

# Migrant and Seasonal Agricultural Worker Protection Act of 1983

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), enacted in 1983, was designed to provide migrant and seasonal farmworkers with protections concerning transportation, housing, pay, working conditions, and work-related conditions. The act also requires farm labor contractors to register with the U.S. Department of Labor and assures necessary protections for farmworkers. The act exempts farm operators (not farm labor contractors) from the migrant and seasonal worker protection provisions if they qualify for the 500-man-days exemption under the Fair Labor Standards Act (FLSA).

Two rules changing and clarifying MSPA were published in 1996 and 1997. The 1996 rule, a result of statutory amendments to MSPA, changed MSPA regulations regarding disclosure of workers' compensation information and reconsideration of the MSPA-required transportation liability insurance. The 1997 rule, amended the definition of "employ" under MSPA to include a definition of "independent contractor" and to clarify the definition of "joint employment."

## Requirements

The law contains several requirements for agricultural employers. First, farm labor contractors and each of their employees who will be performing farm labor contracting activities must obtain a certificate of registration from the U.S. Department of Labor before they can undertake farm labor contractor activities. Farm labor contractors who furnish transportation and housing must also:

- Furnish proof to the U.S. Department of Labor that their transportation vehicles meet safety requirements,
- Furnish proof to the U.S. Department of Labor that their transportation vehicles are insured for the amounts specified in the statute and regulations (\$100,000 per seat with a \$5 million cap for each vehicle); workers' compensation insurance may be used to meet all or part of the insurance requirements, and
- Identify the housing that will be used and show that it meets State and Federal safety and health standards and is approved for occupancy.

Second, farm labor contractors, agricultural employers, and agricultural associations must provide written

information to their workers on wages, hours, State workers' compensation (if applicable), other working conditions, and housing when they recruit.

Third, farm labor contractors, agricultural employers, and agricultural associations must make and preserve written payroll records. They must also provide each employee with a written statement of earnings, deductions (plus reasons for deductions), and net pay.

Finally, agricultural employers and associations, to the extent they own or control migrant housing or use or cause to be used a vehicle for the transportation of agricultural workers, are responsible, individually or jointly with a farm labor contractor, for compliance with the MSPA standards.

Table 5 summarizes MSPA provisions and penalties for violations.

## Definitions

The following definitions are limited to key terms to show the law's range of coverage. Readers seeking more detailed information should contact the nearest office of the Wage and Hour Division, U.S. Department of Labor, and consult *29 Code of Federal Regulations* and *Title 29, United States Code*.

*A farm labor contractor* is a person (other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association) who receives a fee or other valuable consideration for performing farm labor contracting activities.

*Farm labor contracting activity* consists of "recruiting, soliciting, hiring, employing, furnishing, or transporting of any migrant or seasonal agricultural worker" (2).

*A migrant agricultural worker* is a person employed in agricultural work of a seasonal or other temporary nature who is required to be absent overnight from his or her permanent place of residence. Exceptions are immediate family members of an agricultural employer or a farm labor contractor, and temporary H-2A foreign workers.<sup>13</sup>

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<sup>13</sup>H-2A temporary foreign workers are nonimmigrant aliens authorized to work in agricultural employment in the United States for a specified time period, normally less than 1 year.

**Table 5--Migrant and Seasonal Agricultural Worker Protection Act of 1983: Summary of applicability to agriculture and penalties for violations**

Provisions	Exemptions for agriculture	Basis for agricultural exemptions	Enforcement
<p><b><i>Farm labor contractor registration</i></b>            Farm labor contractors and each of their employees who will perform farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can start farm labor contractor activities.</p>	Total	<ol style="list-style-type: none"> <li>1. Agricultural employers and associations or their employees.</li> <li>2. Farm labor contractors who work within a 25-mile intrastate radius of their permanent residence for less than 13 weeks per year.</li> <li>3. Custom combine, hay-harvesting, or sheep-shearing operations.</li> <li>4. Seed production operations.</li> <li>5. Custom poultry operations.</li> <li>6. Common carriers.</li> <li>7. Labor organizations.</li> <li>8. Nonprofit charitable or educational institutions.</li> <li>9. Persons hiring or recruiting students or other nonagricultural employees for employment in seed production or in stringing and harvesting shade-grown tobacco.</li> </ol>	<p><b><i>Responsible agency</i></b>            Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.</p> <p><b><i>Penalties</i></b></p> <ol style="list-style-type: none"> <li>1. Criminal sanctions.               <ol style="list-style-type: none"> <li>a. For first violation: not more than \$1,000 fine and sentenced to prison for not more than 1 year.</li> <li>b. For subsequent violations: not more than \$10,000 fine and/or sentenced to prison for not more than 3 years.</li> </ol> </li> <li>2. For each violation: civil fine up to \$1,000.</li> <li>3. Administrative sanctions (revocation or denial of farm labor contracting certificate).</li> </ol>
<p><b><i>Migrant and seasonal agricultural workers protection</i></b>            Farm labor contractors, agricultural employers, agricultural associations must provide migrant and seasonal agricultural workers with information on wages, hours, and other working conditions. In the case of housing, housing providers must provide migrant and seasonal workers with information on housing.</p>	Partial	<ol style="list-style-type: none"> <li>1. Individuals or immediate family members who engage in farm labor contracting activities on behalf of their exclusively owned or operated operation.</li> <li>2. Any person, except a farm labor contractor (for example, a farm operator), who qualifies for the 500-man-days exemption under the Fair Labor Standards Act. Also, all those listed for the farm labor contractor registration, except number 1.</li> </ol>	

Source: Compiled by USDA, ERS from 29 Code of Federal Regulations and Title 29 United States Code.

A *seasonal agricultural worker* is a person employed in agricultural work of a seasonal or other temporary nature who is not required to be absent overnight from his or her permanent place of residence. Such a worker is covered by MSPA when the worker is performing fieldwork, or when the worker is employed in a packing, processing, or similar operation and is transported by day haul. The same exceptions listed above for migrant agricultural workers apply here.

A *day-haul operation* is “the assembly of workers at a pick-up point waiting to be hired and employed, transportation of such workers to agricultural

employment, and the return of such workers to a drop-off point on the same day” (2).

*Agricultural employment* is any service or activity defined as agricultural employment under section 3(f) of the FLSA or section 3121(g) of the Internal Revenue Code of 1954. In addition, the handling, planting, drying, packing, packaging, processing, freezing, and grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state are also considered agricultural employment.

*Fieldwork* is work related to planting, cultivating, or harvesting operations (which occurs in the field rather than in a processing plant or packing shed).

*Fieldworkers* are employees who plant, cultivate, and harvest agricultural products and include workers in nursery and mushroom-growing operations.

An *agricultural employer* is a “person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker” (2).

An *agricultural association* is a “nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law which recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker” (2).

The *immediate family of an employer* consists of “spouse, children, stepchildren, and foster children; parents, stepparents, and foster parents; and brothers and sisters” (2).

An *illegal alien* is “any person who is not lawfully admitted for permanent residence in the United States or who has not been authorized by the Attorney General to accept employment in the United States” (2).

The definition of *employ under MSPA* is the same as under FLSA and may include consideration of whether an independent contractor or employment relationship exists under the FLSA.

*Joint employment* means a condition in which a single individual is an employee of two or more persons at the same time.

### **Determining Joint Employment**

The rule published in 1997 amended the definition of “employ” under MSPA to include a definition of “independent contractor” and to clarify the definition of “joint employment.” When a farm labor contractor is engaged by an agricultural employer or association, a determination must be made regarding the relationship of the contractor and his or her employees to the person or association. The factors determining whether the farm labor contractor is an independent contractor are as follows:

- The nature and degree of the employer’s control over the manner in which the work is performed;
- The employee’s opportunity for profit or loss depending upon his or her managerial skill;
- The employee’s investment in equipment or materials required for the task, or the employee’s employment of other workers;
- Whether the services rendered by the employee require special skills;
- The degree of permanency and duration of the working relationship; and
- The extent to which the services rendered by the employee are an integral part of the employer’s business.

If it is determined that a farm labor contractor is a bona fide independent contractor, then it must be determined whether the employees of the farm labor contractor are also jointly employed by the agricultural employer or association. The factors to determine whether an employment relationship exists between the agricultural employer or association and the agricultural worker are as follows:

- Whether the agricultural employer or association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker or work performed (such control may be either direct or indirect, taking into account the nature of the work performed and a reasonable degree of contract performance oversight and coordination with third parties);
- Whether the agricultural employer or association has the power, either alone or in addition to another employer, directly or indirectly, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for the worker;
- The degree of permanency and duration of the relationship of the parties in the context of the agricultural activity at issue;
- The extent to which the services rendered by the worker are repetitive, rote tasks requiring skills acquired with relatively little training;

- Whether the activities performed by the worker are an integral part of the overall business operation of the agricultural employer or association;
- Whether the work is performed on the agricultural employer's or association's premises, rather than on premises owned or controlled by another business entity; and
- Whether the agricultural employer or association undertakes responsibilities in relation to the worker commonly performed by employers, such as preparing and making payroll records, preparing and issuing paychecks, paying FICA taxes, providing workers' compensation insurance, providing field sanitation facilities, housing or transportation, or providing tools and equipment or materials required for the job (taking into account the amount of the investment).

### **Fulfilling the Requirements of Conditions of Employment**

A major requirement of employers and contractors under MSPA is to provide workers with a statement of the conditions of their employment. This law requires that each farm labor contractor, agricultural employer, and agricultural association that recruits any migrant or day-haul worker must provide the following information in writing to each worker, unless sufficient justification exists to excuse noncompliance (2):

- Place of employment;
- Wages to be paid;
- Crops and kinds of activities in which the worker is to be employed;
- Period of employment;
- Transportation, housing, and any other employee benefits to be provided, and any costs to be charged to workers;
- The name of the workers' compensation carrier (if workers' compensation is provided), the name of the policy holder of such insurance, the name and telephone number of the person who must be notified of an injury or death, and the time period within which such notice must be given. (The notice can be in writing or as a photocopy of any notice regarding workers' compensation insurance required by the law of the State in which the worker is employed, as long as the photocopied notices contain all required information.);

- Existence of any strike, work stoppage, slowdown, or interruption of operations by employees at the place of employment; and
- Whether the farm labor contractor, the agricultural employer, or the agricultural association is paid a commission or receives a benefit for items that may be sold to workers while employed.

This same information must be provided in writing to any seasonal worker who requests it. The information must be provided in the language in which the farmworker is fluent or literate.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant or seasonal worker (including day-haul workers) must make the following records for each employee and preserve them for 3 years:

- Basis on which wages are paid;
- Number of piecework units earned, if paid on a piecework basis;
- Number of hours worked;
- Total earnings per pay period; and
- Specific sums withheld and the purpose of each sum withheld, and net pay.

Workers must be paid every 2 weeks or twice a month. Each employee must be provided with an itemized written statement showing the name and address of the employer and the information listed above for each pay period. The information furnished to employees must be in a language common to the workers.

Farm labor contractors must also furnish wage records to each agricultural employer and agricultural association for which the contractor provides workers. The agricultural employers and agricultural associations who receive these records are required to keep them for 3 years from the end of the employment period.

### **Enforcement**

The Administrator of the Wage and Hour Division of the U.S. Department of Labor or a designated representative may enter a facility and inspect the employment conditions, practices, and employment records, and may conduct any investigation deemed necessary to determine if any violations of MSPA have occurred. In addition to Wage and Hour inspections, if a compliance officer of the Occupational Safety and

Health Administration conducting investigations is presented with information concerning noncompliance with MSPA, this information will be referred to the Wage and Hour Division.

Violations of MSPA carry criminal and civil penalties and administrative sanctions. MSPA also permits persons whose rights have been violated under MSPA to bring legal action against alleged violators.

### **Sanctions**

Under the criminal sanctions, anyone knowingly and willfully violating MSPA or its regulations may be fined not more than \$1,000 or sentenced to prison for not more than 1 year, or both, for first violations. Subsequent violations carry a fine of not more than \$10,000 or a prison sentence of not more than 3 years, or both (2). An unregistered farm labor contractor who employs an illegal alien may be fined not more than \$10,000 or sentenced to prison for not more than 3 years, or both.

Under civil sanctions, any person who commits a violation of MSPA or any regulations under it may be assessed a civil money penalty of not more than \$1,000 for each violation (13). A violator may also be subject to civil injunctive action as well as legal action to recover unpaid wages.

Under administrative sanctions, farm labor contractors who violate MSPA or any of its regulations may be subject to having their current certificate revoked or future applications for certificates denied. These sanctions also include the denial of facilities and services authorized by the Wagner-Peyser Act (established the U.S. Employment Service) (2).

### **Private Right of Action**

A unique feature of MSPA is that it permits anyone aggrieved by a violation of any provision by a farm labor contractor, agricultural employer, agricultural association, or other person to file suit in any Federal District Court having jurisdiction over the parties (11). The suits may be filed regardless of the amount in controversy, the citizenship of the parties, and whether all administrative remedies available under the act have been exhausted. The court may appoint an

attorney for the complainant. Finally, the court may award up to \$10,000 for each plaintiff for each violation, or other equitable relief when violations are intentional.

### **Summary**

The MSPA is the major Federal law that deals exclusively with agricultural employment. It was enacted to protect migrant and seasonal farmworkers on matters of pay and working and work-related conditions, to require farm labor contractors to register with the U.S. Department of Labor, and to assure necessary protections for farmworkers.

The major requirements of MSPA are: (1) farm labor contractors and each of their employees who will be performing farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can undertake farm labor contractor activities; (2) farm labor contractors, agricultural employers, and agricultural associations must disclose to migrant and seasonal agricultural workers information about wages, hours, workers' compensation (when available), and other working conditions, and about housing when provided; (3) workers must be provided with written statements of earnings and deductions; (4) if transportation is provided, vehicles used must be safe and properly insured; and (5) if housing is provided, it must meet health and safety standards.

The law requires people who use the services of a farm labor contractor to take reasonable steps to determine that the contractor has a valid certificate of registration. This information can be verified by calling the U.S. Department of Labor's toll-free number (1-800-800-0235). The law designates criminal and civil penalties and administrative sanctions against violators.

The amended "joint employment" regulation, by focusing more closely on tests established by the Federal courts and by clarifying certain concepts, has been strengthened. Therefore, agricultural employers and associations using the services of farm labor contractors should become familiar with the provisions of MSPA and other labor laws.