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## KEY EMPLOYMENT REQUIREMENTS FOR AGRICULTURAL WORK PLACES IN CALIFORNIA (Revised October 2006)

This checklist was originally created to assist agricultural employers to prepare for Targeted Industry Partnership Program (TIPP) inspections. Now, the Economic & Employment Enforcement Coalition (EEEC) has replaced TIPP's. While the checklist covers many of the federal and state laws and regulations pertaining to Agricultural employment, it doesn't list every rule and may include some that do not apply to you, consult an employment-law attorney or consultant for more details.

### Hot Topic as of October 2006

- EEEEC Inspections (Economic & Employment Enforcement Coalition) Labor & Workforce Development Agency
  - Agencies involved in EEEEC - <http://www.labor.ca.gov/eeec.htm>
  - Targeted Industries
  - What are they looking for - See checklist below
- U.S. Immigration and Customs Enforcement (ICE)
  - Inspections
  - Labor shortages
  - Social Security Number Mismatch Letters
- Minimum Wage Increases (see below)
- Vineyard Management must license as Farm Labor Contractors (see below)
- Meal Period and Rest Periods (see below)
- Piece-rate compensation
  - Hours worked, includes non-productive activities
  - How to "bullet proof" yourself
- Heat-Illness Prevention - Cal/OSHA regulations
- Cell phone use while driving - July 1, 2008

### Workers' Compensation

- \* Employer must have a workers' compensation insurance policy or be permissibly self-insured
- \* Workers' compensation notice must be posted and given to employees

### Unemployment Insurance

- \* Employment Development Department registration number

### Federal Taxes

- \* Internal Revenue Service employer identification number

### Employment Eligibility Verification

- \* Must verify on CIS Form I-9 the eligibility of every newly hired employee to work in the United States

### Child Labor

- \* Minors below age 12 may neither work in agriculture nor be near moving equipment or unprotected chemicals or water hazards (grower's children excepted)
- \* Permits to Work and Permits to Employ must be on file for at least 3 years for older minors (grower's children and high school graduates excepted)
- \* Limits on hours of work must be observed (grower's

- children excepted, but must attend school when in session)
- \* Minors below age 18 may not mix or load certain pesticides
- \* Minors below age 16 may not work in hazardous agricultural occupations (e.g., near moving machinery) (grower's children excepted)
- \* Minor children notice must be posted
- \* Property owner who benefits from a minor's employment and who knowingly allows child labor violations to occur is liable for them, even if not the minor's employer

### Farm Labor Contractors (FLC)

- \* Verify FLC is federally registered and, if applicable, authorized to transport and house employees (best way: get and keep a photocopy of the Certificate of Registration)
- \* Verify FLC is state licensed: (1) See if license looks genuine; (2) Get and keep for 3 years a copy of the license; and (3) Request from Labor Commissioner verification of license's validity
- \* Keep for at least 3 years a copy of FLC's payroll records for FLC crews supplied to grower
- \* Grower who is a joint employer of FLC's employees or who uses an unlicensed FLC is liable for FLC's violations
- \* Recommended: Have FLC direct his workers' compensation carrier to send you a certificate of insurance

- \* Land management services (such as vineyard & orchard management operators) must obtain state FLC licence.
- Deductions** allowed but not mandated by law require employee's written authorization

**Housing and Meals Credited Against Minimum Wage**

- \* Employee must authorize in writing
- \* IWC orders limit credit amounts

**Posters and Notices**

- \* Federal
  - Minimum Wage
  - Employee Polygraph Protection Act
  - Migrant & Seasonal Agricultural Worker Protection Act (MSPA) (see below)
  - MSPA Housing
  - Equal Employment Opportunity Is the Law
  - Family and Medical Leave Act
  - Uniformed Services Employment and Reemployment Rights Act
- \* Cal/OSHA
  - Safety and Health Protection on the Job
  - Form 300A (each 2/1 to 4/30)
  - Industrial Trucks (forklifts)
  - Access to Medical Records
  - Location of MSDSs
  - Tractor Safety
  - Field Sanitation
- \* Industrial Welfare Commission (IWC)
  - Order 14 (agricultural occupations)
- \* Other IWC orders as applicable
  - Order 4 (clericals, salespersons)
  - Order 8 (post-harvest handling of commodities not produced by the employer)
  - Order 13 (post-harvest handling of only the employer's own commodities)
- \* Other California Notices
  - Payday Notice
  - Discrimination & Harassment
  - Minor Children Notice
  - Time Off to Vote
  - Whistleblower Protection
  - Prop. 65
  - Workers' Compensation Notice
  - UI-SDI-PFL Notice
  - Pesticide Safety Information Sheets - Field Workers & Handlers
  - Emergency Numbers
  - Pregnancy Disability Leave Act
  - California Family Rights Act

**Minimum Wage**

- \* In general, all nonexempt employees must be paid at least minimum wage no matter whether wages are earned on an hourly, piece-rate, commission or salary basis
- \* Minimum wage:
  - Through 2006 . . . . . \$6.75/hour
  - 2007 . . . . . \$7.50/hour
  - 2008 and beyond . . . . . \$8.00/hour

- \* Piece-rate earnings must equal or exceed minimum wage
- \* An employee working a split shift must be paid for 1 hour at the minimum wage in addition to the minimum wage for that day, except where the employee resides at the place of employment

**Overtime Premium Pay**

- \* Almost all nonexempt employees—even those paid a salary or by piece rate—must receive overtime premium pay
- \* IWC Order 14
  - Hours over 10 in a workday and first 8 hours on 7th day of work in a workweek: 1½ times regular pay rate (RPR)
  - Hours over 8 on 7th day of work in a workweek: 2 times RPR
- \* IWC Orders 4, 8 and 13 (and most others)
  - 9th-12th hours in a workday, hours over 40 in a workweek, and first 8 hours on 7th day of work in a workweek: 1½ times RPR
  - Hours over 12 in a workday and over 8 on 7th day of work in a workweek: 2 times RPR
- \* Exceptions
  - Employees performing an irrigator's duties for more than ½ of their working time in a workweek)
  - Drivers of certain large trucks (generally, weighing at least 6,000 lbs. with 3 or more axles)
  - Certain part-time agricultural employees (up to 6 hours in a workday and 30 hours in a workweek)
- \* **Caution:** An employee who during a workweek processes, packs or otherwise handles after harvest any amount of any commodity not produced by his employer must be paid 1½ times RPR for all hours worked over 40 in that workweek, even if most of the employee's work is agricultural

**Payment of Wages**

- \* Generally: At least semimonthly (Exceptions: boarded & lodged employees: at least monthly; FLC employees: at least weekly)
- \* Immediately upon discharge or layoff
- \* Within 72 hours after voluntary quit
- \* Notice of regular pay days, time and place posted

**Itemized Statement** given to employee with wage payment

- \* Employee name and social security number
- \* Basis on which wages are paid (e.g., "\$8/hr."; "\$.20/vine pruned")
- \* Total hours worked
- \* Number of piecework units produced (if applicable)
- \* Total pay period earnings
- \* Purpose and amount of any sum withheld
- \* Net pay
- \* Employer's name, address and IRS employer ID number
- \* Inclusive dates of pay period

**Employer Records**

- \* Employer's name and address
- \* Employee's name, record identifier (if any), permanent address, sex, occupation, social security number and, if under age 19, birthdate, and designation as minor if under age 18
- \* Day and time when workweek starts

- \* Starting and ending times of each work period (meal periods in which operations stop and mandatory rest periods excluded)
- \* Number of piece work units produced, if applicable
- \* Total hours worked each workday, workweek and payroll period
- \* Date, purpose and amount of any sum withheld from or added to wages
- \* Net pay
- \* Total pay period earnings, including value of board, lodging or other compensation
- \* Total daily or weekly straight-time wages due, including such wages for overtime work, but excluding overtime premiums
- \* Total overtime compensation for the workweek (exclusive of straight-time wages)
- \* Regular hourly pay rate for any workweek in which overtime pay is due
- \* Basis on which wages are paid (e.g., "\$8/hr."; "\$.20/vine pruned")
- \* Amount and nature of each payment excluded from the regular pay rate
- \* Pay date and period payment covers
- \* Keep records for at least 3 years; but it's prudent to keep them for 4 years to defend claims under California's Unfair Competition Law (Business & Professions Code sections 17200-17208)

#### **Reporting-Time Pay**

- \* Employee who reports for work as required but who is not put to work or is given less than ½ of the employee's usual or scheduled day's work must be paid at the employee's regular pay rate for ½ (at least 2 but not more than 4 hours) of the usual or scheduled day's work
- \* An employee who, as required, reports for work a second time in a workday and is furnished less than 2 hours of work on the second reporting must be paid for 2 hours at the employee's regular pay rate
- \* Exceptions: Reporting-time pay does not apply where work does not start or continue due to: threats to employees or property; civil authorities' recommendation; public-utility failure; an Act of God or other cause beyond employer's control (e.g., rain)

#### **Tools and Equipment**

- \* Employer must provide and maintain required or necessary tools and equipment for employees earning less than twice the minimum wage
- \* Funds securing return of equipment must be deposited in a joint bank savings account

#### **Meal Periods**

- \* Allow a 30-minute off-duty unpaid meal period after a 5-hour work period
- \* Employer and employee may agree to waive meal period if a work period of 6 or fewer hours will complete day's work
- \* Employer and employee may agree to on-duty paid meal period if task requires it
- \* After 10 hours of work, allow a 2<sup>nd</sup> meal period, which employer and employee may agree to waive if employee

will not work more than 12 hours and 1<sup>st</sup> meal period was not waived (IWC orders other than Order 14)

- \* An employee not provided a required meal period must be paid for that workday 1 hour of additional pay at the employee's regular pay rate

#### **Rest Periods**

- \* Allow 10 minutes of paid rest period per 4 hours of work or major fraction thereof, based on total workday hours
- \* None required if employee works fewer than 3½ hours in a workday
- \* An employee not provided a required rest period must be paid for that workday 1 hour of additional pay at the employee's regular pay rate

#### **Transportation of Workers**

- \* Licensing of drivers
- \* Vehicle safety standards and inspection stickers
- \* Insurance

#### **Housing**

- \* Inspections and permits under state Employee Housing Act if 5 or more employees are housed
- \* Comply with federal housing standards for migrant agricultural workers
- \* Federal migrant agricultural worker housing poster

#### **Field Sanitation in Hand-Labor Operations**

- \* Toilet Facilities
  - Crew with 1-4 employees: 1 toilet, even if a mixed-sex crew
  - Crew with 5 or more employees: 1 toilet per 20 employees of each sex, or fraction thereof
  - 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 & maintenance records for at least 2 years
- \* Handwashing Facilities
  - 1 per 20 employees or fraction thereof
  - Water tank must be able to hold at least 15 gallons and be refilled with potable water as necessary
  - Soap and single-use towels provided
  - Sign posted stating: **This water is for handwashing only.**
- \* Toilet and Handwashing Facilities
  - Located near each other
  - Within a ¼-mile or 5-minute walk of employees, whichever is shorter; where terrain prevents this, then at the point closest to vehicular access
  - Ventilated and rigidly constructed, with self-closing doors, lockable from inside
  - Inside surfaces must be nonabsorbent, smooth, readily cleanable, and light-colored
  - Clean and sanitary
  - **Alternative compliance:** May provide transportation to facilities if: (1) employees are performing fieldwork for under 2 hours (including transportation time) or (2) 4 or fewer employees are engaged in hand-labor operations

on a given day

- \* Drinking Water
  - Pure, cool water must always be readily available
  - Dispensed by fountain or single-use cups
  - Container must be covered, protected and kept clean
- \* Good hygiene practices notice

**Heat-Illness Prevention for Outdoor Employees**

- \* Either (1) have on hand 1 quart of drinking water per hour per employee at a shift's start or (2) show that procedures were in place to replenish the water supply to enable each employee to drink that much water
- \* Stress the importance of frequent water consumption
- \* Provide employees suffering from heat illness or who believe they need time to recover from heat exposure to prevent the onset of heat illness with access to cooling shade for at least 5 minutes
- \* Educate employees and their supervisors on ways to avoid heat illness and steps to take if it nonetheless occurs
- \* Written emergency procedures

**Weeding, Thinning and Hot-Capping**

- \* Employees may not weed, thin or hot-cap in a stooped, kneeling or squatting position using either a short-handled tool (*i.e.*, one with handles less than 48 inches long) or a long-handled tool
- \* Employees may not hand weed, hand thin or hand hot-cap in a stooped, kneeling or squatting position unless at least one of the following applies:
  - The employer can show that doing the task by hand is necessary because there is no readily available, reasonable alternative means (*e.g.*, a long-handled tool) suitable and appropriate to the commodity's production (*i.e.*, presumably, so the task could be done while standing)
  - Hand weeding, hand thinning or hand hot-capping is only occasional or intermittent and incidental to a non-hand weeding operation; this includes both non-weeding operations (*e.g.*, irrigating or harvesting) and weeding operations where employees are generally standing while using long-handled tools; to be "occasional or intermittent," the time devoted to doing the task by hand must be limited to 20% of an employee's weekly work time
  - The commodity plants being weeded, thinned or hot-capped:
    - were spaced less than 2 inches apart when planted;
    - are growing in a field or greenhouse registered as organic with the county Agricultural Commissioner;
    - are seedlings; or
    - are horticultural plants growing in tubs or planter containers with openings of 15 inches or less
- \* Employees engaged in hand weeding, hand thinning or hand hot-capping that is not occasional or intermittent get another 5 minutes on top of the 10-minute rest period they are allowed by law for every 4 hours worked or major fraction thereof (*i.e.*, their rest-break time is 15 minutes instead of 10 minutes)
- \* Employees engaged in hand weeding, hand thinning or hand hot-capping must be supplied with gloves and

kneepads as may be necessary and with training in accordance with existing Injury and Illness Protection Program guidelines

**Other Safety and Health Requirements**

- \* Written Injury and Illness Prevention Program
- \* Written Hazard Communication Program
- \* First-aid kit and person trained in its use
- \* Lockout/Tagout
- \* Emergency Action Plan
- \* Fire Prevention Plan
- \* Access to Medical and Exposure Information
- \* Personal Protective Equipment
- \* Respiratory Protection
- \* Storage of Hazardous Substances
- \* Driverless Self-Propelled Equipment
- \* Machine Guarding and Power Take-Off (PTO) Shafts
- \* Forklifts, Industrial Tow Tractors, and Agricultural Tractors
- \* Reporting Serious Accidents Within 8 Hours
- \* Tractor Roll Over Protection (ROP)
- \* Pressure vessel permits and inspections

**Migrant & Seasonal Agricultural Worker  
Protection Act Disclosure**

- \* Disclose this information in writing to a recruited migrant or seasonal day-haul agricultural worker when the worker is recruited and to a seasonal agricultural worker upon the worker's request when the worker is offered employment:
  - Place of employment, including employer's name and address
  - Wage rates (including piece rates) to be paid
  - Crops and activities the worker may be employed in
  - Period of employment
  - Any transportation, housing and other benefit to be provided, and any cost to be charged for them
  - Workers' compensation and unemployment insurance
  - Existence of any strike or other concerted work stoppage
  - Existence of any arrangement under which the grower or FLC receives a commission or other benefit from sales to workers
  - Workers' compensation carrier and policyholder information

**Sexual-Harassment Training for Supervisors**

- \* Required for employers with 50 or more employees in each of 20 consecutive weeks during the current or prior year
- \* Supervisors as of 7-1-05 must get 2 hours of training by 1-1-06
- \* New supervisors must get 2 hours of training within 6 months after becoming supervisor
- \* After 1-1-06, supervisors must get training every 2 years
- \* Instructor must have knowledge & expertise in the prevention of harassment, discrimination & retaliation
- \* Compliance does not insulate employer from harassment liability but helps show employer took reasonable steps to stop harassment
- \* Failure to comply may result in an order to comply (no fine); lack of training could be used against an employer in a harassment action