



# Agricultural Worker Labor and Employment Laws Study Committee

## Overview of Employment Laws for Agricultural Workers

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# Outline of Presentation

- Wage and hour
- Child labor
- Occupational safety and health
- Discrimination protections
- Other workplace protections
- Workers' compensation
- Unemployment insurance
- Related federal laws

# Wage and hour laws

- Vermont (21 V.S.A. ch. 5, subch. 3)
  - Not covered.
  - “Employee” is defined as “any individual employed or permitted to work by an employer except: (A) any individual employed in agriculture.”
- Federal Fair Labor Standards Act (FLSA) (29 U.S.C. ch. 8)
  - Covered with various exemptions.

# Wage and hour laws

- FLSA Minimum wage and overtime requirements do not apply to:
  - Certain small farms (no more than 500 man-days of labor in any calendar quarter in past year)
  - Immediate family members of farmer
  - Certain seasonal hand-harvest workers paid on a piece-rate basis
  - Children under 16 who work on the same farm as their parent and are employed as hand-harvest workers paid on a piece-rate basis
  - Employees engaged in the “range production of livestock”

# Wage and hour laws

- FLSA overtime requirements do not apply to individuals who work in:
  - Agriculture
  - Irrigation
  - Livestock auctions
  - Small country elevators
  - Processing maple sap into sugar or syrup
  - Transportation (or preparation for transportation) of fruits and vegetables to the “place of first processing or first marketing within the same state”

# Child labor laws

- Vermont (21 V.S.A. ch. 5, subch. 4)
  - No child under 18 may work in an occupation or with machinery that is deemed to be hazardous by the VT Commissioner of Labor or U.S. Secretary of Labor
  - Limitations on hours and time of employment for children under 16
- Federal FLSA
  - Child over 16 may work in any farm job at any time
  - Children who are 14 or 15 may work outside school hours in jobs not deemed hazardous by U.S. Sec. of Labor
  - Children who are 12 or 13 may work outside school hours in nonhazardous jobs with parental consent on farms where no employees are subject to the FLSA minimum wage requirements
  - Local children who are 10 or 11 may hand harvest short season crops for up to 8 weeks between June 1 and October 15 if farmer obtains a special waiver
  - Children of any age may work in any job on a farm owner or operated by their parent.

# Occupational safety and health

- Vermont (21 V.S.A. ch. 3, subchs. 4 & 5)
  - Follows all federal requirements
- Federal Occupational Safety and Health Act (29 U.S.C. ch. 15)
  - Farms that employed 11 or more “hand labor” workers on any day in past 12 months must provide toilets, potable drinking water, and hand-washing facilities workers in the field, and must provide time to use the facilities
  - Specific standards for certain hazardous substances (29 CFR § 1910) and agricultural equipment (29 CFR § 1928)
  - General duty to provide a workplace free from hazards likely to cause death or serious physical harm to employees

# Discrimination protections

- Vermont
  - Fair employment practices act applies to farms and agricultural workers without exception
- Federal
  - Equal pay act applies to farms covered by FLSA
  - Title VII of the Civil Rights Act applies to farms that employed 15 or more individual for each working day in 20 or more calendar weeks of the current or preceding calendar year
  - Age Discrimination in Employment Act applies to farms that employed 20 or more individuals for each working day in 20 or more calendar weeks of the current or preceding calendar year
  - ADA applies to farms that employed 15 or more individual for each working day in 20 or more calendar weeks of the current or preceding calendar year



# Other Workplace Protections: Sick leave

- Vermont(21 V.S.A. ch. 5, subch. 4b)
  - Applies to all employers
  - Does not apply to employees:
    - Who work an average of less than 18 hours per week
    - Who work for the employer for fewer than 20 weeks per year in a job that is scheduled to last fewer than 20 weeks
    - Who are under 18
- Federal
  - No current requirement

# Other Workplace Protections: Family and Medical Leave

- Vermont(21 V.S.A. ch. 5, subch. 4a)
  - Applies to some employers
    - Parental leave: 10 or more employees who are employed for average of 30 hours per week
    - Medical Leave: 15 or more employees who are employed for average of 30 hours per week
  - Covers employees employed by same employer for one year who work average of 30+ hours per week
- Federal
  - Applies to employers with 50+ employees in 20+ calendar workweeks
  - Covers employees who have worked for employer for at least 1 year and worked 1250 hours in past year

# Other Workplace Protections: Nursing Mothers

- Vermont(21 V.S.A. § 305)
  - Applies to all employers
  - Must provide reasonable time and a private location for 3 years
- Federal (29 U.S.C. § 218d)
  - Applies to employers covered by FLSA
  - Must provide reasonable time and a private location for 1 year

# Workers' Compensation

- State law only (21 V.S.A. ch. 9)
- Does not apply to farms with an aggregate payroll of less than \$10,000 per year
- Covered farms must provide workers' compensation insurance for all employees

# Unemployment insurance

- State operates program subject to federal requirements
- Applies to farms that:
  - Paid \$20,000 or more to agricultural workers in any calendar quarter during current or preceding calendar year; or
  - Employed 10 or more individuals in agricultural labor on at least one day in 20 different calendar weeks during the current or preceding calendar year
- Workers employed as part of a crew that provides services to various farms are considered employees of the crew

# Federal Migrant and Seasonal Agricultural Worker Protection Act

- Requires farm labor contractors to register with USDOL
- Employers must pay wages when due and provide written itemized statement of wages, including any deductions
- Housing must meet federal and state safety and health standards, and terms of occupancy must be posted or provided to workers
- Vehicles used to transport workers must be insured, operated by licensed drivers, and meet federal and state safety standards
- Employer must disclose employment terms and conditions and must maintain payroll records
- Does not apply to H-2A workers

# Federal H-2A Program

- Permits farmers to employ temporary, non-immigrant workers on an H-2A Visa if employment of US workers will not be adversely impacted
- Farmer must meet following requirements:
  - Pay cost of transportation to and from worker's home
  - Provide housing at no cost to workers unable to return to residence in same day
  - Provide transportation from housing to worksite
  - Pay workers at least bimonthly
  - Ensure that transportation and housing meet certain safety standards
  - Offer workers in employer-provided housing three meals per day or free and convenient cooking facilities