



FARMWORKER HOUSING Issue Brief

Farmworker Housing


Introduction

Recent estimates¹ indicate there are approximately 3 million migrant and seasonal farmworkers in the United States. A migrant farmworker, unlike a seasonal farmworker, establishes a temporary home during the employment period.^{2, 3} Migrant and seasonal farmworkers often arrange housing through their employer, with a greater proportion of migrant farmworkers utilizing employer-based housing systems than seasonal employees.^{4, 5} Employer-based housing systems are often organized in camps with numerous units (i.e., apartments or trailers).⁶ The quality and conditions of housing vary from camp to camp as they are frequently built and maintained by the employer and dependent on employee turnover.⁷

Camp housing conditions often have negative social and physical attributes,⁸ including excessive noise, crowding, mold, insect and rodent infestation and structural damage. Farmworkers living in such conditions are prone to health problems such as depression, anxiety, respiratory disease, skin disease, infectious disease and injuries.⁹ Farmworker housing conditions are addressed by various government agencies at the national, state and local levels. Federal legislation addresses farmworker housing through the Migrant and Seasonal Agricultural Worker Protection Act (29 USCA §1802). Various state laws also address farmworker housing. Considering the different agencies involved in advancing farmworker health, each agency should have a strong understanding of its authority and responsibility to allow for effective collaboration.¹⁰ This memorandum is not intended to be comprehensive, but is meant to help local and state agencies and interested individuals better understand legal authority relating to farmworker housing.

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (29 USC §1802)

The Migrant and Seasonal Agricultural Worker Protection Act (AWPA)¹¹ addresses the requirements of farmworker housing when provided by a grower or farm labor contractor. AWPA is administered by the Wage and Hour Division of the Department of Labor and requires that employer housing adheres to substantive federal and state safety and health standards. Every non-exempt farm labor contractor, agricultural employer and agricultural association is required to obtain a Certificate of Registration.¹² A Certificate of Registration authorizes the applicant to employ and, if applicable, house migrant farmworkers. Exempt employers include family businesses and small business.¹³ A complete list of employers who are exempt from AWPA is found under 29 USC §1803.¹⁴ A Certificate of Registration may be issued by the



Department of Labor or through a state or local authority, and contains the employer's approved employment procedure, such as rate of pay and housing arrangements.

A Certificate of Registration may be issued by the Secretary of Labor or the Secretary's authorized representative. Once issued, the certificate may be [suspended or revoked](#)¹⁵. For example, applicants who knowingly make misrepresentation in their application or who fail to pay any court judgment obtained by the Secretary of Labor may have their license suspended or revoked. An employer whose Certificate of Registration was refused, suspended or revoked is afforded an opportunity for an agency hearing. A person may also obtain judicial review from a United States District Court.

REGULATIONS IMPLEMENTING AWPA ([29 CFR PART 500](#))¹⁶

The Secretary of Labor is empowered to enforce the Act through 29 CFR Part 500, which sets out the regulations for implementing AWPA and defines substantive Federal and State safety and health standards. Compliance with state standards is required wherever they are more stringent than Federal standards. State safety and health standards may be found under the state's Occupational Safety and Health Act (OSHA). A state's OSHA typically addresses standards related to fire prevention such as smoke detector locations, the necessity of maintained plumbing and an accessible, sanitary water supply. Confusion over who has responsibility over the implementation and functioning of AWPA may occur because AWPA is Federal legislation that relies on the enforcement of state standards.

The Secretary of Labor may delegate certain AWPA functions. See 29 CFR Part 500.158. These functions include: the receipt, handling and processing of applications for certificates of registration; issuance of certificates of registration; investigations and inspections; the enforcement of AWPA; and functions the Secretary deems useful. Alternatively, a state may gain authority over AWPA functions by submitting a plan to the Secretary in compliance with 29 CFR Part 500.159-500.160.

FUNCTIONS

Each state has the opportunity to delegate authority throughout the state level or to local authorities. Not all states have created legislation addressing farmworker housing. In states that have not enacted legislation, the Wage and Hour Division of the U.S. Department of Labor is responsible for [administering and enforcing](#)¹⁷ AWPA. States that have addressed farmworker housing by statute or regulation commonly delegate power to state and local health departments (or alternative health-focused entity) or the state's labor department (or alternative labor-focused entity).

Receipt, Handling and Processing of Applications for Certificates of Registration

Receipt, handling and processing of applications for a Certificate of Registration may be the first time a new employer of migrant or seasonal farmworkers has contact with a government agency. After receiving a Certificate of Registration, employers will likely need to again contact the Department of Labor regarding work Visas. All employers of migrant and seasonal workers who are not exempt, even those not providing housing, must obtain a Certificate of Registration. To obtain a Certificate of Registration, the employer must complete a written application containing information such as the farm labor contracting activities, transportation details and an identification of each facility or real property that is to be used to house any migrant agricultural worker. Table 1 below highlights some of the different state and local departments responsible for receipt, handling and processing of applications for Certificates of Registration. If a state does not have a department for the receipt, handling and processing of applications for certificates of registration, the employer may [apply](#) directly through the [U.S. Department of Labor](#).^{18,19}

Dept. of Housing & Community Involvement	California (Health and Safety Code §§ 17032-17033), Texas (Tex. Admin. Code § 90.3)
Dept. of Health (State)	Delaware(CDR 16-4000-4447 §3.3.1), Florida (Chapter 381.008-.00897, F.S., Chapter 64E-14) , Illinois (210 ILCS 110/4) Indiana (IC 16-41-26-6), Iowa (Iowa Code, Chapter 138.3) , Massachusetts (105 CMR 420.811) , New York (10 NYCRR §15.2) , Ohio (ORC Ann. 3733.43) , Virginia (Va. Code Ann. 32.1-206) , Washington (Rev. Code Wash (ARCW) § 70.114A.065)
Local Health Dept. or Agency	California (Health and Safety Code §§ 17032-17033), Florida (Chapter 381.008-.00897, F.S., Chapter 64E-14)North Carolina (N.C. Gen. Stat. §95-47.2), Ohio (ORC Ann. 3733.45), Washington (Rev. Code Wash (ARCW) § 70.114A.065) , West Virginia (W.Va. CSR §§ 64-18-1-3.2)
Dept. of Agriculture	Michigan (MCLS §§ 333.12411 through 333.124314) , Pennsylvania (7 Pa. Code § 82.20)
Dept. of Labor	Colorado (C.R.S. 8-3.5-105) , Maryland (Labor and Employment Art. 7 §302) , New Jersey (N.J. Stat. §34:9A-20), North Carolina (13 NCAC 16 .0202), Wisconsin (Wis. Stat. §103.92)
Dept. of Consumer & Business Services	Oregon (ORS Vol. 11 §456.585)

**State hyperlinks connect to respective state's application*

Issuance of Certificates of Registration

Once an employer submits an application the “Administrator or authorized representative”²⁰ reviews the application and determines if the application is complete and properly executed. Complete and properly executed applications have no missing information and provide details such as employment conditions, rate of pay and housing arrangements. An applicant whose application is complete and properly executed receives a Certificate of Registration. The U.S. Department of Labor, Wage and Hour Division issues Certificates of Registration if the Administrator reviews the Application. When an “authorized representative” reviews the application, their respective department or agency typically issues the Certificate of Registration. See Table 2 below for the state and/or local agency responsible for the issuance of Certificates of Registration.

Dept. of Housing & Community Involvement	California (Health and Safety Code §§ 17032-17033), Texas (Tex. Admin. Code § 90.3)
Dept. of Health (State)	Delaware (CDR 16-4000-4447 §3.3.1), Florida (Fla. Stat tit. XXIX §381.0086), Illinois (210 ILCS 110 §4), Indiana (ICA §16-41-26-6), Iowa (Iowa Code 138.2-138.3), Massachusetts (Mass. Gen Laws ch. 111, § 128G), New York (10 NYCRR § 15.4), Ohio (ORC Ann. 3733.02), Virginia (Va. Code Ann. §32.1-206), Washington (Rev. Code Wash (ARCW) § 70.114A.065)
Local Health Dept. or Agency	Florida (Fla. Stat tit. XXIX §§ 381.00897;381.0086), North Carolina (N.C. Gen. Stat. Art. 19 §95-224), West Virginia (64 C.S.R. 18)
Dept. of Agriculture	Michigan (MCLS §333.12413)
Dept. of Labor	Maryland (Labor and Employment Art. 7 §302), New Jersey (N.J. Stat. §34:9A-20), Washington (Rev. Code Wash (ARCW) § 70.114A.065), Wisconsin (Wis. Stat. §103.905;103.92)
Dept. of Environmental Resources of the Commonwealth	Pennsylvania (7 Pa. Code § 82.2)
Office of Administrative Hearings	North Carolina (13 NCAC 16.0202)

Investigations and Inspections

An **investigation**²¹ typically occurs when a person, commonly a farmworker, makes a complaint. An investigation may sporadically occur in industries notorious for paying low wages. Occasionally, geographic areas will be targeted for an investigation. Investigations are most often the responsibility of the U.S. Department of Labor, Wage and Hour Division in states without a delegated authority for farmworker housing investigations. In addition to reviewing their AWPAs responsibilities, state and local authorities should look to their **Occupational Safety and Health Plan's Field Sanitation Standards**²² to determine which department has authority over farmworker housing investigations and inspections.²³

Dept. of Housing & Community Involvement	California (Health and Safety Code §17008), Texas (Tex. Admin. Code § 90.3)
Dept. of Health (State)	Delaware (CDR 16-4000-4447 §1.1), Illinois (210 ILCS 110 §§§4. 6, 9), Florida (Fla. Stat tit. XXIX §381.0086), Indiana (ICA §16-41-26 §§§6, 9, 12), Iowa (Iowa Code 138.11), Maryland (COMAR 10.16.01.08), Massachusetts (Mass. Gen Laws ch. 111, § 128G), Nevada (NRS 444.190), New York (10 NYCRR § 15.4), Ohio (ORC Ann. 3733.45), Utah (UT Admin Code R392-501), Virginia (Va. Code Ann. §32.1-207), Washington (Rev. Code Wash (ARCW) § 70.114A.065)
Local Health Dept. or Agency	California (Health and Safety Code §17008), Florida (Fla. Stat tit. XXIX §381.0086), Iowa (Iowa Code 138.11), Massachusetts (Mass. Gen Laws ch. 111, § 128G), Nevada (NRS 444.190), New Jersey (N.J. Stat. §34:9A-18), North Carolina (N.C. Gen. Stat. Art. 19 §95-226; 13 NCAC 16.0201; 16.0303; 16.0404), Ohio (ORC Ann. 3733.45), Utah (UT Admin Code R392-501), West Virginia (64 CSR 18-4)
Dept. of Agriculture	Michigan (MCLS §333.12425)
Dept. of Labor	Colorado (C.R.S. 8-3.5-105), Connecticut (Conn Gen Stat §22-17a), Maine (26 MRS §587), New Jersey (N.J. Stat. §34:9A-18), North Carolina (N.C. Gen. Stat. Art. 19 §95-226), Oregon (ORS 654.251), Washington (Rev. Code Wash (ARCW) § 70.114A.065), Wisconsin (Wis. Stat. §103.905;103.92)
Dept. of Environmental Resources of the Commonwealth	Pennsylvania (7 Pa. Code § 82.2)

Enforcement of AWPA

When a state has not adopted AWPA, or been delegated an enforcement authority, then AWPA is enforced by the Department of Labor, Wage and Hour Division. The Department of Labor, Wage and Hour Division maintains enforcement authority along with any state delegated enforcement authority. Enforcement includes civil money penalty assessment, payment and collection of penalties and registration determinants according to [29 CFR Part 500.140-500.143](#).²⁴ Enforcement proceedings occur when the department with enforcement authority believes the AWPA or any of its regulations have been violated. See Table 4 for a list of state and/or local agencies with the delegated authority to enforce AWPA.

Dept. of Housing & Community Involvement	California (Health and Safety Code §17052), Texas (Tex. Admin. Code § 90.6, 90.7)
Dept. of Health (State)	Delaware (CDR 16-4000-4447 §1.1), Florida (Fla. Stat tit. XXIX §381.0086), Illinois (210 ILCS 110 §§16, 18), Indiana (ICA §16-41-26-9), Iowa (Iowa Code 138.5; 138.7; 138.8; 138.10; 138.19), Massachusetts (Mass. Gen Laws ch. 111, § 128H), Nevada (NRS 444.190; 200), New York (10 NYCRR §15.3), Ohio (ORC Ann. 3733.46), Virginia (Va. Code Ann. §32.1-209), West Virginia (W.Va. CSR §§ 64-18-1.7), Washington (Rev. Code Wash (ARCW) § 70.114A.065)
Local Health Dept. or Agency	California (Health and Safety Code §17052), Florida (Fla. Stat tit. XXIX §381.0061; §381.0012), Nevada (NRS 444.030), New York (10 NYCRR § 15.3), Oregon (ORS 654.251), West Virginia (W.Va. CSR §§ 64-18-1.7)
Dept. of Agriculture	Michigan (MCLS §§ 333.12425), Connecticut (Conn Gen Stat §22-4c)
Dept. of Labor	Colorado (C.R.S. 8-3.5-106; 110; 111), Maine (26 MRS §566), Maryland (Labor and Employment Art. 7 §308; 309; 312; 313), New Jersey (N.J. Stat. §34:9A-15), North Carolina (13 NCAC 16.0208), Oregon(ORS 654.251), Wisconsin (Wis. Stat. §103.95), Washington (Rev. Code Wash (ARCW) § 70.114A.065)
Dept. of Environmental Resources of the Commonwealth	Pennsylvania (7 Pa. Code § 82.2)

CONCLUSION

Government agencies equipped with a stronger understanding of their authority concerning farmworker housing will help improve the health of this historically underrepresented population. Individuals seeking state-specific information may click on the links provided in the above tables, or refer to common AWPA authorities such as the State's Department of Labor or Public Health Department.²⁵

SUPPORTERS

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation with direction and technical assistance by the Public Health Law Center at William Mitchell College of Law.



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This document was developed by Jenna Ventresca, summer intern at the Network for Public Health Law – Mid-States Region at the University of Michigan School of Public Health. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.

¹ Anthony MA, Martin EG, Avery AM, Williams JM. Self Care and Health-Seeking Behavior of Migrant Farmworkers. *J Immigr Minor Health*. 2010 ; 12: 634-639.

² *Id.*

³ Maureen Anthony M, Williams JM, Avery AM. Health Needs of Migrant and Seasonal Farmworkers. *J Community Health Nurs*. 2008; 25: 153-160.

⁴ Quirina M. Vallejos QM, Quandt SA, Grzywacz JG, et al. Migrant Farmworkers' Housing Conditions Across an Agricultural Season in North Carolina. *Am J Ind Med*. 2011; 54: 533-544. Available at <http://www.ncfh.org/pdfs/2k9/9130.pdf>. Accessed on June 29, 2012.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Daley DM. Interdisciplinary Problems and Agency Boundaries: Exploring Effective Cross-Agency Collaboration. *J Public Adm Res Theory*. 2009; 19: 477-493.

¹¹ United States Department of Labor. The Migrant and Seasonal Agricultural Worker Protection Act (MSPA). Available at <http://www.dol.gov/compliance/laws/comp-msawpa.htm>. Accessibility verified June 29, 2012.

¹² United States Department of Labor. Wage and Hour Division (WHD). Instructions for Form WH-530: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration. Available at http://www.dol.gov/whd/forms/fts_wh530.htm. Accessibility verified June 29, 2012.

¹³ *Id.*

¹⁴ 29 U.S.C. §1803. Available at <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title29/pdf/USCODE-2011-title29-chap20-sec1803.pdf>. Accessed on June 29, 2012.

¹⁵ 29 U.S.C. § 1813. Available at <http://codes.lp.findlaw.com/uscode/29/20/I/1813>. Accessed on June 29, 2012.

¹⁶ Migrant and Seasonal Agricultural Worker Protection. 29 C.F.R. § 500 (2002). Available at http://www.osha.gov/pls/epub/wageindex.download?p_file=F219/wh1455.pdf. Accessed on June 29, 2012.

¹⁷ United States Department of Labor. Wage and Hour Division (WHD). Fact Sheet #44: Visits to Employers. Available at <http://www.dol.gov/whd/regs/compliance/whdfs44.htm>. Accessed on June 29, 2012.

¹⁸ United States Department of Labor. Wage and Hour Division (WHD). Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration Migrant and Seasonal Agricultural Worker Protection Act. Available at <http://www.dol.gov/whd/forms/wh530.pdf>. Accessed on June 29, 2012.

¹⁹ Instructions for Form WH-530. See footnote 11.

²⁰ The Administrator is the Administrator of the Wage and Hour Division, Employment Standards Administration of the United States Department of Labor. An "authorized representative" is an employee within the state or local health authority of authorized agency who has been given authority by the Administrator to act on their behalf

²¹ United States Department of Labor. Wage and Hour Division (WHD). Fact Sheet #44. See footnote 16.

²² United States Department of Labor. Wage and Hour Division (WHD). Fact Sheet #51: Field Sanitation Standards under the Occupational Safety and Health Act. Available at <http://www.dol.gov/whd/regs/compliance/whdfs51.pdf>. Accessed on June 29, 2012.

²³ United States Department of Labor. Occupational Safety & Health Administration. State Occupational Safety and Health Plans. Available at <http://www.osha.gov/dcsp/osp/index.html>. Accessed on June 29, 2012.

²⁴ Migrant and Seasonal Agricultural Worker Protection. 29 C.F.R. § 500 (2002). See footnote 15.