

# 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



# Definitions

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- “**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
- *Martinez v. Berlecamp Farms, Inc.* 1986
  - 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

## • Purpose

○ “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

APPLICATION FOR  
FARM LABOR CONTRACTOR LICENSE

AN INCOMPLETE APPLICATION, INCLUDING INCOMPLETE SUBMISSION OF REQUIRED SUPPORTING DOCUMENTATION, WILL DELAY THE ISSUANCE OF YOUR LICENSE. IF YOU ARE SUBMITTING A RENEWAL APPLICATION, TO AVOID A LAPSE IN THE EFFECTIVE DATE OF YOUR LICENSE, PLEASE RETURN YOUR APPLICATION PACKAGE, WITH FEES AND DOCUMENTATION, AT LEAST 90 DAYS PRIOR TO THE EXPIRATION OF YOUR LICENSE.

**Instructions:**

- 1.) Please read attached Requirements and/or renewal letter and each question on the application form carefully. If a question does not apply to you, put "NA" (for "Not Applicable") on the application form for that question.
- 2.) Always put your license/revise number on all correspondence mailed to this office.
- 3.) Be sure the application is signed and executed by the individual owner, all partners, or, if the business is a corporation, by any authorized officer. The officer's corporate title must be shown after his or her signature.
- 4.) You must participate in at least eight hours of relevant education classes for each license period pursuant to the provisions of Labor Code section 98843(a)(2).
- 5.) A written examination may be required pursuant to the terms of Labor Code sections 1684(a)(3) and 1684(c). A copy of a valid driver's license or other legal photo-identification of each person taking the exam is required.
- 6.) You are required to notify the Labor Commissioner of the name and address of any person or company with whom you enter into any contract, oral or written, to provide farm labor services at any time after issuance of your license.

**Submit the application with required fees to:**

For Counties of Kern, Tulare, Fresno, Merced,  
Kings and Madera:

Department of Industrial Relations  
Division of Labor Standards Enforcement  
Licensing and Registration  
770 East Shaw Ave., Ste. 222  
Fresno, CA 93710  
559-248-1883

All Other Counties:

Department of Industrial Relations  
Division of Labor Standards Enforcement  
Licensing and Registration  
P.O. Box 420003,  
San Francisco, CA 94142  
415-703-4854

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

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# Notice

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## Migrant and Seasonal Agricultural Worker Protection Act

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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

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# Aviso

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## Ley de Protección de Trabajadores Migrantes y Temporales en la Agricultura

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Esta ley federal exige que los patrones agrícolas, las asociaciones agrícolas, los contratistas de mano de obra agrícola (o troqueros), 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 troqueros, tienen además la obligación de registrarse con el Departamento del Trabajo.

### Los Trabajadores Migrantes y Temporales en la Agricultura Tienen los Derechos Sigüientes

- 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.



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