

# AGRICULTURAL EMPLOYMENT

## DISCRIMINATION LAWS

### TITLE VII CIVIL RIGHTS ACT OF 1964

Title VII covers all employers with 15 or more employees in at least 20 calendar weeks of the current or preceding calendar year. Title VII applies to discriminatory employment practices affecting every aspect of employment, including recruitment, hiring, promotion, compensation, and termination of employment.

Employment discrimination based on race, color, religion, sex, or national origin is prohibited by this act. Title VII also prohibits retaliation. Under the law, women affected by pregnancy, childbirth, and related medical conditions must be treated the same as other persons not affected by pregnancy or related conditions, but otherwise similar in their ability or inability to work.

Under Title VII there are two kinds of discrimination: “disparate treatment” and “disparate or adverse impact.”

### DISPARATE TREATMENT

The most common type of Title VII violation is intentional discrimination, known as disparate treatment. Disparate treatment occurs when an employer excludes or treats persons differently because of their race, sex, religion, color, or national origin. If such treatment were shown, the employer would have to give a legitimate nondiscriminatory reason for such action.

Title VII has a very narrow exception, called a “bona fide occupational qualification” (BFOQ) to what otherwise would be illegal discriminatory practices. The BFOQ exception permits the employment of a person of a particular religion, sex or national origin where that religion, sex or national origin, is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Race cannot be a BFOQ. The BFOQ exception is extremely narrow and has not been recognized as a legitimate defense in a number of circumstances. For example, customer preferences are not legitimate BFOQs. The fact that an employer’s customers do not like dealing with a woman, or a minority, or a person of a particular religion, is not a legitimate basis for discrimination.

### Example

An agricultural employer might believe that certain agricultural activities, such as handling heavy machinery or large animals, are particularly dangerous to women—especially pregnant women. However, the courts have not recognized a BFOQ exception on the basis that a job is dangerous to women. Instead, the employer would have to prove that the essence of the business would be undermined by hiring female workers because they would be unable to perform the job safely and efficiently—a highly doubtful proposition. This is especially true given the 1978 passage of the Pregnancy Discrimination Act amendment to Title VII, which states that discrimination on the “basis of sex” includes discrimination on the basis of pregnancy, childbirth or related medical conditions. Women cannot be excluded from dangerous occupations because of possible injuries to unborn children. Under Title VII the woman makes those choices for herself and her unborn child.

### DISPARATE IMPACT

Disparate impact occurs when an employer uses practices that are neutral on the surface, but adversely affect a protected class of persons such as women or minorities. An employer’s imposition of minimum height and weight requirements upon prospective employees is a classic example of disparate impact.

### Example

Even though the height/weight requirements apply to both men and women, they tend to exclude a larger percentage of women from doing a job because, on an average, men are taller and heavier than women. An employer’s requirement that all employees weigh a minimum of 120 pounds and be at least 5 feet 2 inches tall effectively excludes over 40 percent of the female population, but less than 10 percent of the male population, and statistically establishes a prima facie case of sex discrimination. Such requirements also have a disparate impact on people of various national origins, such as Hispanics and Asians. If an employer imposes job requirements that have a disparate impact, the employer must prove that a business necessity justifies the hiring criteria. For example, if an employer did impose weight and height requirements for prospective employees, the employer would have to prove the requirements were necessary to do the job.

### Example

While physical size and strength can be legitimate criteria if a job requires extensive heavy lifting or involves extremely strenuous physical work, an employer cannot merely assume that women cannot do the job. The United States Supreme Court requires the use of tests that measure

strength directly. If an employer needs an employee to do a physically demanding job, such as loading and unloading large livestock, the employer can require applicants to be able to repeatedly lift certain heavy loads. While the employer might be able to find more men than women capable of lifting the loads, the employer could not legitimately refuse to hire a woman who was physically capable of doing the job. An employer's claim that his or her discriminatory hiring criteria arise from a business necessity will be closely scrutinized by the courts. The employer has the burden of proof showing that the discriminatory job requirement is job related for the position in question, and consistent with business necessity. In order for discriminatory criteria to qualify as a business necessity, the employer must show that

- the criteria are necessary to the safe and efficient operation of the [employer's] business.
- they effectively carry out the purpose they are supposed to serve.

Even if the employer shows business necessity, the criteria may still be unlawful if it is shown there are alternative policies or practices that would better or equally well serve the same purpose with less discriminatory impact.

### PRE-EMPLOYMENT PRACTICES

Employers may unknowingly be conducting illegal interviews of prospective employees because some of the historically common inquiries contained in employment application forms are now unlawful.

In developing application forms or in seeking information from applicants, employers should consider

- whether the answer to a particular question, if used in making a decision, will have an impact on a protected group, or members of one sex (i.e., disqualify a significantly larger percentage of members of a particular group than another).
- whether the information is really needed to judge an applicant's competence or qualifications for the job in question.

Generally, pre-employment inquiries that directly or indirectly disclose the applicant's race, color, religion, sex, national origin, or age do not as such violate Title VII or the Age Discrimination in Employment Act (ADEA), as long as the inquiries are made of all applicants.

However, unless justified, such inquiries may be important evidence of discriminatory selection. Therefore, such inquiries are suspect and are strong evidence of discrimination unless the employer can show that the information was not used for discriminatory purposes and provided a valid criterion for employment.

*Note: Refer to the "Americans with Disabilities Act" section of this chapter for more information.*

Questions related to marital status, pregnancy and childcare are examples of pre-employment inquiries, which may indirectly screen out members of a protected group.

Questions related to these subjects would be discriminatory if asked only of women. Even if asked of all applicants, such questions may not be used to limit or deny employment opportunities only for women who are qualified to perform the job.

### Example

As a general rule, information that is not job related is likely to be illegal (have a disparate impact).

Employers can obtain necessary information in other ways to such questions:

- "Are you a US citizen?" Better to ask: "Do you have the legal right to work in this country?" Proof may be requested after hiring.
- "What is your age?" Better to ask: "If hired, can you give proof of age or a work permit?"
- "Are you married?" "With whom do you live?" Better to ask nothing. Minors may be asked parents' address.
- "Have you ever been arrested?" Better to ask: "Have you ever been convicted of a crime, and what are the circumstances?"

### SEXUAL HARASSMENT

The consequences of sexual harassment or discrimination should be of increasing concern to employers. Employers should establish and widely circulate strict company policies against such behavior. Procedures to quickly and effectively deal with sexual harassment should be established as soon as possible and should be the basis for across-the-board employee training.

The US Equal Employment Opportunity Commission (EEOC) guidelines define two types of sexual harassment, both of which are illegal.

### QUID PRO QUO

Quid pro quo (something given or received for something else) occurs when an employee is subjected to unwelcome sexual advances, and submission becomes the basis for employment decisions such as hiring, firing or advancement.

### ENVIRONMENTAL

Environmental occurs when any type of unwelcome sexual behavior creates a hostile work environment.

Examples of sexual harassment

- unsolicited and unwelcome flirtations, advances or propositions

- display of sexually suggestive objects or pictures
- graphic or degrading comments about employee's appearance, dress, or anatomy
- ill-received dirty jokes and offensive gestures
- sexual or intrusive questions about employee's personal life
- explicit descriptions of the harasser's own sexual experiences
- unnecessary, unwanted physical contact such as touching, hugging, pinching, patting, kissing
- whistling, catcalls, leering
- exposing genitalia
- physical or sexual assault
- rape.

The above conduct violates Title VII if it is sufficiently severe or pervasive to create a hostile work environment. Generally isolated instances of verbal sexual conduct, unless particularly severe, would not rise to this level.

### 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 or older on the basis of age in any aspect of employment, including hiring, promotion, discharge, wages, and benefits. It also prohibits retaliation against a person who files a charge of age discrimination.

The law prohibits any statement in advertisements that indicates any preference, limitations, specifications, or discrimination on the basis of age. The phrase "state age" on an employment application is not, in itself, a violation of the act. However, since it is felt that such a phrase will tend to deter older applicants, its use will be carefully scrutinized to assure that such a request is for a lawful purpose. The act does not prohibit specification of a minimum age below 40 in advertisements, i.e. "must be 18 or over."

There are permitted exceptions to the above rules. An exception is permitted where age is a bona fide occupational qualification (BFOQ) and is reasonably necessary to the normal operation of the particular business.

Employers may differentiate on reasonable factors other than age if they are applied equally, do not in any way include age, and are job related.

The Older Workers Benefit Protection Act of 1990 amended the ADEA, reaffirming that the act applies to benefits and benefit plans, and providing minimum standards for valid waivers of rights under the ADEA.

### EQUAL PAY ACT (EPA)

The Equal Pay Act prohibits employers from discriminating between men and women on the basis of sex in the payment of wages where they perform substantially equal work (requiring equal skill, effort and responsibility) under similar working conditions, and in the same establishment. The law also prohibits employers from reducing the wages of either sex to comply with the law.

The law does not apply to pay differences based on factors other than sex, such as seniority, merit, or systems that determine wages based upon the quantity or quality of items produced or processed. Many EPA violations may be violations of Title VII as well, which also prohibits sex-based wage discrimination. Such charges may be filed under both statutes.

### AMERICANS WITH DISABILITIES ACT (ADA)

#### Who must comply?

A covered entity includes any employer with 15 or more employees who work for 20 or more calendar weeks in the current or preceding calendar year. ADA prohibits employment discrimination against qualified individuals with disabilities and requires employers to make a "reasonable accommodation" to an applicant's or employee's known physical or mental limitations resulting from a disability, unless the employer can show that a specific accommodation causes undue hardship.

#### Definitions

The ADA protects persons with one or more disabilities. Under the ADA disability means

- a physical or mental impairment that substantially limits one or more of an individual's major life activities.
- a record of such impairment.
- being regarded as having such impairment.

The ADA may protect not only those with obvious mobility impairments, but also persons who are mentally retarded and those with such hidden disabilities as epilepsy, cancer, heart disease, or AIDS.

A qualified person with a disability is defined as "an individual with a disability who, with or without reasonable accommodations, can perform the essential functions of the employment position."

To avoid discriminating against a qualified person with a disability an employer may find it useful to define the essential functions of a position. If challenged, an employer must be able to explain why any function is listed as essential. It is suggested that an employer itemize the priority of all duties of a particular position and write the job description in clear, concise, and accurate language.

The federal regulations describe essential functions as “primary job duties that are intrinsic to the employment position the individual holds or desires. The term “essential function” does not include the marginal or peripheral functions of the position that are incident to the performance of primary job function.”

Factors, which can be considered in determining whether a job function is essential:

- employer judgment
- time necessary to perform a function
- work experience of current and past employees in that position
- limited number of employees available to perform the function
- consequences of not requiring a certain function.

The above factors are just some that can be taken into consideration. Each case is decided on its own merits.

Once the employer has defined the essential functions of a job, the employer must design hiring and advancement procedures that are nondiscriminatory towards the disabled.

### **Pre-employment inquiries**

The ADA prohibits any pre-offer inquiries about disability. Instead, the employer must first make a job offer which is conditional upon the satisfactory results of a post-offer medical examination. The medical examination is conducted before the applicant starts work and the employer may also at that time ask health-related questions. However, all applicants who receive a job offer in the same job category must be subjected to the same examination and questions.

Although the ADA limits some inquiries, the following information can still be obtained during a pre-offer interview:

- the applicant’s previous work history
- the applicant’s qualifications for the position
- the applicant’s abilities to perform the essential functions of the position with or without reasonable accommodation
- what the company has to offer as an employer
- the applicant’s interest in the company.

However, questions routinely asked on employment applications, and previously not violative of other civil rights legislation, are prohibited under the ADA.

Examples of such questions include the following:

- Have you ever had or been treated for any of the following conditions or diseases? (Followed by a checklist of various conditions and diseases.)
- Have you been treated for any conditions or diseases in the past three years?

- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- Is there any health-related reason you may not be able to perform the job for which you are applying?
- Have you had a major illness in the last five years?
- How many days were you absent from work because of illness last year? Note: An employer may state its attendance requirement and inquire whether the applicant can satisfy that requirement.
- Do you have any physical defects that preclude you from performing certain kinds of work? If so, please describe the defects and specific work limitations.
- Do you have any disabilities or impairments that may affect your performance in the position you seek?
- Are you taking any prescribed drugs? (This inquiry is prohibited because the answer may reveal a disability).
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever filed for workers’ compensation insurance?

### **Reasonable accommodation**

To establish a prima facie case of discrimination, a qualified person with a disability need only show that he or she was discriminated against and that a reasonable accommodation could have been made by the employer to accommodate the complainant’s disability. “Reasonable accommodation” includes

- making existing facilities readily accessible and usable to disabled persons.
- restructuring jobs, such as modifying work schedules.
- modifying equipment or devices or even acquiring new equipment or devices.
- modifying examinations, training materials or policies.
- hiring qualified readers or interpreters.
- reassigning to a vacant position.

### **Undue hardship**

To defend a prima facie case of discrimination under ADA, the employer must prove that a reasonable accommodation would be an “undue hardship.” Undue hardship is determined on a case-by-case basis, but the following factors may be taken into consideration:

- the facility’s financial resources
- number of persons employed
- the overall size of the operation
- the impact of the expense on the business
- the type of business, its structure and functions.

## EMPLOYING MINORS

### Prohibitions and exemptions

Although the protection afforded under the ADA is extremely broad, there are a number of persons and activities that are not covered. The following is a list of those persons and activities:

- The ADA specifically excludes from protection homosexuals, bisexuals, compulsive gamblers, kleptomaniacs, transvestites, transsexuals and pedophiles.
- A person who would pose a direct threat to himself or others, if the threat cannot be eliminated by reasonable accommodation.
- An employer may prohibit the illegal use of drugs and alcohol at the work place. Also, employers can require that employees not be under the influence of alcohol or illegal drugs while at work.

### TECHNICAL ASSISTANCE

#### US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1801 L St. NW  
Washington, DC 20507  
Phone \_\_\_\_\_ 202-663-4900  
TTY \_\_\_\_\_ 202-663-4494

#### EEOC Field Office

Phone \_\_\_\_\_ 800-669-4000  
TTY \_\_\_\_\_ 800-669-6820  
Web \_\_\_\_\_ <http://eeoc.gov>

#### OREGON BUREAU OF LABOR AND INDUSTRIES (BOLI)

800 NE Oregon St., #32, Suite 1045  
Portland, OR 97232  
Phone \_\_\_\_\_ 971-673-0761, ext. 1  
TDD \_\_\_\_\_ 971-673-0766  
Spanish (voicemail) \_\_\_\_\_ 971-673-9199  
Web \_\_\_\_\_ <http://oregon.gov/BOLI>

*Note: The EEOC has a working agreement with the Oregon Bureau of Labor and Industries, which provides that charges of discrimination filed with one agency are also filed with the other agency. Charges may be processed by either agency.*

### WHO MUST COMPLY?

All employers who employ minors, excepting children of farm owner/operators.

### PERMITS AND LICENSES

Farm operators are not required to obtain validated employer certificates to employ minors in agriculture unless the minor will be operating, assisting in operating, or riding in or on power-driven machinery.

### RECORDS

Records that growers employing minors must keep for each minor employee include, but are not limited to

- name in full
- address of the minor while employed and permanent address if different
- date of birth
- any written parental consent required
- any certificates of completion of training for operation of power-driven farm machinery.

### INSURANCE

You must carry workers' compensation insurance for all workers who receive any remuneration, including wages, room and board, or other benefits.

Contact the Workers' Compensation Department, 350 Winter St. NE, P.O. Box 14480, Salem 97309-0405, Phone: 503-947-7814 or Toll-free: 1-800-452-0288, for more information regarding workers' compensation.

E-mail general questions to [workcomp.questions@state.or.us](mailto:workcomp.questions@state.or.us)

*Note: See the section on "Workers' Compensation" in this handbook.*

### SAFETY TRAINING

Workers must be properly instructed and supervised in the safe operation of any machinery, tools, equipment, process, or practice they are authorized to use or apply. Contact extension safety specialists, Agricultural Engineering Department, OSU, 541-754-4021, for training program information.

### OPERATING OR RIDING ON MACHINERY

Minors employed by a parent or person standing in place of a parent (sibling, uncle, aunt, or grandparent) do not need an employment certificate or certificate of training to operate or ride on farm machinery.

Other minors 14-17 years old may operate power-driven farm machinery ONLY if they have passed and received a

certificate of training in a 4-H or vocational agricultural safety program, copies of which the farmer must keep on record for two years.

If a 4-H Extension Service or vocational agricultural safety training program is not available within 35 miles of the minor's residence, a 16 or 17-year-old minor may be employed as specified below if the minor, the minor's parent or guardian, and the employer sign the statement on Form WP-15 certifying to the following:

- A 16 or 17-year-old may be employed to operate or assist in operation of power-driven farm machinery otherwise prohibited if
  - » the employer has provided the minor with not less than eight hours of instruction, four hours of which must be 'hands-on' training under the supervision of a trained adult relating to the safe and proper operation of specific equipment, and
  - » the employer agrees to continuously supervise the minor or check on the minor at intervals of no less than two hours.
  - » Riding in or on power-driven farm machinery for minors under 18 years of age:
    - » the employer has provided the minor with not less than two hours of safety training related to the specific machinery, which the minor will be employed to ride in or on before the minor begins work, and
    - » the employer agrees to continuously and closely supervise the minor while riding in or on the machinery.

*Note: A 14 or 15-year-old must have training provided by the 4-H Extension Service Program or an approved secondary vocational agricultural program.*

Contact your local 4-H County Extension Program, high school FFA program, or the Oregon Department of Education, agricultural education specialist, at 503-378-3584, ext. 345, for information.

### PROHIBITED JOBS

It is illegal for a minor under the age of 16 to perform any of the following jobs (exception for machinery operation as noted above, and children of farm owner/operators):

- operating power-driven machinery without certification
- working in an area occupied by a bull, boar, sow with suckling pigs, cow with newborn calf, or stud horse
- felling, bucking, skidding, loading or unloading timber with butt diameter of six inches or greater
- working from a ladder or scaffold at a height of over 20 feet
- driving a bus, truck or automobile, or ride on a tractor as a passenger or helper
- working inside certain fruit, storage, manure pits or silos

- handling or applying certain agricultural chemicals
- transferring, transporting or applying anhydrous ammonia
- handling or using a blasting agent such as dynamite, black powder, blasting caps, primer cord, etc.
- working in feed mills, flour mills, grain warehouses or any workplace where power-driven machinery is used.

### BREAKS

All minors must be given a meal period of at least 30 minutes after the first five hours of work, during which time the worker must be relieved of all duties. (A 16- or 17-year-old may continue some duties during the meal/rest period with pay.) Minors must receive a 15 minute break with pay for every four hours worked.

### HOURS

Minors under 16 may not work more than 10 hours a day, six days a week during the summertime. Hours worked may be restricted if operating power-driven farm machinery. Contact a compliance specialist in the nearest Oregon Bureau of Labor and Industries office for clarification of the specific work situation and hours allowed.

### AGE REQUIREMENTS

Minors age 16 and above may work, at any time, in jobs not declared hazardous (refer to the Web site <http://oregon.gov/BOLI/WHD/CLU> or call US Department of Labor for more information). Minors ages 14 and 15 may work outside of school hours in jobs not declared hazardous. Minors aged 12 and 13 may be employed outside of school hours, with written parental consent or on a farm where the minor's parents or guardians are employed, in jobs not declared hazardous. Minors aged nine to 11 can pick berries and beans outside school hours with parental consent and only if the produce is sold within the state or the farm has used less than 500 man-days of labor in all calendar quarters of the preceding year. Local minors ages 10 and 11 may hand harvest short-season crops outside school hours for no more than eight weeks between June 1 and October 15 if the employer has obtained special waivers from the US Department of Labor, Wage and Hour Division, 503-326-3057.

### HOUR LIMITATIONS

Minors under age 16 may not work while school is in session. A maximum of three hours per day may be worked outside of school (before or after school); 10 hours per day maximum on non-school days; and a maximum of 25 hours per week during school weeks. During summer months or other school vacation periods of one week or more, a maximum of 10 hours per day and 60 hours per

week may be worked unless a special permit is first obtained from the Wage and Hour Commission of BOLI.

Minors under age 16 employed to operate, assist in the operation of, or ride in or on power-driven farm machinery may work a maximum of eight hours per day on non-school days; and 18 hours per week during school weeks. During the summer months, a maximum of 10 hours per day and 60 hours per week may be worked. Outside of harvest season (summer months) a maximum of 44 hours per week is allowed without an emergency overtime permit. There is no restriction on starting and quitting times for minors employed in agriculture, so long as the minor does not work when school is in session and does not exceed the hour limitations.

### TECHNICAL ASSISTANCE

The Oregon Bureau of Labor and Industries provides technical assistance and information to employers about minors, wages and hours, and civil rights questions. All inquiries are handled confidentially.

#### OREGON BUREAU OF LABOR AND INDUSTRIES (BOLI)

800 NE Oregon St., Suite 1045  
 Portland, OR 97232  
 Phone \_\_\_\_\_ 971-673-0824  
 TDD \_\_\_\_\_ 971-673-0766  
 Web \_\_\_\_\_ <http://oregon.gov/BOLI>

##### Wage and Hour Division

Phone \_\_\_\_\_ 971-673-0761, ext. 2

#### US DEPARTMENT OF LABOR

##### Wage and Hour Division

620 SW Main St, Room 423  
 Portland, OR 97205  
 Phone \_\_\_\_\_ 503-326-3057  
 Fax \_\_\_\_\_ 503-326-5951  
 Web \_\_\_\_\_ <http://www.wagehour.dol.gov>

#### OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

##### Workers' Compensation Division

350 Winter St. NE  
 P.O. Box 14480  
 Salem 97309-0405  
 Phone \_\_\_\_\_ 503-947-7814  
 Toll-free \_\_\_\_\_ 1-800-452-0288  
 E-mail \_\_\_\_\_ [workcomp.questions@state.or.us](mailto:workcomp.questions@state.or.us)

### Publications

- Child Labor Requirements in Agriculture Under the Fair Labor Standards Act, Child Labor Bulletin No. 102.
- A Message to Young Workers About the Fair Labor Standards Act, as Amended in 1974, WH Publication 1236, 1976.

- Occupations in Agriculture Particularly Hazardous for the Employment of Children Below the Age of 16, WH Publication 1283, December 1972.
- Young Farm Workers and the Fair Labor Standards Act, WH Publication 1338, May 1971.

### Insurance

#### OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

##### Workers' Compensation Division

##### Employer Compliance Unit: Employer Coverage

350 Winter St. NE  
 PO Box 14480  
 Salem 97309-0405  
 Phone \_\_\_\_\_ 503-947-7814  
 Toll-free \_\_\_\_\_ 1-800-452-0288

### Safety training

#### OREGON STATE UNIVERSITY

##### Agricultural Engineering, Extension Safety Specialists

Phone \_\_\_\_\_ 541-754-4021

##### Oregon 4-H Youth Development Education

105 Ballard Extension Hall, Oregon State University  
 Corvallis, OR 97331-3608  
 Phone \_\_\_\_\_ 541-737-2421  
 Fax \_\_\_\_\_ 541-737-1332  
 E-mail \_\_\_\_\_ [4-h@orst.edu](mailto:4-h@orst.edu)  
 Web \_\_\_\_\_ [oregon.4h.oregonstate.edu/index\\_w.html](http://oregon.4h.oregonstate.edu/index_w.html)

## EMPLOYMENT ELIGIBILITY VERIFICATION

### WHO MUST COMPLY?

The Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 placed the burden of employment eligibility verification upon US employers and provided for employer sanctions for hiring undocumented or illegal immigrants. It is unlawful for an agricultural association, agricultural employer, or farm labor contractor to hire, recruit, or refer for a fee, an individual for employment in the US without complying with the employment eligibility verification requirements.

### REQUIREMENTS

The law requires employers, including agricultural employers, to

- ensure that all employees fill out section 1 of the Form I-9 at the time of hire.
- review documents establishing employee's identity and eligibility to work and complete section 2 of the Form I-9 within three business days.

- retain the Form I-9 for three years after the date the person begins work, or one year after the person's employment is terminated, whichever is later.
- make the Form I-9 available for inspection to an officer of Immigration and Customs Enforcement (ICE), the US Department of Labor (DOL), or the Office of Special Counsel (OSC).

The handbook for employers provides three lists of documents that can be used to establish identity and employment eligibility of workers. The lists are also reproduced on the back of the Form I-9. The handbook with I-9 forms can be obtained by writing the ICE, Investigations Division, 511 NW Broadway, Portland OR 97209, or by calling the automated forms line at 800-870-3676.

The following documents were removed from the list of acceptable identity and work authorization documents (listed on the 11/91 version of the Form I-9):

- Form I-151 (Note: The form I-551 is still acceptable)
- Certificate of US Citizenship (List A #2)
- Certificate of Naturalization (List A #3)
- Unexpired Reentry Permit (List A #8)
- Unexpired Refugee Travel Document (List A #9).

An employer cannot direct an employee to present a particular document from the list(s); the employee must choose which document(s) from the list he or she will provide. An employer cannot mandate that an employee provide more documents than are required by the law. An employer cannot refuse to honor documents that reasonably appear to be genuine and relate to the person presenting them. Employers must treat all employees the same when completing the Form I-9.

## INSPECTIONS

Employers will be given at least three days advance notice for each inspection. Besides inspecting Form I-9s for all employees hired after November 6, 1986, the inspecting officers will also look for evidence of prohibited hiring practices, which include

- hiring and/or continuing to employ unauthorized workers.
- failing to comply with the law's record-keeping requirements.
- requiring the employee to self-insure for damage or loss.
- recruiting unauthorized seasonal agricultural workers outside the United States.
- engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized employees.
- engaging in fraud or false statements or otherwise misusing visas, immigration permits, and identity documents.

## TECHNICAL ASSISTANCE

### Immigration and Customs Enforcement (ICE)

Office of Investigations—Worksite Enforcement Unit

511 NW Broadway

Portland, OR 97209

Phone \_\_\_\_\_ 503-326-7487

Web \_\_\_\_\_ <http://www.uscis.gov>

## FAIR EMPLOYMENT PRACTICES ACT

### WHO MUST COMPLY?

All Oregon employers, employment agencies, and labor organizations.

### DEFINITIONS

#### Employer

An employer is any person who directly or through an agent, engages or uses the personal service of one or more employees reserving the right to control how the service is performed.

#### Employment agency

Any person who procures employees or opportunities to work.

#### Labor organization

Any organization constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms and conditions of employment.

### COMPLIANCE

#### Employers must

- Refrain from any discriminatory unlawful employment practices based on race, color, religion, sex, national origin, age, sexual orientation, physical or mental handicap, or marital status, such as
  - » discharge or failure or refusal to hire.
  - » discrimination on compensation, terms, conditions or privileges of employment.
  - » limiting, segregating or classifying employees or applicants for employment.
  - » discrimination in apprenticeship or training programs.
  - » printing, or causing to be printed or published, any notice of employment which specifies a discriminatory preference.
  - » discrimination against anyone who opposes discriminatory practices or assists, testifies or participates in any discrimination investigation.



- » discrimination in the sale, rental or financing of housing.
- Not require as a condition of employment or continuation of employment that an employee take a breathalyzer or lie detector test. Breathalyzer test may be administered only if employer has reasonable grounds to believe employee is under the influence of alcohol or the employee consents to such testing.
- Not subject, directly or indirectly, an employee or prospective employee to any polygraph examination, psychological stress test, genetic screening or brain wave test.
- Not blacklist employees discharged by the employer with intent of preventing employee from engaging or securing similar or other employment.

State laws prohibits age discrimination based on age if the person is over 18. This is broader protection than offered by the federal Age Discrimination in Employment Act. Additionally, many municipalities have passed other antidiscrimination laws (regarding sexual orientation, gender identity, source of income, etc.)

## TECHNICAL ASSISTANCE

OREGON BUREAU OF LABOR AND INDUSTRIES  
800 NE Oregon, Suite 1045  
Portland, OR 97232  
Phone \_\_\_\_\_ 971-673-0824

# FAIR LABOR STANDARDS ACT (FLSA-MINIMUM WAGE): FEDERAL LAW

## WHO MUST COMPLY?

Any farmer who employs workers is subject to the Federal Labor Standards Act unless the farmer falls within one of the exemptions below. The law also applies to employers who engage in interstate commerce directly or indirectly through a buyer or other agent.

## EXEMPTIONS

If the employer did not employ more than 500 man-days of agricultural labor (see definition below) 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.

## DEFINITION

### Man-day

A man-day is any day one worker works for at least one hour. Five workers working one hour on one day is equal to five man-days. To be exempt, all the employee's work in the work week must be an exempt activity. Any mixing of exempt and nonexempt (non agricultural) activities will cause all of the employee's time to be compensable at the minimum wage rate.

*Note: Employees who are parents, spouses, children, or other members of an employer's immediate family are excluded from the minimum wage and overtime requirements of the law, as well as the 500 man-day test.*

### Agricultural labor

In general, under the primary definition of agriculture in the FLSA, if the employee is engaged in cultivating the soil or growing or harvesting of crops, or raising livestock, bees, fur-bearing animals, or poultry, he/she is engaged in agricultural labor. The definition does not include forestry or Christmas tree operations (including nurseries that produce seedlings for forestry or Christmas tree farms). This means that these operations are not exempt agricultural activities and are subject to the minimum wage and overtime requirements (unless the activity is secondary or incidental to a primary farming activity). There is a separate exemption from overtime for operations that employ eight or fewer workers in forestry or Christmas trees.

The following employees are also exempt from the minimum wage and overtime requirements of the law, but their man-days of work must be counted toward the 500 man-day test:

- Employees who are solely engaged in hand harvest work where the work is customarily paid on a piece-rate basis in the area, are paid solely on a piece-rate basis, the workers return to their permanent homes each night (non-migrants), and each worker has worked less than 13 weeks in agriculture in the preceding calendar year.
- An employee in agriculture whose employer did not, during any calendar quarter of the preceding calendar year, use more than 500 man-days of agricultural labor.
- Any agricultural employee 16 years old or younger employed as a hand harvest laborer
  - » paid on a piece-rate basis in an operation which is customarily and generally recognized as paid for on a piece-rate basis in the region
  - » employed on the same farm as his/her parent or person standing in place of his/her parents, and
  - » is paid at the same piece-rate as employees over age 16 on the same farm.

- Employees principally engaged in the range production of livestock who must be available at all hours to care for such livestock (this exemption does not include dairy workers).

### Wages and hours

Employers are required to pay employees a minimum wage of \$6.55 per hour unless a higher wage is required by state law.

*Note: The Federal minimum wage will increase to \$7.25 per hour, effective July 24, 2009.*

Although the minimum wage is stated on an hourly basis, employees can also be paid on salary commissions, piecework, biweekly, or under any other arrangement so long as the wages equal or exceed the minimum wage during each pay period. To determine whether the minimum wage is being paid, the hours worked per week should meet the minimum wage requirement ( $\$290/40$  hours = \$7.25 per hour). If, however, the same worker were being asked to work 60 hours a week for \$300, then the FLSA would be violated by the employer ( $\$300/60$  hours = \$5.00 per hour).

### Employee

The act uses a very broad definition of employee, including anyone the employer “suffers or permits” to work. As an example, if a worker’s spouse is helping the worker pick in an orchard, with the employer’s knowledge, and the employer does not stop the practice, the spouse will also be considered an employee. If subject to the FLSA, both workers will be entitled to receive minimum wage.

### Minimum work week

The FLSA also requires employers to limit the employee’s work week to no more than 40 hours per week, unless overtime is paid. Workers who are allowed to work more than 40 hours per week must be compensated for each hour worked in excess of 40 hours in a work week at a rate of not less than one-and-one-half times their regular rate of pay, unless the worker qualifies for one of the agriculture or forestry exemptions. Unless exempt, time-and-a-half is due to hourly-paid employees; extra halftime may be due piece-rate employees for overtime. Work week is defined by the Wage and Hour Division as “a fixed and regularly recurring period of 168 hours: seven consecutive 24-hour periods.”

### Overtime

Employees working in agriculture, as defined by the Fair Labor Standards Act, are exempt from overtime. Under the secondary definition of agriculture, any practice performed, other than those listed under the primary definition, such as office work, shipping, warehouse, transporting, sales, etc., are exempt only if performed by employees of the farmer

with respect to products grown by their employer or if performed on a farm as an incident to and in conjunction with products grown on the particular farm on which they are working. Because some employees of agriculture employers handle or otherwise work on products not grown by their employer, or do work not within the definition of agriculture as outlined above, the employer should seek professional legal counsel or advice from the local US Department of Labor, Wage and Hour office concerning specifics of the overtime exemption.

### RECORD KEEPING

The FLSA requires employers to keep certain records concerning covered employees. The failure to keep accurate records creates a presumption in favor of the employee that a violation did occur.

*Note: Also see the section on the “Migrant and Seasonal Agricultural Worker Protection Act” for record keeping requirements when using a farm labor contractor.*

An employer must keep records of

- employee’s name in full including any identifying name or symbol used in place of the name on any other records.
- home address (with zip code).
- date of birth if employee is less than nineteen (19) years of age.
- employee’s sex, and the occupation in which employed.
- time of day and day of the week on which the employee’s work week begins.
- regular hourly rate of pay and the basis on which wages are paid.
- hours worked each workday and total hours worked each week.
- total daily or weekly straight-time earnings or wages.
- total weekly premium pay for overtime hours worked.
- total additions to or deductions from wages paid each pay period.
- total wages paid each pay period.
- date of payment and the pay period covered by payment.

Additionally, employers should

- have on file a statement from each exempt piece-rate employee showing the number of weeks employed in agriculture during the preceding year.
- have on file the date of birth and parent name for each exempt minor paid on a piece-rate basis.
- maintain a file showing the full name, present and permanent address, and date of birth of any minor under 18 who works when school is in session or works in a hazardous occupation.

- display the official US Department of Labor poster “Employee Rights” where employees can see it. This poster contains basic information on minimum wages.

Records on employees must normally be kept for a minimum period of three years.

## PAYCHECK DEDUCTIONS

FLSA allows employers to deduct the cost of certain items from the wages of farm workers. However, Oregon law (ORS 652.610) requires the authorization of the employee in writing for all deductions other than required tax deductions. All deductions must be recorded on the books of the employer and must be primarily for the benefit of the employee or authorized by a collective bargaining agreement.

Deductions that may lawfully reduce the wage level below the minimum wage:

- Taxes required by law (Social Security, Medicare and withholding tax).
- Third party deductions authorized by the employee—union dues, savings bonds, merchant accounts, insurance premiums, church and charitable organizations—so long as the employer receives no profit or benefit directly or indirectly.
- Salary advances exclusive of interest charges. Signed receipts for cash advances must be obtained and retained.
- Housing and meals, provided it does not exceed the lesser of actual costs or fair market value and meets a number of specified conditions dealing with profit and rate of return on investment. Housing facilities must be maintained for the benefit of employees, occupancy must not be mandatory, and costs cannot include depreciation when the facilities have been fully depreciated. Recent rulings by the DOL indicate that some migrant housing may have no fair rental value. If you provide and charge farm workers for housing that can only be used by migrant workers and thus has no fair rental value, this rental charge cannot reduce their wages below the current minimum wage of \$5.85 per hour.

Deductions that may not lawfully reduce the wage level below the current minimum wage:

- Transportation advances. This policy applies where agricultural employers provide daily transportation to assure a sufficient number of workers. It also applies for long distance travel to arrive in Oregon if it brings the wage below the minimum. However, when the following three factors are all present, agricultural employers may deduct from workers’ wages the lesser of reasonable costs or fair value of such transportation regardless of whether

such deductions will decrease workers’ wages below the minimum wage:

- » The workers must know the location of their work site.
- » Alternative transportation sources (i.e., personal automobile or carpool arrangements) must be readily available.
- » The workers are not required to use the employer’s transportation.
- Charges for contractors’ (crew leaders’) services.
- Charges for tools of the trade and other materials incidental to carrying on the employer’s business.

## ADDITIONAL INFORMATION

- Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects, Under the FLSA of 1938, as amended WH Pub. 1042, April 1974.
- Interpretative Bulletin, Part 791: Joint Employment Relationship Under the Fair Labor Standards Act, WH Pub. 1057, January, 1977.
- Wage Payments under the Fair Labor Standards Act of 1938, WH Pub. 1210 Ref., May 1974.
- Records To Be Kept by Employers Under the Fair Labor Standards Act of 1938, as amended, WH Pub. 1261, September 1984.
- Handy Reference Guide to the Fair Labor Standards Act, WH Pub. 1282, October 1978.
- Agricultural employment Under the Fair Labor Standards Act, WH Pub. 1288, August 1979.
- Employment relationships Under the Fair Labor Standards Act, WH Pub. 1297, March 1979.
- Hours Worked Under the Fair Labor Standards Act, WH Pub. 1344, March 1976.

## TECHNICAL ASSISTANCE

### US DEPARTMENT OF LABOR

#### Wage and Hour Division

620 SW Main St, Room 423

Portland, OR 97205

Phone \_\_\_\_\_ 503-326-3057

Fax \_\_\_\_\_ 503-326-5951

Web \_\_\_\_\_ <http://www.wagehour.dol.gov>

## FAMILY AND MEDICAL LEAVE ACT: FEDERAL

### WHO MUST COMPLY?

All employers who are engaged in commerce or industry who employ 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year. Farm businesses are engaged in commerce and affect commerce. An employee is considered to have been employed for each working day of a work week if the employee remains on the payroll throughout the week, even if the employee does not actually work on each workday.

### ELIGIBLE EMPLOYEES

An eligible employee is one employed for a total of 12 months. These 12 months need not be consecutive. The employee must have worked for the employer for at least 1,250 hours of service during the 12 consecutive month period immediately preceding the commencement of the leave. (This averages about 105 hours a month or 25 hours a week.)

### WHICH HOURS TO COUNT

Federal law requires that when a worker is employed by one employer, the employee must total all hours worked (even though two or more unrelated job assignments may have been performed). In the case of an employee working for two or more employers, each employer must add all hours worked by the employee in all employment.

### EXCLUDED ELIGIBLE EMPLOYEES

An employee is not entitled to leave under the act if the employer does not employ 50 or more employees who work at locations within a 75 mile radius of the employee's work site. Even though an employer may not be exempt, highly compensated employees may be exempt from portions of the act. For example, key employees, or the highest paid 10 percent, may not request restoration to the same or equivalent position upon their return. To exempt these employees an employer must demonstrate a leave would cause substantial and grievous economic injury to the employer's operations.

## COMPLIANCE

### Employers must

Allow an eligible employee up to a total of 12 work weeks leave during any 12-month period for one or more of the following:

- birth of a son or daughter of the employee and for care of the infant
- placement of a son or daughter with an employee for foster care
- care for son, daughter, spouse, or parent that has a serious health condition
- employee's serious health condition making it impossible to perform functions of employee's position.

*Note: A serious health condition is an illness, injury, impairment, or physical or mental condition involving*

- inpatient care in a hospital, hospice, or residential care facility.
- continuing treatment by a health care provider.

An employee may elect or an employer require the employee to substitute any accrued vacation leave, personal leave, or family leave of the employee for the leave provided under this act.

Employers must also

- restore employee to the position of employment the employee held when leave commenced or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- not reduce or cancel any of the employee's benefits accrued prior to the date leave commenced.
- maintain coverage of employee under any group health plan for the duration of the leave at the level and under the conditions coverage would have been provided if employee had continued employment.
- notify employees in writing that leave is designated as accruing under the Family and Medical Leave Act (FMLA).

### FORESEEABLE LEAVE

When leave is for child birth or foster child placement, an employee shall give the employer 30 days notice before leave is to begin. When leave is with regard to serious health condition and is foreseeable due to a planned medical treatment, the employee shall

- schedule treatment so as not to unduly disrupt employer's operations, subject to the approval of the health care provider.
- provide employer with not less than 30 days notice before leave is to begin.

## CERTIFICATION

An employer may require leave for serious medical condition to be accompanied by a certification by a health care provider. If there is reason to doubt the validity of a certification, the employer may request a second one at the employer's expense.

## FAILURE TO RETURN FROM LEAVE

The employer may recover the premiums that employer paid for maintaining coverage for the employee under a group health plan during a period of leave when the employee fails to return to work, unless failure to return is due to recurrence of condition of serious medical condition or circumstances beyond employee's control.

## TECHNICAL ASSISTANCE

### US DEPARTMENT OF LABOR

#### Wage and Hour Division

620 SW Main St, Room 423

Portland, OR 97205

Phone \_\_\_\_\_ 503-326-3057

Fax \_\_\_\_\_ 503-326-5951

Web \_\_\_\_\_ <http://www.wagehour.dol.gov>

## FAMILY MEDICAL LEAVE: OREGON

### WHO MUST COMPLY?

All businesses that employ 25 or more employees in Oregon during each working day of 20 or more calendar work weeks, either in the calendar year in which the leave is taken or in the preceding calendar year.

### ELIGIBLE EMPLOYEES

Workers must be employed at least 180 days in order to take leave to care for a newborn, newly adopted child, or newly placed foster child.

For all other leave benefits, workers must be employed at least 180 days and also work at least an average of 25 hours a week.

### COMPLIANCE

An employer must

- grant an employee's request for family leave for up to 12 weeks within a one year period to care for
- a family member with a serious health condition.
- the employee's own serious health condition.
- a newborn or newly adopted or newly placed foster child.
- a sick child who requires home care.

- not fire or discipline an employee or in any way retaliate against an employee for taking family leave.
- restore the worker to the same position held by the employee regardless of whether the job has been reclassified or renamed—even if the employer hired someone else to fill in—without loss of seniority, service credits under a pension plan, or any other benefit or right that had been earned at a time before the leave started.
- restore employee to an available position that is the same as the former job in as many aspects as possible, if the employee's former position has been eliminated.

*Note: When a serious health condition is unanticipated, a verbal request confirmed in writing to the employer within three days after the employee's return to work can serve as a written request.*

An employer is not required to discharge another employee to reinstate employee who took leave.

An employee must

- make a reasonable effort to schedule medical treatment so as to minimize disruption of the employer's operations.
- give the employer 30 days notice before taking leave when the serious health condition is anticipated.

## DEFINITIONS

### Serious health condition

- an injury, disease, or condition that is chronic and/or requires inpatient or constant care
- a condition in which death is imminent or probable in the near future
- a condition that involves a period of incapacity or treatment for a condition that, if not treated, would likely result in incapacity
- a period of disability due to pregnancy or childbirth or prenatal care.

### Family member

Includes employee, employee's spouse, same sex domestic partner, parents, parents-in-law, children, grandparents, and grandchildren.

## TECHNICAL ASSISTANCE

### OREGON BUREAU OF LABOR AND INDUSTRIES

800 NE Oregon St., #1045

Portland, OR 97232

Phone \_\_\_\_\_ 971-673-0824

The bureau's Technical Assistance for Employers Program handles all employer requests for information confidentially. Employers with questions concerning Oregon Family Leave should call 971-673-0824, in Portland.

## FARM LABOR CONTRACTING

### WHO MUST COMPLY?

All farm and reforestation labor contractors must be licensed by Oregon Bureau of Labor and Industries (BOLI). Most labor contractors will be required to register with both state and federal agencies.

### REGISTRATION WITH THE STATE OF OREGON

The following require a farm labor contractors license from the State of Oregon:

- Any person who, for agreed remuneration
  - » recruits, solicits, supplies, or employs workers to perform labor for another to work in reforestation or the production or harvesting of farm products.
  - » recruits, solicits, supplies, or employs workers to gather evergreen boughs, yew bark, bear grass, salal or ferns from public lands for sale or market prior to processing or manufacture.
  - » is employed to recruit, solicit, supply, or employ workers in reforestation or the production or harvesting of farm products.
  - » supplies board or lodging in connection with the recruitment or employment of workers in agriculture or reforestation.
  - » bids or submits prices on contract offer for those activities, or subcontracts with another for any of those activities is required to obtain a license from BOLI unless otherwise exempt.

### EXEMPTIONS

A farmer who obtains workers solely for the farmer's own operation does not qualify as a labor contractor. A farmer who operates a farm-worker camp and permits workers living in the camp to be employed by other farmers on no more than an incidental basis and receives no remuneration by virtue of such incidental employment is exempt. Farmers, including owners or lessees of land intended to be used for the production of timber, their permanent employees, advertising media, platoon leaders, or individuals engaged in the solicitation or recruitment of persons for dayhaul work in connection with growing, production or harvesting of farm products are also exempt from registration.

### REGISTRATION WITH THE US DEPARTMENT OF LABOR

Any person who recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers for someone else for a fee must obtain a Federal Farm Labor Contractor Certificate of Registration, unless otherwise exempt. The exemptions are the same as those that apply under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

### DEFINITIONS

#### Farm labor contractor

Farm labor contractor means any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another to work in the production or harvesting of farm products; or who recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities.

#### Farm labor contracting

Farm labor contracting means recruiting, soliciting, hiring, employing, or furnishing any seasonal or migrant agricultural worker.

#### Agricultural worker

Agricultural worker means an individual employed in field work related to planting, cultivating, or harvesting operations; or employed in canning, packing, ginning, seed conditioning, or related research, or processing operations; or employed in reforestation activities, Christmas tree production and harvesting, gathering evergreen boughs, yew bark, bear grass, salal or ferns from public lands for sale or market prior to processing, or nursery production.

#### Certification fee

The State of Oregon requires one of two different certifications:

- farm labor contractor, which costs \$100.00
- farm and forest labor contractor, which costs \$250.00.

*Note: There is only one federal certification for which there is no fee.*

### BUSINESS REGISTRATION

All assumed business names and corporations must be registered with the Secretary of State's Office. Forms to register names may be obtained from

#### SECRETARY OF STATE

##### Corporation Division

Public Service Building  
255 Capitol St. NE  
Salem, OR 97310  
Phone \_\_\_\_\_

503-986-2200

**APPLICATION PROCESS: STATE**

BOLI issues licenses to individuals, partnerships, and limited liability partnerships, corporations and their major shareholders, limited liability companies, publicly traded corporations, nonprofit corporations, agricultural associations, and cooperative corporations.

Each application must include

- application Form WH-37 and appropriate fee.
- \$10,000 Farm Labor Contractor Corporate Surety Bond for up to 20 employees, or \$30,000 for 21 or more employees.
- proof of financial responsibility (If you are applying as an employee of a farm/forest labor contractor, you do not need to submit proof of financial responsibility, Certificate of Insurance for Vehicle, or Certificate of Insurance for Workers' Compensation).
- Certificate of Compliance (Form WH-87).
- Certificate of Insurance, issued by your auto insurance carrier which lists the Oregon Bureau of Labor and Industries as certificate holder and provides a 30-day cancellation notice, for all vehicles used in the operation of this business and to transport workers.
- Certificate of Workers' Compensation Insurance which lists the Oregon Bureau of Labor and Industries as certificate holder and provides a 30-day cancellation notice.
- three color passport photos, 2" x 2".
- IRS tax compliance certification.
- Oregon Department of Revenue tax compliance certification.
- Oregon Employment Department Tax Compliance Certificate and sponsorship statement, if applicable.

*Note: In lieu of the Farm Labor Contractor Corporate Surety Bond (second bullet point above), which may be purchased through an insurance company, a contractor may choose to establish a savings account or deposit the equivalent of cash in the name of the Commissioner of the Oregon Bureau of Labor and Industries. The completed application is mailed to BOLI at the address shown below. The Rights of Workers Form WH-151 and Contractor/Worker Agreement Form WH-153 or their equivalents are required for renewal applications and must be given to employees at time of hire for each project.*

**APPLICATION PROCESS: FEDERAL**

The US Department of Labor Employment Standards Administration (ESA) issues certifications to individuals, partnerships, and corporations to act as farm labor contractors. ESA also requires certification of employees of farm labor contractors who engage in labor contracting activity.

Each application must include

- Form WH-510, application.
- Form FD-258, finger print.
- Form WH-512, employee application, if necessary.
- Forms WH-515 and WH-514a when the contractor intends to transport workers.
- Certificate of Vehicular Insurance for all vehicles used to transport workers.
- Certificate of Workers' Compensation Insurance.
- three color passport photos.

The completed application is then mailed to the US Department of Labor at the address shown. Additional forms and information may be obtained by contacting either of the following agencies.

**TECHNICAL ASSISTANCE****SECRETARY OF STATE****Corporation Division**

Public Service Building

255 Capitol St. NE

Salem, OR 97310

Phone \_\_\_\_\_ 503-986-2200

**State application****OREGON BUREAU OF LABOR AND INDUSTRIES****Licensing Unit**

3865 Wolverine St. NE, E-1

Salem, OR 97305-1268

Phone \_\_\_\_\_ 503-373-1463

**Federal application****US DEPARTMENT OF LABOR****Farm labor contracting licenses**

455 Golden Gate Avenue

San Francisco, CA 94102

Phone \_\_\_\_\_ 415-703-4854

**Wage and Hour Division**

90 7th St., Suite 13-100

San Francisco, CA 94103-6714

Phone \_\_\_\_\_ 415-625-7700

## MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA)

### WHO MUST COMPLY?

All agricultural employers, agricultural associations, and farm labor contractors who recruit, solicit, hire, employ, furnish or transport any person who meets the definition of a “migrant” or “seasonal” agricultural worker are covered by MSPA. Anyone engaged in farm labor contracting activity for a fee or other valuable consideration must register and obtain a certification of registration (a farmer or employee of the farmer who is engaged in these activities solely for the farmer’s own operation are not required to register).

### DEFINITIONS

#### Agricultural employer

An agricultural employer is defined as any person, agricultural association, or cooperative, which owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, forestry or Christmas tree operation, or a producer or conditioner of seed who recruits, solicits, hires, employs, furnishes or transports any migrant or seasonal agricultural worker. The definition also includes farm labor contractors who furnish employees for agricultural employment.

#### Migrant agricultural worker

A migrant agricultural worker is someone who works in agricultural employment in a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence (a labor camp is not regarded as a permanent place or residence, even if the worker lives there on a year round basis). Seasonal refers to the particular task being performed, not the length of employment of the worker. A worker engaged year round on a series of seasonal tasks may be a migrant or seasonal worker under MSPA.

#### Seasonal agricultural worker

A seasonal agricultural worker is an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

### Agricultural employment

Agricultural employment under MSPA includes any activity which is agriculture under FICA or the Fair Labor Standards Act, plus the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. This language has been interpreted to include forestry and Christmas tree production.

### EXEMPTIONS

Several groups are exempt from the provisions of the MSPA. Persons not subject to the provisions of the act:

- Family business. This exemption only applies if the individual recruits solely for the family business, and only members of the immediate family engage in recruiting, soliciting, hiring, employing, or transporting migrant or seasonal agricultural workers.
- Small business. The same rules apply to this exemption as used in determining the minimum wage exemptions, i.e., currently the limit for exemption is 500 man-days of agricultural labor used during any calendar quarter of the preceding calendar year. See the “Fair Labor Standards Act (Minimum Wage)” section of this handbook.
- Common carrier. Any common carrier that would be a farm labor contractor solely because the carrier is transporting migrant and seasonal agricultural workers.
- Labor organizations. Any labor organization as defined in the Labor Management Relations Act, or as defined by state law.
- Nonprofit charitable organizations.
- Local, short-term contractors. Any person who engages in any farm labor contracting activities solely within a twenty-five mile intrastate radius of such person’s permanent place of residence and not for more than thirteen weeks per year. This exemption is void if the person uses the US mail, telephone, or advertising to recruit, solicit, hire or furnish workers from more than twenty-five miles or across a state line.
- Employees of exempt employers. Any employee of an exempt employer when performing farm labor contracting activities exclusively for such person. This rule does not apply to anyone utilizing a family business or small business exemption.
- Other exemptions. Other exemptions include some custom combine operations, custom poultry operations, and seed production operations.



## CONDITIONS OF EMPLOYMENT

- » A written statement of the conditions of employment (Form WH 516 or similar document containing required information below) must be provided to seasonal workers recruited through a day haul operation and to migrant workers. Any workers, including other seasonal workers, are entitled to the disclosure statement upon request. The disclosure should describe
  - » place of employment.
  - » wage rates (including piece-rates) to be paid.
  - » crops and kinds of work.
  - » period of employment.
  - » transportation, housing, and any other benefits or items provided, and their costs to the worker.
  - » workers' compensation and unemployment insurance.
  - » whether a strike or work stoppage is in progress.
  - » any commission (kickback) arrangement between the employer and any local merchant selling to employees.
- All required disclosures under the act shall be in English, or Spanish, or another language common to the migrant and seasonal agricultural worker. The US Department of Labor will make forms available in English, Spanish, Haitian, Creole, or other languages as necessary.
- Seasonal workers in processing operations are only covered under MSPA if recruited through a day haul operation. At the time of such recruitment the employer shall disclose in writing the conditions of employment listed above.
- Note: Workers doing cultivation and harvesting activities indoors (greenhouse, mushroom plants, etc.) are regarded as field workers, not processing workers.

## POSTING

At the place of employment of migrant and seasonal agricultural workers, a labor contractor, agricultural employer or agricultural association, must post in a conspicuous place the MSPA poster (form WH 1376) outlining the workers' rights and protections. In joint employment situations each employer is equally responsible for displaying this poster.

Anyone who provides housing facilities for migrant farm workers shall post the housing permit and, in addition, shall post in a conspicuous place in such housing, for the entire period of occupancy, and provide a written statement to the worker at the time of recruitment, information on the terms and conditions of occupancy.

*Note: For details of this statement, see the sections on "Housing Safety and Health" and "Agricultural labor camps" in this handbook.*

## WAGES AND PAYROLL

Each labor contractor, agricultural employer and agricultural association must keep the following payroll records for migrant and seasonal agricultural workers:

- name
- permanent address
- Social Security number
- basis on which wages are paid
- number of piecework units earned if paid on piecework basis
- number of hours worked
- total pay period earnings
- sums withheld and purpose of each withholding
- net pay.

*Note: Employers must preserve payroll records for three years.*

A labor contractor must furnish the person who contracts for his services with a copy of all payroll records. The person who receives such records must maintain them for three years.

Farm labor contractors, agricultural employers, and agricultural associations must provide each migrant and seasonal agricultural worker with an itemized written statement of the payroll information shown above at the time of payment. Pay periods cannot be less than every two weeks or semimonthly.

The employee payroll statement (form WH-501 or equivalent document) must also include

- employer's name
- employer's address
- employer's IRS identification number.

In a joint employment situation, both parties are equally responsible for payroll records.

Wages owed migrant and seasonal agricultural workers must be paid when due.

## MOTOR VEHICLE SAFETY

Each farm labor contractor, agricultural employer and agricultural association that uses or causes to be used any vehicle to transport migrant and seasonal agricultural workers, both on and off farm, must ensure that such vehicle conforms to safety standards prescribed by the US Department of Labor or the US Department of Transportation.

*Note: See the section on "Motor Carrier Safety Law" in this handbook.*

## EXCLUSIONS TO VEHICLE SAFETY STANDARDS

- Vehicle safety standards and insurance requirements do not apply to the transportation of migrant and seasonal agricultural workers on a tractor, combine, harvester, picker, or similar vehicle while engaged in on-farm agricultural work.
- Vehicle safety standards and insurance requirements do not apply to an individual migrant or seasonal agricultural worker when the only other occupants of that individual's vehicle consist of his immediate family.
- Vehicle safety standards and insurance requirements do not apply to carpooling arrangements made by the workers themselves, using one of the workers' own vehicles, and the employer has no participation or direction in such arrangements.

## VEHICLE INSURANCE

Anyone transporting migrant or seasonal agricultural workers must have workers' compensation, a liability bond, or insurance covering the workers. If the workers' compensation does not cover all circumstances under which the workers are to be transported, then insurance must be secured to cover such transportation.

Except in those instances where a liability bond is in effect or where workers' compensation insurance is applicable, a farm labor contractor, agricultural employer or agricultural association is required to have vehicle liability insurance in at least the amounts shown below:

- \$100,000 per seat up to a maximum of \$5,000,000 per vehicle for bodily injuries to, or death of, all persons injured or killed in any single accident
- limit for loss or damage in any one accident to property of others (excluding cargo), \$50,000.

In those instances where the employer of migrant or seasonal agricultural workers is satisfying the insurance requirements by covering his workers with state workers' compensation insurance, the MSPA regulations also require that he provide insurance of at least \$50,000 for loss or damage to property of others.

*Note: Workers' compensation does not provide coverage for family members of workers being transported with workers. Nor does workers' compensation cover non-work travel, such as rides to town for shopping or banking. Adequate coverage for such occurrences may be the responsibility of the employer.*

Agricultural employers and agricultural associations are required to provide evidence of liability insurance coverage only upon request by the US Department of Labor. Farm labor contractors, however, must provide evidence of insurance when applying for authorization to transport migrant or seasonal agricultural workers and the policy must include a clause which provides for cancellation only after 30 days notice to the US Department of Labor, Wage and Hour Division.

Persons who will be transporting migrant and seasonal agricultural workers may provide financial responsibility in lieu of insurance by providing a liability bond of at least \$500,000 for damages to persons and property.

## HOUSING SAFETY AND HEALTH

MSPA has four fundamental housing requirements related to migrant agricultural workers:

- to assure that the housing complies with any applicable federal, state, or local code pertaining to safety and health
- to obtain a pre-occupancy inspection of the housing prior to occupancy
- to post the Certificate of Occupancy provided by the inspecting agency
- to post terms and conditions of occupancy.

*Note: See the section on "Agricultural labor camps" for more information.*

Providers of housing for any migrant agricultural worker must post in a conspicuous place at the housing site, for the entire period of occupancy, or present a written statement to the worker at the time of recruitment, the following information on the terms and conditions of occupancy (WH-521):

- name and address of the employer(s) providing housing
- name and address of person in charge of the housing
- mailing address and phone number where housing occupants can be reached
- who may live in the housing
- the charge (rent) to be made for the housing
- meals to be provided and the cost to workers
- charges for utilities
- any other charges or conditions of occupancy.

## EXEMPTIONS TO HOUSING STANDARDS

MSPA housing standards do not apply to any person who, in the ordinary course of business, regularly provides housing to the general public and who provides housing to any migrant agricultural worker on the same or comparable terms and conditions.

## HIRING FARM LABOR CONTRACTORS

Producers should verify the following prior to engaging such labor contractor:

- That the labor contractor holds a valid Certificate of Registration as a farm labor contractor at the time he/she is hired. A copy of an application is not sufficient.
- That the labor contractor holds a valid certificate to perform the services for which he/she is engaged, i.e., transporting, housing, etc.
- That each vehicle to be used to transport workers is certified and that the insurance on such vehicle is current.
- That each driver of a properly certified vehicle used to transport farm workers is properly registered as a farm labor contractor employee authorized to transport farm workers, possess a commercial driver's license with a passenger transport endorsement, and has a satisfactory doctor's certificate (form 415) less than three years old.

## JOINT EMPLOYMENT

An employer/grower is mutually responsible for the actions of the farm labor contractor if joint employment conditions exist. The term joint employment means a condition in which a single employee is employed by two or more employers at the same time. The factors considered significant by the courts in determining joint employment and to be used to determine joint employment under the provisions of the MSPA and the FLSA (minimum wage) include, but are not limited to

- the nature and degree of control of the workers.
- the degree of supervision, direct or indirect, of the work.
- the power to determine the pay rates or the methods of payment of the workers.
- the rights, directly or indirectly, to hire, fire, or modify the employment conditions of the workers.
- preparation of payroll and the payment of wages.

*Note: Joint employment means a farmer may be held jointly liable for violations of MSPA by the labor contractor.*

***The following is from the American Farm Bureau Grower's Handbook, 1991.***

In a typical situation, the grower owns the land, makes the significant decisions about planting, cultivating, and harvesting, has significant investment in equipment, and tells the contractor what to do, in which fields, and when; and migrant and seasonal workers who are employed to harvest crops are unskilled. So, even in a situation where the labor contractor handles all employee matters, such as payroll, records, and direct supervision, the grower's control of the whole operation probably will be enough for him to be a joint employer with a labor contractor.

As precautionary practice, employers should pay attention to complaints and address any problems, ensure that labor contractors are keeping accurate records and paying workers in a timely manner, and treat all workers fairly and equally.

## DISCRIMINATION

It is a violation of the MSPA for any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause

- filed a complaint with the US Department of Labor.
- brought any proceeding under the Act.
- testified or is about to testify in any proceedings.
- exercised or asserted on behalf of himself or others any rights or protection under the Act.

According to Oregon Legal Services, the most common cause of litigation is responding to legitimate complaints of workers with the equivalent of "If you don't like it, you don't have to work here anymore. Just leave." Workers often reasonably perceive this to be a retaliatory discharge. Migrant and seasonal agricultural workers who believe they have been discriminated against may, no later than 180 days after such violation occurs, file a complaint with the US Department of Labor.

## TECHNICAL ASSISTANCE

### US DEPARTMENT OF LABOR

#### Wage and Hour Division

620 SW Main St, Room 423

Portland, OR 97205

Phone \_\_\_\_\_ 503-326-3057

Fax \_\_\_\_\_ 503-326-5951

Web \_\_\_\_\_ <http://www.wagehour.dol.gov>

## MINIMUM WAGE: OREGON LAW

### WHO MUST COMPLY?

Employees of agricultural employers must be paid at least the minimum wage of \$8.40 per hour (for 2009) unless exempted.

### EXEMPTIONS

Among the categories of employees who are not included in the state coverage are

- members of the employer's immediate family.
- hand harvest or pruning workers who are paid at piece-rate, in a job that is traditionally paid by piece-rate in the area, who commute daily from their permanent residence to the farm on which they are employed, and have been employed in agriculture less than 13 weeks in the preceding calendar year.

- hand harvest or pruning workers who are paid at piece-rate in a job that is traditionally paid by piece-rate in the area, who are 16 years of age or under and paid the same piece-rate as workers over 16 years of age.
- workers mainly engaged in the range production of livestock (but only if they are being paid a salary that is equivalent to 40 times the minimum wage per week).
- hand harvest and pruning workers who are paid at a piece-rate, in a job that is traditionally paid by piece-rate in the area, who work on farms which used less than 500 worker-days of piece-rate labor in every calendar quarter of the preceding calendar year (piece-rate- work-day means any day when an employee—other than an immediate family member—does any hand harvest or pruning labor on a piece-rate basis for at least one hour).

### OVERTIME

While the Oregon law provides for overtime pay calculated at one and one-half times the regular rate of pay for a work week longer than 40 hours, this provision specifically excludes most agricultural employees. However, employees in forestry and Christmas tree harvesting do not fall in the overtime exemption and are therefore entitled to overtime. Oregon cannery and packing workers are entitled to time-and-a-half pay after ten hours per day, unless the cannery or packing plant is located on a farm and is primarily processing products produced on that farm.

### RECORDS

Every employer required to pay minimum wage, shall make and keep for two years, a record containing name, address, occupation of each employee, and actual hours worked each week and each pay period by each employee.

### REST AND MEAL PERIODS

Oregon agricultural employers must provide employees with at least a 30-minute unpaid meal period when the work period is six hours or greater. The law requires an uninterrupted period in which the employee is relieved of all duties. No meal period is required if the work period is less than six hours. Employers must also provide workers with a paid, uninterrupted 10-minute rest break for every four-hour segment or major portion thereof in the work period. OAR 839-020-0050(1)(b). To understand meal and rest period requirements for work days longer than eight hours please consult our Web site [http://oregon.gov/BOLI/TA/T\\_FAQ\\_Taagricrestmeals.shtml](http://oregon.gov/BOLI/TA/T_FAQ_Taagricrestmeals.shtml).

### DEDUCTIONS FROM PAYCHECK

No employer may withhold, deduct, or divert any portion of an employee's wages unless

- required to do so by law (i.e., withholding tax, garnishment).
- deductions are authorized in writing by the employee, are for employee's benefit, and are recorded in employer's books.
- the employee voluntarily signs an authorization for deduction for any other item provided the ultimate recipient of the money is not the employer, and the deduction is recorded in employer's books.
- authorized by a collective bargaining agreement.

Employers must also provide each employee with an itemized statement of amounts and purposes of deductions.

### POSTING REQUIREMENTS

All agricultural employers must post the BOLI State Minimum Wage Poster (see the section on "Employee Health and Safety" in this handbook for more information). Every producer who employs a labor contractor for harvest of perishable agricultural commodities or who offers a bonus to those who harvest such produce must conspicuously post a notice stating

- terms and conditions of any bonus offered and the manner of determining if one is earned.
- that portion of the labor contractor's compensation that is based on the amount of work done by each employee of the contractor.

### TIMELY PAYMENT OF WAGES

Every employer shall establish and maintain regular paydays at which date all employees shall be paid the wages due and owing to them. Paydays must not extend beyond a period of 35 days from the time employees began work or from the date of the last regular payday.

Seasonal farm workers are entitled to be paid in full for all wages due and owing immediately upon termination of employment.

Seasonal farm workers who quit without giving an employer 48 hours notice must be paid in full within 48 hours or the next scheduled payday, whichever is sooner. If a worker fails to return for payment, an employer should mail payment to the employee's last known address.

### TECHNICAL ASSISTANCE

OREGON BUREAU OF LABOR AND INDUSTRIES  
800 NE Oregon St., #1045  
Portland, OR 97232  
Phone \_\_\_\_\_ 971-673-0824

## RECRUITING WORKERS USING WORKSOURCE OREGON EMPLOYMENT DEPARTMENT

### WHO CAN USE WORKSOURCE OREGON EMPLOYMENT DEPARTMENT (WSOED) SERVICES?

Any employer in Oregon can list job openings for recruiting workers (including for agricultural workers) and use a range of other workforce services at no charge.

### WHAT CAN WORKSOURCE OREGON EMPLOYMENT DEPARTMENT DO?

The agency provides labor recruitment and referral services for Oregon businesses, identifying qualified job seekers from among the 400,000+ Oregonians who are actively seeking work and registered for job seeker services.

Employers can list jobs by calling their local WSOED office, going online to iMatchSkills® at [www.iMatchSkills.org](http://www.iMatchSkills.org), or faxing the information to their local office. A job listing will state the skills, experience, and educational requirements, if any, that the employer is seeking. It will also include the duties, pay and other key information of the job.

Staff members review listings for legal sufficiency. A listing in the computer system is typically matched against registered job seekers and, as needed, made available for job seekers to see for potential referral. Job listings are also accessible in all WSOED offices throughout the state on the agency's Web site at [www.WorkingInOregon.org](http://www.WorkingInOregon.org) (English) and [www.EmpleoEnOregon.org](http://www.EmpleoEnOregon.org) (Spanish) and on the award-winning job matching site iMatchSkills® at [www.iMatchSkills.org](http://www.iMatchSkills.org).

By publicizing listings in both English and Spanish, a wider range of job seekers can learn about available work opportunities. Special outreach efforts can also publicize seasonal agricultural jobs locally, throughout Oregon and outside of Oregon. WSOED labor exchange and job finding services are at no charge to employers and job seekers.

### SEASONAL AGRICULTURAL WORK

#### **Recruiting within commuting distance of the job**

To use agency services for recruiting workers living within commuting distance of the job, an employer can offer the wage and terms and conditions of employment of his/her choosing, subject to state and federal wage and hour law. The WSOED office closest to the work will take the information for a job listing and can begin recruitment immediately.

#### **Agricultural Recruitment System (ARS): Recruiting domestic workers beyond commuting distance of the job**

An employer can use the agency's services for recruiting seasonal agricultural workers from beyond the local area of the job under the Agricultural Recruitment System (ARS). This can mean recruiting and referring workers from around Oregon (ARS intrastate job listing) or from other states in cooperation with their workforce agencies (ARS interstate job listing). Employers using the ARS are required by federal law to offer wages, benefits, and working conditions which at least meet the prevailing wages, benefits, and practices for that occupation in the local area, as determined by WSOED employer surveys. The job also must provide no-cost or public housing for hired workers whose permanent residence is beyond regular commuting distance of the job. Housing must meet applicable federal and state standards and have passed a recent housing inspection before ARS out of area recruitment can begin. WSOED local office staff or the ARS coordinator at 503-947-1659 can provide information and guidance to interested employers.

#### **H-2A Program: Seeking permission to hire foreign workers**

If an employer is concerned that sufficient domestic workers may not be available or recruited on time through the ARS process, the employer as an alternative can ask for recruitment help through the H-2A program. This US Department of Labor program is administered in partnership with WSOED and other states' workforce agencies. It provides the option of hiring foreign workers for seasonal agricultural work if the employer and state workforce agencies cannot find sufficient domestic workers for the job. The terms and conditions of the job, the benefits offered all workers in the job, the recruitment process for domestic workers and the oversight process, however, must meet requirements beyond those of ARS job listings. Information on H-2A program requirements is available from the WSOED H-2A program specialist at 503-947-1659 or on the web at [www.foreignlaborcert.doleta.gov/h-2a.cfm](http://www.foreignlaborcert.doleta.gov/h-2a.cfm)

An authorized agent may apply for recruitment assistance through the ARS or H-2A program on behalf of an employer. If an employer uses an authorized agent/staffing service/farm labor contractor, the employer should make sure the agent has the proper federal and/or state registration certificate(s) and can legally do business in Oregon.

*Note: See the sections on "Farm Labor Contracting" and "Agricultural Labor Housing" in this handbook.*

## TIME CONSTRAINTS

The more time before labor is needed that an employer contacts WSOED, the better the opportunity the workforce system has to recruit workers locally, elsewhere in Oregon, or with partner agencies in other states to meet the labor need. For ARS recruitment efforts to recruit workers in other states, eight weeks advance notice to WSOED before the date of need is encouraged. If that can't be done, give as much notice as possible. For the H-2A program, the application must be filed at least 45 days prior to the intended start of work. The terms and conditions of the job must be approved and domestic worker recruitment must occur to assess the need for foreign workers.

Any agricultural employer using the Employment Department to recruit seasonal agricultural workers under local, ARS, or H-2A job listings must also comply with the federal Migrant and Seasonal Agricultural Worker Protection Act. An employer may be an individual, association, partnership or corporation.

*Note: See the section on (section on MSPA) for more information.*

## YEAR-ROUND AGRICULTURAL WORK

For year-round agricultural jobs, the agency will be able to match job requirements against job seekers and refer interested workers from throughout the state for consideration. Workers could also self-screen themselves and apply directly to the employer if the job listing is for a year-round job, using the "self-refer" listing option. Besides being displayed in English and Spanish on the department's Web sites, year round agricultural positions can also be displayed at JobCentral ([www.jobcentral.com](http://www.jobcentral.com)) for wider recruitment.

## OTHER DEPARTMENT AND WORKFORCE SERVICES FOR EMPLOYERS

The Employment Department's workforce and economic research Web site [www.QualityInfo.org](http://www.QualityInfo.org), includes information and analysis of census data and population, wages and income, education and training providers, and articles relating to agricultural employment and activities. In addition, the department can help you with your specific questions on a one-on-one basis. To find help, click on the "contacts" button on the [www.QualityInfo.org](http://www.QualityInfo.org) home page, then select "regional analysis" in the topic area box.

Oregon Employer Council is a 32 year-old nonprofit organization dedicated to encouraging business leaders to have influence on the workforce system. Employer members learn about services provided by the Oregon Employment Department and many other workforce partners and comment on how these services are delivered

to business. There are 21 chapters throughout the state that produce high-quality low-cost seminars on human resource issues, job fairs and scholarship programs. For information about an Employer Council in your area, contact your local Employment Department office, the agency's OEC coordinator at 503-947-1305, or go to [www.WorkingInOregon.org/OEC](http://www.WorkingInOregon.org/OEC).

The agency also operates the state's Unemployment Insurance Program. An Employer Handbook describes an employer's rights and responsibilities and options for action when a former employee files a claim for unemployment benefits. The handbook is available on line at [www.employment.oregon.gov/EMPLOY/TAX/docs/EDPub117.pdf](http://www.employment.oregon.gov/EMPLOY/TAX/docs/EDPub117.pdf) or at any local Employment Department office without cost.

Unemployment insurance claims involving your employer account are now handled through the Employment Department's three regional Unemployment Insurance Centers rather than at local offices. Please direct all questions about the unemployment insurance claims process or claims involving your employer account to UI staff at the regional center for your area. To locate the center for your area and its toll free number, please go to: <http://findit.emp.state.or.us/ocs/ui-center-lookup>. Other information about the Unemployment Insurance claims process is also available at [www.oregon.gov/EMPLOY/UI/index.shtml](http://www.oregon.gov/EMPLOY/UI/index.shtml). The local Employment Department offices no longer provide information about the Unemployment Insurance claims process or the status of individual claims.

*Note: For information on paying and reporting employee wages, refer to the "Unemployment Tax" sections in this Farmer's Handbook or online at [www.employment.oregon.gov/EMPLOY/TAX/index.shtml](http://www.employment.oregon.gov/EMPLOY/TAX/index.shtml).*

Agricultural employers can learn about the state's child care assistance program for migrant families by calling the Child Care Division at 800-556-6616. To learn about Oregon's employer child care tax credits, available when an employer helps employees with their child care needs, call the Oregon Child Care Resource and Referral Network at 800-342-6712 or get information at [www.childcareinoregon.org](http://www.childcareinoregon.org) and select "Child Care Tax Credits."

Partners in the WorkSource Oregon system with the Employment Department offer a variety of other services which can help a business with its workforce challenges. These include access to funding for training and education of workers and business development resources. To learn more about these options, visit the Web site for the workforce system at [www.WorkSourceOregon.org](http://www.WorkSourceOregon.org) or contact any of the WorkSource Oregon Centers listed below.

## TECHNICAL ASSISTANCE

## WORKSOURCE OREGON EMPLOYMENT DEPARTMENT

**Business & Employment Services Programs**

875 Union St. NE Room 201

Salem, OR 97311

Phone \_\_\_\_\_ 503-947-1659

Web \_\_\_\_\_ www.WorkingInOregon.org

Staff at WorkSource Oregon Centers will assist agricultural employers with employment recruiting and other workforce services:

**Albany**

139 SE Fourth Ave \_\_\_\_\_ 541-967-2171

**Astoria**

450 Marine Drive \_\_\_\_\_ 503-325-4821

**Baker City**

1575 Dewey Ave \_\_\_\_\_ 541-523-6331

**Bend**

1645 NE Forbes Road \_\_\_\_\_ 541-388-6070

**Brookings/Harbor**

16399 Lower Harbor Rd. \_\_\_\_\_ 541-469-9836

**Burns**

90 W Washington \_\_\_\_\_ 541-573-5251

**Canyon City**

120 S Washington \_\_\_\_\_ 541-575-0744

**Corvallis**

545 SW 2nd St. Suite C \_\_\_\_\_ 541-757-4261

**Coos Bay/North Bend**

2075 Sheridan Ave \_\_\_\_\_ 541-756-8459

**Dallas**

580 Main St., Ste B \_\_\_\_\_ 503-831-1950

**Enterprise**

104 Litch St. \_\_\_\_\_ 541-426-4972

**Eugene**

2510 Oakmont Way \_\_\_\_\_ 541-686-7601

**Florence**

3180 Hwy 101 N \_\_\_\_\_ 541-997-1913

**Grants Pass**

1545 Harbeck Road \_\_\_\_\_ 541-476-1187

**Gresham**

19421 SE Stark \_\_\_\_\_ 503-669-7112

**Hermiston**

950 SE Columbia Dr., Suite B \_\_\_\_\_ 541-567-3381

**Hillsboro**

265 Oak St., Suite A \_\_\_\_\_ 503-681-0219

**Klamath Falls**

801 Oak Ave \_\_\_\_\_ 541-883-5630

**La Grande**

1901 Adams Ave \_\_\_\_\_ 541-963-7111

**Lincoln City**

801 SW Highway 101, Ste 102 \_\_\_\_\_ 541-994-6992

**Madras**

243 SW Third \_\_\_\_\_ 541-475-2382

**McMinnville**

370 NE Norton Ln. \_\_\_\_\_ 503-472-5118

**Medford**

119 N Oakdale St. \_\_\_\_\_ 541-776-6060

**Newport**

120 NE Avery St \_\_\_\_\_ 541-265-8891

**Ontario**

375 SW Second Ave \_\_\_\_\_ 541-889-5394

**Oregon City**

506 High St. \_\_\_\_\_ 971-673-6400

**Pendleton**

408 SE Seventh St. \_\_\_\_\_ 541-276-9050

**Portland**

30 N. Webster \_\_\_\_\_ 503-280-6046

**Prineville**

2321 N 3rd St. \_\_\_\_\_ 541-447-8076

**Redmond**

2158 SE College Lp \_\_\_\_\_ 541-548-8196

**Roseburg**

846 SE Pine St. \_\_\_\_\_ 541-440-3344

**St. Helens**

500 N Hwy 30 \_\_\_\_\_ 503-397-4995

**Salem**

605 Cottage St. NE \_\_\_\_\_ 503-378-4846

**The Dalles**

700 Union St. \_\_\_\_\_ 541-296-5435

**Tillamook**

3600 E Third St. \_\_\_\_\_ 503-842-4488

**Tualatin**

7995 SW Mohawk St, Bldg A \_\_\_\_\_ 503-644-1229

**Woodburn**

120 East Lincoln \_\_\_\_\_ 503-982-2817

**SOCIAL SECURITY: NO-MATCH**

The Department of Homeland Security published a new regulation in the Federal Register on Wednesday, August 15, 2007, addressing the impact of Social Security Number “no-match” letters that employers have been receiving for years.

*Note: On October 10, 2007, the US District Court for the Northern District of California issued a preliminary injunction in AFL-CIO, et al. v. Chertoff, et al. (N.D. Cal. Case No. 07-CV-4472 CRB). The preliminary injunction enjoins and restrains the Department of Homeland Security and the Social Security Administration from implementing the Final Rule entitled “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter.” Immigration and Customs Enforcement (ICE) has developed a comprehensive interactive Safe Harbor Information Center which will answer no-match related questions, or inquiries may be directed to ICE at 800-421-7105.*

## SSN NO-MATCH LETTER

No-match letters are the correspondence that employers receive from the Social Security Administration (SSA) stating that the SSA is unable to match the name and social security number (SSN) provided for a specific employee to its records.

## PROCESS TO FOLLOW

It is important for employers to follow a specific procedure when receiving a no-match letter. Following the procedure outlined by the US Department of Homeland Security gives employers safe-harbor. Safe-harbor status may protect employers from being found to have “constructive knowledge” of hiring an unauthorized worker.

1. The employer must check its records promptly upon receipt of a SSN no-match letter to determine if the no-match was the result of a clerical error. If the letter is the result of a clerical error, the employer should correct its records, inform the relevant agencies of the error and verify that the name and number, as corrected, match the Agency’s records. Immigration and Customs Enforcement (ICE) considers employers to have acted reasonably if they resolve the discrepancy with the relevant agency within 30 days of receipt of a SSN no-match letter. Employers should keep a record that such verification has occurred. If by checking its records, the employer determines the discrepancy is not due to an error in its records, it must contact the employee and request confirmation that the employee provided information is correct. If the employer, after contacting the employee, discovers its information is incorrect, the employer must correct the employee’s information in its records, inform the relevant agencies of the correction and verify the corrected information with the agency’s records. The employer is required to keep the date and time of verification.
2. If the employer’s records are correct according to the employee, then the employer must inform the employee of the date it received the no-match letter and direct the employee to pursue the matter him/herself with the SSA and to return with proof of correction within 90 days of the receipt of the no-match letter. Once again, ICE considers employers who take these corrective actions within 30 days of receipt of a SSN no-match letter to have acted reasonably and are within the “safe harbor” provision.

If the employee is not able to fix the SSN no-match issue within 90 days of receipt of the SSN no-match letter, the regulation describes the next step of the procedure that the employer must follow. The regulation allows for a person’s identity and work eligibility to be verified in an effort to

thwart identity theft, document fraud and similar crimes perpetrated on employers. At this time, DHS requires that the employer and employee to complete a new Form I-9, as if the employee were a new hire, with certain restrictions. These restrictions include the following:

1. Require the employee section 1 of the new I-9 by the 93rd day of receipt of the SSN no-match letter. The employer must complete section 2 of the new I-9 in the same timeframe.
2. Exclude any document that was the cause of the SSN no-match letter from being used to establish employment eligibility.
3. Exclude any document without a photograph of the employee from being used to establish identity. While the requirements focus on documentation, employers are reminded not to over-document the completion of the new Form I-9s or request more information than the form requires, as that could subject them to liability for discrimination. Employers may not verify in advance the authenticity of documents presented to complete an I-9 form.

When the procedure described above is completed and it is determined that the employee is work authorized in the U.S., DHS may not consider the employer to have constructive knowledge of an unauthorized worker’s status. However, it is important to note that there is no safe harbor from actual knowledge of a worker’s unauthorized status.

After exhausting the process outlined above, if an employer is still unable to confirm an employee’s authorization to work in the United States, the employer must terminate that employee. Not terminating the employee puts the employer at risk for violating the law by knowingly continuing to employ unauthorized persons. The penalties may include both heavy fines and prison time.

## CONSTRUCTIVE KNOWLEDGE

Not following the concrete steps of the new DHS regulation allows the federal government to deem that an employer may be in violation of federal regulations because the employer had constructive knowledge that an employee was an unauthorized worker. An employer may be deemed to have constructive knowledge for any of the following:

1. If a reasonable person would infer from the facts that the employee is unauthorized.
2. The employer has learned from other individuals, media reports, or any other source of information available to the employer, that the alien is unauthorized to work in the U.S.
3. The employer acts with reckless and wanton disregard for the legal consequences of permitting another individual



to introduce an unauthorized alien into the employer's work force.

4. The I-9 employment eligibility form has not been properly completed, including supporting documentation.
5. A request by an alien to their employer to file an alien labor certification or an employment based immigrant visa petition;
6. Written notice from the SSA that the combination of name and SSN submitted for an employee do not match agency records; and,
7. Written notice from Department of Homeland Security (DHS) that the immigration status document, or employment authorization document presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to anyone.

### SAFE HARBOR

Following the procedure outlined by the US Department of Homeland Security provides employers with safe-harbor. Safe-harbor status provides employers with protection from liability for having unknowingly hired unauthorized workers.

The steps outlined in the regulation (listed above) state that an employer should take as a reasonable response to receiving a SSN no-match letter are very similar to what was included in the proposed regulation. The "safe harbor" provision says if an employer follows the suggested steps, then DHS will not make a finding that the employer had constructive knowledge. The "safe harbor" provisions protect employers from DHS imposing severe fines and possible prison time for each employee that is not authorized to work in the US.

Immigration and Customs Enforcement (ICE) will consider the discrepancy resolved only if the employer verifies with the SSA or DHS that the employee's information matches the SSA's records and number assigned to that name, and that the number is valid for work with or without with DHS authorization.

### TECHNICAL ASSISTANCE

- Employers should retain all correspondence with regard to employment verification.
- Employers should not use discriminatory methods in verifying employment eligibility or verifying employees' identities. Employers should institute the same practices for every person hired. Resorting to "citizen only" hiring policies to avoid SSA inquiries is illegal. Immigration status or citizenship may not be inferred by a person's accent or appearance or country of origin.

- For a copy of the final rule and additional information, please visit [www.ice.gov](http://www.ice.gov).

The above recommendations should not be construed as legal advice. Consult your Attorney for legal advice to make sure the rule is being properly implemented on your operation.

*Source: Oregon Farm Bureau and Department of Homeland Security*

### IMMIGRATION AND CUSTOMS ENFORCEMENT

Phone \_\_\_\_\_ 800-421-7105

Web \_\_\_\_ <http://www.ice.gov/partners/safeharbor/index.htm>

### Web resources

\_\_\_\_\_ <http://www.ssa.gov/legislation/nomatch2.htm>

\_\_\_\_\_ [http://www.nilc.org/immsemplymnt/SSA\\_Related\\_Info](http://www.nilc.org/immsemplymnt/SSA_Related_Info)

## WORKERS' COMPENSATION

### WHO MUST COMPLY?

Under Oregon law, every employer employing one or more subject workers in Oregon must maintain workers' compensation insurance so that subject workers of the employer and their beneficiaries will receive compensation as required by the workers' compensation laws in the event of a work related injury, disease, or death. If you pay someone to work for you (even someone with a family relationship), and you are in charge of the way the job is done, that worker is probably your employee. Employers provide workers' compensation coverage by qualifying a) as a carrier-insured employer or (b) as a self-insured employer as provided by ORS 656.407 which requires posting of a surety deposit with the director of the Department of Consumer and Business Services. The surety deposit must be sufficient to cover future claim costs. Commonly, agricultural employers comply with the law by becoming a carrier-insured employer, much like purchasing car insurance or homeowners insurance. Having private health insurance does not replace the obligation to carry workers' compensation insurance. In most cases, workers' compensation insurance is required of all employers for their workers. To discuss exceptions, contact the Workers' Compensation Division, 503-947-7815. For a list of insurers you may access this link [http://www.oregon.gov/DCBS/SBO/short\\_list.shtml](http://www.oregon.gov/DCBS/SBO/short_list.shtml). In addition you may access this link for a list of insurance carriers and their respective pricing tiers.

[http://www4.cbs.state.or.us/ex/ins/rates\\_and\\_forms/WCRateFactorLog/display\\_log/index.cfm?fuseaction=sort\\_by\\_company\\_name](http://www4.cbs.state.or.us/ex/ins/rates_and_forms/WCRateFactorLog/display_log/index.cfm?fuseaction=sort_by_company_name) or contact the Small Business Ombudsman for Workers' Compensation, 503-378-4209.

Workers' compensation coverage provides all medical expenses as well as disability and vocational benefits to workers who become occupationally injured or diseased and are temporarily or permanently disabled. Payments are made to dependents if the worker dies as a result of occupational injury or disease. Workers' compensation coverage is insurance designed to compensate workers injured on the job, and at the same time protect the employer from liability as long as that employer is in compliance with the law. In most cases, when an employer has workers' compensation insurance, an injured worker must look for indemnification only from the insurer.

### WHAT IF I DON'T COMPLY?

If you don't have the required workers' compensation coverage, WCD sends an order to you, stating the period of noncompliance and assessing a fine. The penalty for the first offense is two times the amount of premium you should have paid for insurance, with a minimum of \$1,000.

If you continue to employ workers without coverage, the penalty increases to \$250 per day with no limit on the total fine. By law, bankruptcy can't reduce this debt. In addition, WCD will request a permanent court injunction to force you to comply. If you disobey an injunction, you're in contempt of court and subject to other types of sanctions, including jail time.

The expenses that result when a worker is injured could cost you even more than penalties. By law, a noncomplying employer is financially responsible for the same benefits insured workers receive. The law requires that a certified claims examiner process the claim. You must pay a fee for this processing in addition to claim benefit costs. The total bill can (and often does) amount to hundreds of thousands of dollars. Business owners cannot hide behind a corporation or limited liability company because corporate directors and officers and limited liability company members and managers are personally and separately liable for penalties and claim expenses. Lawsuit protection doesn't apply to noncomplying employers. So an employee can file suit against a noncomplying employer in addition to having a legitimate workers' compensation claim. Carrying workers' compensation insurance is vital to your business.

### INSURANCE PREMIUM

This is a payment made by an employer to an insurer for workers' compensation insurance coverage.

### PREMIUM

Workers' Compensation premium is based upon \$100 of estimated annual workers' compensation payroll.

Four factors influence the premium for each farm employer:

1. Type of farm operation (dairy, orchard, ranch, etc.).  
Farm operations are categorized into National Council on Compensation Insurance (NCCI) classification codes based upon the business of the employer. In turn, the NCCI class code determines the initial loss cost. The statewide risk (injuries) associated with each NCCI class code determines the loss costs, i.e., the higher the injury costs in each NCCI category, the higher the loss cost rate. For example, the 2009 loss cost rate for a dairy operation is \$4.58 per \$100 of annual payroll; for a cattle operation/ranch, the loss cost is \$17.16 per \$100; \$3.94 for orchard operations; and \$.43 for berry picking by hand.
2. Experience modification factor (mod) reflects the injuries occurred by the individual farm operation. The experience modification compares the employer's actual past claims experience to a model that represents the average claim experience for the employer's classification. If the employer's experience is less than average, it gets a rating lower than 1. If it is greater than average, the rating is higher than 1.
3. The experience modification formula generally uses three years of payroll and loss experience to calculate an experience modification factor. Therefore once an injury occurs it remains a factor in determining the farm's premium for the next three policy years. Farm operators can significantly reduce premiums over time by implementing a well-managed worker safety program, thereby reducing the number of on-the-job injuries.  
*Note: See the section on "Worker Health and Safety" in this handbook.*
4. Expense loading factor or loss cost multiplier. The loss cost multiplier is a component of the premium rate that accounts for insurer expenses relating to acquisition, taxes, claims adjustment, general expenses, profit and contingencies. Each licensed workers' compensation carrier in Oregon files one or more loss cost multipliers to account for their costs of doing business over and above the loss cost.. Farm operators may want to shop around with various carriers to determine which has the most competitive rate.

## ASSESSMENTS

There are two types of assessments paid to the Department of Consumer and Business Services: premium assessment and workers' benefit fund (WBF) "cents-per hour" assessment. The premium assessment is a flat rate assessed to all insurers, which is included in the insurance premium. This assessment funds administrative costs of the workers' compensation system, non-complying employer claims, a portion of OR-OSHA administrative costs, and other related programs. The workers' benefit fund "cents-per hour" assessment is a payroll assessment calculated on the basis of covered workers' hours worked. The employer collects half the assessment from the worker and the employer contributes the other half of the assessment. The assessment is reported and paid by the employer directly to the state with other payroll taxes each calendar quarter through the combined quarterly payroll tax reporting system. Employers report by using a Form OQ or Form OQ-WBF, and pay accompanied by a Form OTC (payment coupon). This assessment funds programs for direct benefits to injured workers and the employers who help make it possible for them to return to the workforce.

## PERMITS AND LICENSES

The Workers' Compensation Division will issue a notice of compliance when an insurer files proof of coverage on behalf of the employer. This notice must be posted in locations accessible to inform workers of the coverage. A new notice is required should the insurance carrier change.

## REPORTING INJURIES

Injuries should be reported using Form 801, Report of Occupational Injury or Disease, or Form 801S in Spanish, all of which are available from the insurer. To assure prompt and accurate filing of reports, instruct employees to report all accidents immediately. Verify all facts concerning an accident before completing the report. If an injured worker required only first aid and did not lose time from work, a report is not filed with the insurer, unless the worker wants to file a claim. In all circumstances, it is the worker's choice whether to file a claim, and an employer may be penalized if they induce a worker to not file.

## RECORD KEEPING

A record of the date, nature, and treatment of every injury, including minor ones requiring only first aid, should be kept going back five years. These records may be useful in case the worker later seeks medical treatment. Any sufficient form may be used to document minor injuries. A physician must complete form 801 for all cases involving lost time from work or treatment.

## COMPENSABLE INJURY

A compensable injury is an accidental injury or disease occurring in the course of employment that requires medical services or results in disability or death. The following points are particularly important for agricultural employers:

- A previous injury or physical condition, if aggravated by current employment, could result in a compensable claim.
- The absence of witnesses does not prevent an injury from being compensable.
- If a worker does not follow company rules, the claim could still be compensable.
- Your insurer determines compensability.
- As employer, you are considered to have knowledge of an accident when any one of the following occurs:

You or your authorized representative, such as a farm manager or supervisor, see an accident and know that a worker was injured as a result of that accident.

The worker or someone on the worker's behalf advises you or your representative, orally or in writing, that an on-the-job injury has occurred.

The worker notifies you that he or she intends to file a claim for a condition previously not considered work-related.

Your insurer receives a First Medical Report (Form 827) filled out by the doctor and signed by the worker.

The worker or his or her representative tells your insurer, orally or in writing, that an on-the-job injury has occurred.

The Report of Injury (form 801) must be filed with your insurer within five days after knowledge of an injury.

## TECHNICAL ASSISTANCE

### OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

#### Workers' Compensation Division

Benefits & Certifications Unit

Phone \_\_\_\_\_ 503-947-7840

Toll-free: \_\_\_\_\_ 1-800-452-0288

Fax \_\_\_\_\_ 503-947-7794

E-mail \_\_\_\_\_ workcomp.questions@state.or.us

Web \_\_\_\_\_ <http://cbs.state.or.us/wcd>

#### Small Business Ombudsman for Workers' Compensation

Labor and Industries Building, Room 330

350 Winter Street NE

Salem, OR 97310-1321

Phone \_\_\_\_\_ 503-378-4209

Fax \_\_\_\_\_ 503-373-7639

**Collection and reporting of workers' benefit fund  
assessment**

Fiscal and Business Services

350 Winter St. NE, Room 300 P.O. Box 14480

Salem OR 97309-0405

Phone \_\_\_\_\_ 503-947-7977

Fax \_\_\_\_\_ 503-378-3134

Email \_\_\_\_\_ mailacct.bad@state.or.us

**Sprint Relay**

Place calls from any Internet connection

Go to the Sprint Relay link below, then type 503-947-7810

and click the connect button, then begin typing your confidential conversation to a Sprint Relay operator who will then read aloud the typed conversation to the person listening on a standard telephone or wireless handset. The operator will then type that person's words and relay them back to you.)

<https://www.sprintip.com/index.jsp>