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Serving Agriculture in Labor Management Relations

Farm Employment Basics and Dealing with Inspectors, Lawyers and Other Unsavory Characters...

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Farm Employers Labor Service

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Enforcement Agencies You Must Deal With...

- Cal-OSHA or DOSH
- Division of Labor Standards Enforcement or the Labor Commissioner
- U.S. Department of Labor
- Department of Fair Housing and Employment
- The Economic and Employment Enforcement Coalition (EEEC)
- The Agricultural Labor Relations Board (ALRB)



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Others Who Sometimes Try to Pass Themselves off as Enforcers, but Aren't...

- California Rural Legal Assistance attorneys
- United Farm Workers of America organizers
- Private Attorneys (ambulance chasers)
- Private Investigators
- Private Consultants
- Members of the News Media (TV, Print, etc.)
- Legislators who are seeking higher office and trying to use you as a backdrop for their media crusade...



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Believe It Or Not, You Still Have Private Property Rights, Even in California!

- You don't have to allow that pencil-neck reporter with a TV crew on your farm...
- You don't have to allow the busy-body CRLA "inspector" into your fields to inspect you...
- You don't have to allow that a State Senator who's running for Lt. Governor onto your farm to make a "documentary" that's really a political hit-piece...



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Top-Five Most Popular Lies in California

- #5 If you elect me Governor, I'll balance the budget...
- #4 Of course I'll still respect you in the morning...
- #3 The Check's in the Mail...
- #2 No, really, I can get you in the movies/on TV/get you a record deal...



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The #1, Most-Popular Lie in California...

...I know my business card says I'm with California Rural Legal, but we're working with Cal/OSHA to enforce the Heat Illness Standard (or the Field Sanitation Standard)...



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Defend Your Property!

- Post your property boundaries, especially along roads
- Train your supervisors and lead people to “greet” strangers on your property
- Control access wherever possible with gates, fences, and signs advising visitors who to call or where to go to get access if they have a legitimate need



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Make Sure You Know Who's on Your Farm, and Why

- Make sure your contractors (especially Farm Labor Contractors) and vendors understand your company policies – where visitors can go to check in, who to talk to, where they can get access
- Don't physically restrain anyone – call the Sheriff to deal with a trespasser
- Get names/business cards/license plate numbers



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Dealing with Real Inspectors

- Agency personnel will wait a “reasonable amount of time” for owner/manager. EEEEC policies indicate up to 30 minutes
- EEEEC, if denied access still entitled to proof of Workers’ Compensation coverage and farm labor contractor license



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If you deny access to inspectors, understand the consequences

- Inspection Warrants
- Subpoenas
- And a big legal mess....
- Get Legal Counsel ASAP



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What's New?

- Revised Heat Illness Protection Standard – Effective Next Summer
- New Workers Comp Notices – Effective October 8



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Revised Heat Illness Prevention Standard

- Adopted by Cal/OSHA Standards Board last month
- Makes the Standard identical to March 2008 Cal/OSHA Guidance that we've used to advise growers on compliance for the last two summers



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Requirements for Shade:

- Must be present at all times at temps $>85^{\circ}$ or upon employee request at temps $<85^{\circ}$ -- unless employer can show continuous provision is unsafe or unfeasible
- Must be “as close as practicable” to the work area
- Must be sufficient for 25% of the crew
- Workers needing shade must be allowed and encouraged to rest in shade for no less than 5 minutes
- Must allow workers to rest comfortably without touching
- Workers must be provided with ground cover unless lawn/grass is present



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Requirements for Water

- Must furnish one quart of drinking water per hour per employee at the start of the shift, or
- An effective procedure to replenish water so that minimum amount will be provided throughout the work shift
- Employees must be encouraged to drink water frequently



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High-Heat Procedures – temps >95°

- Ensure effective communication so employees can contact supervisor when necessary
- Observing employees for alertness or signs of heat illness
- Reminding employees throughout the workshift to drink plenty of water
- Closely supervise new employees during first 14 days of employment, unless employee has been working under similar conditions for 10 of the last 30 days



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Training

- Workers must be trained before beginning work where exposure to heat illness could occur, including prevention and procedures if heat illness occurs
- Train supervisory employees on implementation of Standard's requirements, what to do if someone gets sick, how to know if hot weather is coming and how to respond



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Written Procedures

- An employer must have written compliance and emergency procedures
- Cal/OSHA inspectors will want to see these written procedures before leaving an inspection



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New Workers Comp Notice

- Effective October 8, 2010
- New Poster available through FELS
- New new-hire pamphlets available through your w/c carrier
- Shows changes to program designed to better control costs



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Verify Employment Eligibility

- Must use Immigration and Customs Service (ICE) Form I-9 to verify employment eligibility
- Keep I-9 for 1 year after employment ends or 3 years, whichever is greater



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Minors Working in Ag

- Under 12 years – may not be in the “Zone of Danger”
- Near moving equipment, unsecured chemicals, water hazards
- School district has to issue a Work Permit; you must get a Permit to Employ from Division of Labor Standards Enforcement
- Observe Limits on Hours of Work



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- Minors under 18 may not mix or load certain pesticides
- Minors below 16 may not work in hazardous occupations near moving machinery, large and dangerous animals



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You Want to be Sure you Get it Right if you Employ Minors...

Under “Hot Goods” enforcement policies, products produced with illegal child labor can be destroyed!



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Posters & Notices

- Federal Minimum Wage Poster
- Cal/OSHA Safety and Health on the Job poster
- Industrial Welfare Commission (IWC) Order 14 poster for ag occupations; others as applicable:
 - IWC Order 4 for clerical/office employees
 - IWC Order 8 for commercial packing
 - IWC Order 13 for grower packing own produce



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More Posters & Notices...

- Migrant and Seasonal Ag Worker Protection Act (MSPA) poster
- Employee Polygraph Protection Act poster
- California nondiscrimination poster (5 or more employees)
- Federal nondiscrimination poster (15 or more employees)



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Minimum Wage

- \$8.00 per hour under California Law
- Piece-rate earnings must be averaged over the workweek to determine compliance with minimum wage
- Housing and Meals can be credited against Minimum Wage
 - Employee must authorize in writing
 - IWC orders limit credit amounts



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Overtime Premium Pay

- “Non-exempt” employees, even if paid by salary or piece-rate must receive overtime
- For Ag employees covered by IWC Order 14:
 - Hours after first 10 in a workday, and 1st 8 hours on the 7th day of work in a workweek – 1 ½ times the regular rate of pay (time and a half)
 - Hours over 8 on the 7th day of work in a workweek – 2 times the regular rate of pay (double-time)

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Non-Ag workers covered by IWC Orders 4, 8 and 13

- More than 8 hours in a day, more than 40 hours in a week, 1st 8 hours on the 7th day of work in a workweek – 1.5 times the regular rate of pay (time and a half)
- More than 12 hours in a workday or more than 8 hours on the 7th day of work in a work week – 2 times the regular rate of pay (double-time)



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Premium Overtime Pay Exceptions

- Irrigators – doing irrigation work over ½ of hours in a workweek
- Drivers of certain large trucks (>6K lbs with more than 3 axles)
- Some part-time ag employees (up to 6 hours in a workday and 30 hours in a workweek)



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Be Careful with Overtime...

- If your employees process, pack or handle anything not produced by you they are subject to Federal overtime law.
- They must be paid 1 ½ time the regular rate of pay (time and a half) for all hours worked over 40 in that workweek, even if most of that worker's work is agricultural



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Payment of Wages

- Deductions not required by law must have employee written authorization
- Employees must be paid:
 - At least semi-monthly, except:
 - ✓ Boarded/Lodged employees – monthly
 - ✓ FLC employees – at least weekly



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- Employees Must be Paid:
 - Immediately upon discharge or layoff
 - Within 72 hours of voluntary quit
- Post notice of regular pay days, times and places
- Itemized Statement must be given to employee with wage statement
- Best Practice – keep payroll records for 4 years



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Reporting Time Pay

If employee reports as directed and no or less than usual work is available:

- Must pay $\frac{1}{2}$ of usual day's pay (at least 2, not more than 4 hours)
- Must pay when employee reports but is given less than $\frac{1}{2}$ the usual day's work



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Exceptions to Reporting Time Pay Requirement

- Recommendation of Civil Authorities
- Failure of Public Utilities
- Act of God
- Other causes beyond employer's control

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Tools & Equipment

- Employer must provide and maintain required or necessary tools and equipment for employees earning less than 2X the minimum wage
- You can take a security deposit, deposited in a joint bank savings account
- Deduction for employee's final pay for lost/damaged equipment allowed only on employee's prior written authorization and only where loss is due to dishonesty, willful or grossly negligent act



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Break



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Cal/OSHA Field Sanitation

Toilet Facilities

- Crew of 1-4 employees: one toilet, even if a mixed-sex crew
- Crew of 5+: one toilet per 20 employees of each sex, or fraction thereof



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- Toilet paper in suitable holder
- Screened
- Chemical toilet waste water tank must be able to hold at least 40 gallons and must contain effective odor-control and solid-liquefying chemicals
- Keep service and maintenance records for at least two years



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Handwashing Facilities

- One handwashing facility per 20 employees or fraction thereof
- Water tank must be able to hold at least 15 gallons and be refilled with potable water as needed
- Soap and single-use towels must be provided
- Must be labeled: **This water is for handwashing only.**



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- Handwashing water, soap and single-use towels must be located near each other
- Must be located within ¼ mile or a 5-minute walk of work location



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Alternative Compliance

May provide transportation to facilities if:

- employees are performing fieldwork for under 2 hours (including transportation time) or
- 4 or fewer employees are engaged in hand-labor operations on a given day



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Drinking Water Requirements

- Comply along with Heat Illness Prevention Standard
- Pure, cool water must always be readily available
- Dispensed by fountain or single-use cups
- Container must be covered, protected and kept clean



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Other Important Health & Safety Requirements

- Written Injury and Illness Prevention Program
- Written Hazard Communication Program
- First-aid kit and person trained in its use



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Federal Migrant and Seasonal Ag Worker Protection Act Required Disclosure

- To recruited migrant or day-haul worker
- To a seasonal agricultural worker upon request
- Place of employment
- Wage rates (including piece rates)
- Crops and activities
- Period of employment



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- Any benefits and any cost
- WC and UI
- Strike or work stoppage
- Arrangement for sale of goods to workers
- WC carrier and policyholder information



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Questions? Comments?

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