Employers may continue to use the older Form I-9 (Rev. 10/21/19) through Oct. 31, 2023. After that date, they will be subject to penalties if they use the older form. The new version will not be available for downloading until Aug. 1.

Additionally, the U.S. Department of Homeland Security (DHS) issued a final rule that created a framework under which employers can implement alternative document examination procedures, such as remote document examination. DHS confirmed that only employers that use E-Verify who are in good standing may continue to conduct verifications electronically after Aug. 1, 2023, though the stage has been set for permanent remote examinations to become a reality for all employers based on the new rule.

I-9 Compliance and Hiring Policies

Employment lawyers should become more equipped to provide guidance regarding employment verification and compliance.

Over the past decade, worksite enforcement has increased to unprecedented levels.

Employers must be cautious when abiding by the Form I-9 requirements enforced by U.S. Immigration and Customs Enforcement by not violating the anti-discrimination laws as enforced by the Immigrant and Employee Rights Section (IER), Civil Rights Division of the Department of Justice.

FORM I-9



Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2019

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) (f)	First Name (Given Name) (f)	Middle Initial (f)	Other Last Names Used (if any) (f)	
Address (Street Number and Name) (f)		Apt. Number (f)	City or Town (f)	State (f) ZIP Code (f)
Date of Birth (mm/dd/yyyy) (f)	U.S. Social Security Number (f)	Employee's E-mail Address (f)		Employee's Telephone Number (f)

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.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States (f)
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions) (f)
<input type="checkbox"/> 3. A lawful permanent resident (f) (Alien Registration Number/USCIS Number): (f) _____
<input type="checkbox"/> 4. An alien authorized to work (f) until (expiration date, if applicable, mm/dd/yyyy): (f) _____ Some aliens may write "N/A" in the expiration date field. (See instructions)

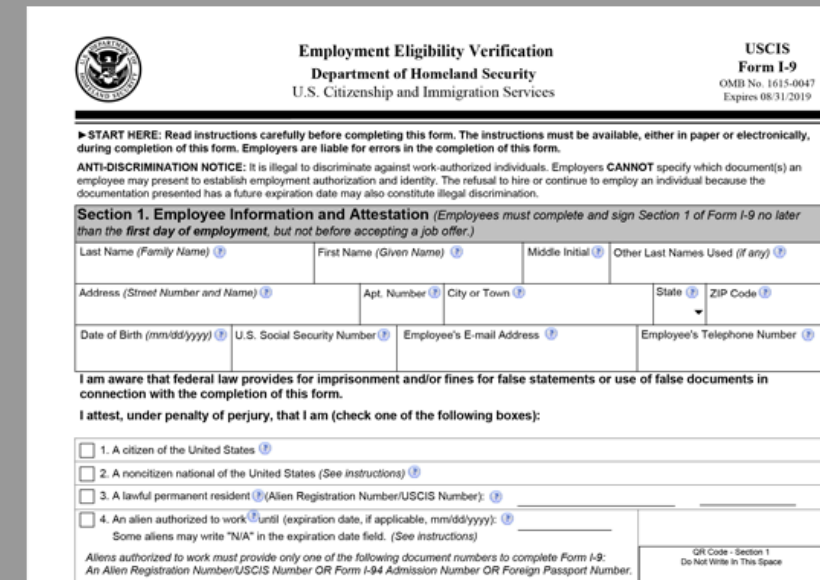
Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

QR Code - Section 1
Do Not Write in This Space

I-9 Compliance

- **Completion of Form** - The employee will complete Section 1 of the form no later than his or her first day of work for pay. The employer must complete Section 2 of the form no later than the 3rd business day that the employee starts work.
- **Documents** - The employee may present documents of their choosing from those listed on the most recent Lists of Acceptable Documents, which can be found on the last page of the Form I-9.
- **Reverification** - For employees who attest in Section 1 that their employment authorization expires, employers must reverify employment authorization on or before that date.
- **Rehire** – If an employer rehires an employee within 3 years of the date that a previous Form I-9 was completed, they may complete a new Form I-9 for that employee or complete Section 3 of the previously completed Form I-9.

FORM I-9



Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

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Address (Street Number and Name) (f)		Apt. Number (f)	City or Town (f)	State (f) ZIP Code (f)
Date of Birth (mm/dd/yyyy) (f)	U.S. Social Security Number (f)	Employee's E-mail Address (f)		Employee's Telephone Number (f)

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.

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<input type="checkbox"/> 3. A lawful permanent resident (f) (Alien Registration Number/USCIS Number): (f) _____	
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Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

QR Code - Section 1
Do Not Write In This Space

Form I-9 is Revised Effective 8/1/2023

Old version dated 10/21/19 valid thru 10/31/2023

Federal Register / Vol. 88, No. 141 / Tuesday, July 25, 2023 / Rules and Regulations

The image shows the front page of the old Form I-9 (10/21/19). It is titled "Employment Eligibility Verification" and is issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services. The form includes instructions for employers and employees, and various fields for entering personal and employment information. At the bottom, it says "Form I-9 (10/21/19)" and "Page 1 of 4".

Table 1: Lists of Acceptable Form I-9 Documents

Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		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, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		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, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security
		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		

Changes to Form I-9

1. Reduced Sections 1 and 2 to a single-sided sheet. No previous fields were removed. Rather, multiple fields were merged into fewer fields when possible.
2. Moved the Section 1 Preparer/Translator Certification area to a separate, standalone supplement (Supplement A) that employers can provide to employees when necessary. Employers may attach additional supplement sheets as needed.
3. Moved the Section 3 Reverification and Rehire area to a separate, standalone supplement (Supplement B) that employers can print if or when rehire occurs or reverification is required. Employers may attach additional supplement sheets as necessary.
4. **Removed use of “alien authorized to work” in Section 1 and replaced it with “noncitizen authorized to work” as well as clarified the difference between “noncitizen national” and “noncitizen authorized to work.”**

Changes to Form I-9

- 5. Ensured the form can be filled out on tablets and mobile devices.**
6. Removed certain features to ensure the form can be downloaded easily. This also removes the requirement to enter N/A in certain fields.
- 7. Updated the notice at the top of the Form I-9 that explains how to avoid discrimination in the Form I-9 process.**
8. Revised the Lists of Acceptable Documents page to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization documentation.
- 9. Added a box that eligible employers must check if the employee's Form I-9 documentation was examined under a DHS-authorized alternative procedure rather than via physical examination.**
- 10. Allowed for remote verification procedures!**

Workplace Discrimination

Here are important developments in the workplace discrimination space:

2. Federal Rulemaking Threatens to Significantly Increase the Adverse Effect Wage Rate Methodology for Agricultural Wages.

The Final Rule Concerning AEWR Methodology.

The federal district court challenge to federal rulemaking authority, *Teche v. Su*

H. Significant Employment Law Changes in 2023

1. Two mandatory federal posting changes went into effect:

April 2023 version of the Employee Rights Under the Fair Labor Standards Act posting from the Department of Labor (DOL).

June 2023 version of the Know Your Rights: Workplace Discrimination is Illegal posting from the Equal Employment Opportunity Commission (EEOC).

Significant Employment Law Changes in 2023

2. Fair Labor Standards Act (FLSA): Information about the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act has been added to the FLSA poster.

The section on Nursing Mothers is now called Pump at Work.

It notes that the law requires employers to provide reasonable break time for a nursing mother to express breast milk and must provide a place, other than a bathroom, that is shielded from view which may be used by the employee.

The poster adds information about employee rights under the Pregnant Workers Fairness Act (PWFA), which took effect on June 27, 2023.

Employers may not discriminate against employees on the basis of pregnancy, childbirth, or related medical conditions.

Failure to provide reasonable accommodation for pregnancy, childbirth, or related medical conditions can be discriminatory.

Significant Employment Law Changes in 2023

3. Remote employees need access:

When some employees work in an office and some work remotely, it is always a best practice to make electronic postings available.

According to the Department of Labor (DOL) “Where an employer has employees on-site and other employees teleworking full-time, for example, the employer may supplement a hard-copy posting requirement with electronic posting and the Department would encourage both methods of posting.”

According to the EEOC, “In addition to physically posting, covered employers are encouraged to post the notice digitally on their web sites in a conspicuous location.”

Significant Employment Law Changes in 2023

4. National Origin and Citizenship Discrimination:

Cruz v. Farmers Ins., Exch., 42 F.4th 1205 (10 Cir. 2022) - Summary judgment overturned – one racist comment is sufficient – one manager commented prior to the termination that “they don’t want . . . some crazy brown man running around with a gun.”

Significant Employment Law Changes in 2023

5. Sex Discrimination:

Joll v. Valparaiso Comm. Schs., 953 F.3d 923 (7th Cir. 2020) – Summary judgment overturned 2-1 based on sex stereotyping – female running coach passed over for positions – reasonable jury could find sex stereotyping – Joll asked about parenting and whether she could do the job with parenting – male applicants not asked about parenting – male applicants asked about coaching experience – female applicants references contacted promptly – male applicants references not checked until after hiring decision made – decision was 2-1 to overturn summary judgment – reasonable jury could find sex stereotyping.

Significant Employment Law Changes in 2023

6. Sexual Orientation and Gender Identity:

Bostock v. Clayton County, Georgia, 140 S. Ct. 1731 (2020) – The Supreme Court, in an opinion by Justice Gorsuch, ruled 6-3 that discrimination against homosexual or transgender employees is barred by the prohibition against sex discrimination in Title VII. The straightforward application of Title VII's terms interpreted in accord with this Court's precedents resolves the three cases. In each of the three cases, a longtime employee was fired for simply being homosexual or transgender. Title VII prohibits discrimination where the protected status is a butfor cause. A defendant cannot avoid liability just by citing some other factor that contributed to the challenged employment action. The statute's repeated use of the term individual means that the focus is on a particular being as opposed to a class. Thus, an employer violates Title VII when it intentionally fires an individual employee based in part on sex. It makes no difference if other factors besides the plaintiff's sex contributed to the decision. Because discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII. When an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably intends to rely on sex.

Significant Employment Law Changes in 2023

7. Reasonable Accommodations Under ADA:

Mobley v. St. Luke's Health Sys., Inc., 53 F.4th 452 (8th Cir. 2022) – Employee with multiple sclerosis requested hospital to agree that whenever he had a flair-up he could work from home – hospital offered to consider flair-ups on a case-by-case basis – employee refused and quit – no violation – this was a reasonable accommodation.