Migrant and Seasonal Worker Protection Act (MSPA)

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History

- Farm Labor Contractor Act of 1963
  - Did little to nothing to actually protect farm workers due to poor enforcement and inefficient investigations

- *Brock v Elsberry, Inc.* 1981
  - Three-year investigation of Elsberry Farms resulted in no progress whatsoever
  - Interviews were scheduled and canceled
  - Demonstrated enforcement failures of the FLCRA

- Migrant and Seasonal Worker Protection Act 1983
  - Replaced FLCRA and set stronger standards for enforcement
“Farm labor contractor” means any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.
Definitions

The term “migrant agricultural worker” does not include:

◦ any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 101(a)(15)(H)(ii)3 and 214(c) of the Immigration and Nationality Act.

◦ H-2A recipients are excluded from MSPA protections
Exemptions

- Small businesses, family businesses, nonprofits, and charities

  - Berlecamp Farms attempted to claim a family business exemption to protect themselves from MSPA enforcement
  - Claimed that 3rd party crew leaders were responsible for contracting migrant workers
  - US District Court of Ohio ruled that Berlecamp Farms could not claim this exemption
“To remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this Act; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.”

- Open commerce
- Register FLCs
- Protect workers and employers
Requirements
Registration

- Certificate of registration
- Process:
  - Statement with applicant’s place of residence, farm labor activities, identification of vehicles used to transport any migrant worker, and identification of property used to house the workers
- Revocation
  - FLCs must comply with written arrangements made with agricultural employers and agricultural associations
An example of an application for an FLC license.
Recordkeeping/Disclosure

- Records
  - Kept for three years
  - Basis on which wages are paid, number of hours worked, total pay period earnings, specific sums withheld (purpose of each), and the net pay

- Disclosure
  - Any language
  - Readily available
  - Workers’ comp and unemployment insurance information MUST be provided in writing to workers
Notice

Migrant and Seasonal Agricultural Worker Protection Act

This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply. Further, farm labor contractors are required to register with the U.S. Department of Labor.

Migrant and Seasonal Farmworkers Have These Rights

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment

Aviso

Ley de Protección de Trabajadores Migrantes y Temporales en la Agricultura

Esta ley federal exige que los patrones agrícolas, las asociaciones agrícolas, los contratistas de mano de obra agrícola (o troqueños), y sus empleados cumplan con ciertas normas laborales cuando ocupan a los trabajadores migrantes y temporales en la agricultura, a menos que se apliquen excepciones específicas. Los contratistas, o troqueños, tienen además la obligación de registrarse con el Departamento del Trabajo.

Los Trabajadores Migrantes y Temporales en la Agricultura Tienen los Derechos Siguientes

- Recibir detalles exactos sobre el salario y las condiciones de trabajo del empleo futuro
- Recibir estos datos por escrito en inglés, en español, o en otro idioma que sea apropiado
- Cumplimiento de todas las condiciones de trabajo como fueron presentadas cuando se les hizo la oferta de trabajo
- Al ser reclutados para un trabajo, ver una prueba de que el contratista se haya registrado con el Departamento del Trabajo

Disclosure of rights guaranteed by MSPA.
Wages, Housing, and Vehicle Safety

- **Wages**
  - Paid when due
  - No restricting consumers

- **Housing**
  - Must meet federal and state safety and health standards

- **Vehicles**
  - Insurance
  - License
  - Complies with federal and state safety and health standards
Example of housing provided to migrant farm workers.
Enforcement

- Prosecution
  - Can be civil or criminal

- Fines/Prison
  - Any violation can result in fine of up to $1000, a prison sentence for up to a year, or both. Subsequent violations result in fines of up to $10,000, prison sentences of up to three years, or both
  - FLC will have license revoked if they violate MSPA
Enforcement

- **Private Right of Action**
  - Migrant or seasonal workers can sue in federal court if a provision of this act has been violated, regardless of citizenship status
  - Court can award up to $500 per plaintiff per violation
  - FWMA does not create a new private right of action for H-2A workers

- **Investigations**
  - Wage and Hour Division of the DOL can enter and inspect premises, checking to see whether vehicles and housing are consistent with safety standards
  - They can also review and transcribe payroll records and interview workers.
End