

LEGAL ISSUES OF MICHIGAN FARMWORKERS



FARMWORKER LEGAL SERVICES

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FARMWORKER LEGAL SERVICES (“FLS”)

□ FAQs

- Who is eligible for our legal services?
 - Low income farmworkers or immediate family members.
- Do you charge for legal services?
 - No! Our office is a non-profit law office.
- How can I ask for legal help?
 - Call the FLS office toll-free at 1-800-968-4046. You can also visit our office or you can speak to one of our representatives when he or she visits your community. We conduct outreach at migrant camps, community meetings, and other farmworker-focused events across the state of Michigan. **All staff speak Spanish.**
- I live far from your office. Can you still help me?
 - Yes. We represent farmworkers throughout the state of Michigan. Just call our office and we may be able to start a case for you.
- When can I call your office?
 - Our office is open Monday through Friday from 9:00am to 5:00 pm. If you call us outside of these hours, please leave a message and contact information on our voicemail. We will return your call as soon as we can.

Who does FLS serve?

- ❖ 49,000 migrant and seasonal farmworkers in Michigan, employed in field agriculture, nursery/greenhouse, and food processing.
- ❖ 94,000 farmworkers with accompanying non-farmworker household members.
- ❖ 42,000+ farmworker children and youths aged 0-19.
- ❖ 28,000 farmworker children under 13.
- ❖ 12,000 farmworker children under 5.



Legal Concerns of Migrant & Seasonal Farmworkers

- ❖ **Wage Theft (Sub-Minimum Wages or Unpaid Wages)**
- ❖ Labor Camp Conditions
- ❖ Health & Environmental Justice (Field Sanitation, Pesticides)
- ❖ Discrimination & Harassment
- ❖ **H2A Job Protections**
- ❖ **Access to Driver Licenses & Vital Documents**
- ❖ **Right to Unemployment Benefits**
- ❖ Health Care, Medicaid or Medicare
- ❖ Immigration Concerns

Employment- Payment

- Farmworkers may be paid at “piece rate” or at an hourly wage.
- Because Michigan’s minimum wage of \$8.50/hour is higher than the federal minimum wage (\$7.25 per hour), Michigan’s minimum wage controls
- Piece rate
 - If paid by the piece (bucket, truckload, number of trees planted, etc.) – you still **MUST** earn at least as much as you would earn if you had been paid by your hourly wage rate.
 - Workers must know how many hours they worked in order to compare their piece rate to the minimum hourly wage.
 - YOUR EMPLOYER **MUST** PAY YOU THE HIGHER OF THE MINIMUM WAGE **OR** YOUR PIECE RATE EARNINGS. (CAN’T PICK AND CHOOSE FROM WEEK TO WEEK.)

Employment- Payment

Examples:

- In August 2016 Juan's piece rate for picking blueberries was forty cents (\$.40) a pound. One week he picked 750 pounds of blueberries. Juan was paid for all his buckets of blueberries and earned \$300.00 for the week ($750 \times \$0.40 = \300.00).
- Elena worked for the same crew leader in different fields. Elena picked 1000 pounds of blueberries that week. Elena was paid \$400 ($1000 \times \$0.40 = \400).

WHAT DO YOU THINK?

What should Juan receive? (remember: he received \$300)

Juan worked 45 hours.

He should have received $45 \times \$8.15 = \382.50 .

He was underpaid by \$82.50.

What should Elena receive? (remember: she received \$400)

Elena also worked 45 hours.

She should also have received \$382.50.

Since she was paid \$400, she was not paid less than the minimum wage that week.

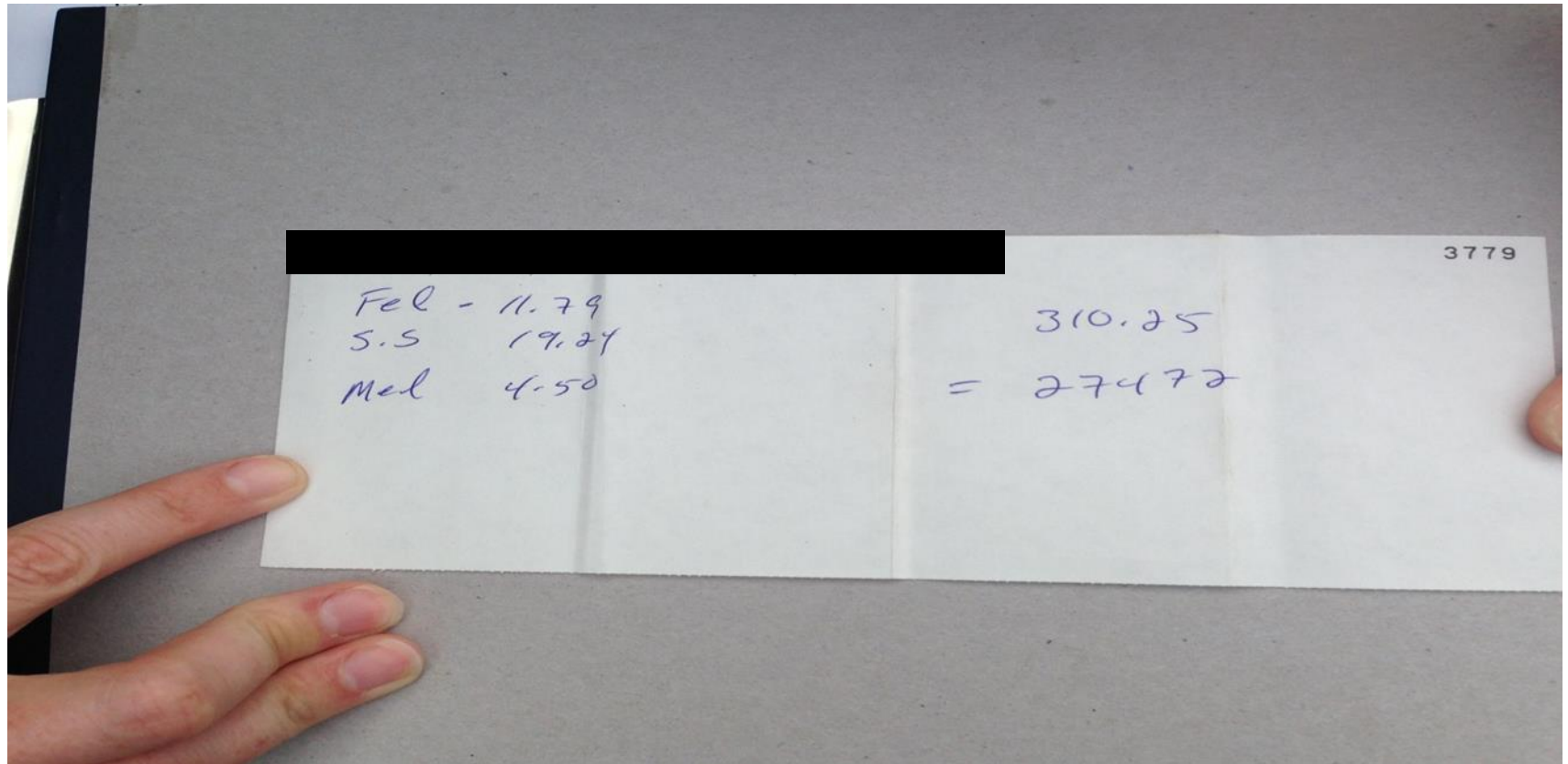
How many blueberries would you need to pick per hour at 40 cents per pound to earn the minimum wage in 2016? In 2015 when the minimum wage was \$8.15?

2016: $\$8.50 / \$.40 = 21.25$ pounds per hour in 2016.

2015: $\$8.15 / \$.40 = 20.375$. Over 20 pounds per hour in 2015



EMPLOYMENT – PAY RECORDS



PERIOD FROM 7-27-13 TO _____

NAME [REDACTED]

HR.@	0		
OT HR.@	$11\frac{1}{2}$	$\times 9.00$	
TOTAL EARNINGS			103.50
FICA	6.42		
U.S. INC. TAX	00		
STATE INC. TAX	00		
MEDICARE	1.50		
TOTAL DEDUCTIONS			7.92
NET PAY			95.58

EMPLOYEE'S STATEMENT - DETACH AND RETAIN

PERIOD FROM 8-9-13 TO _____

NAME [REDACTED]

HR.@	0		
OT HR.@	$4\frac{1}{2}$	$\times 9.00$	
TOTAL EARNINGS			40.50
FICA	2.51		
U.S. INC. TAX	00		
STATE INC. TAX	00		
MEDICARE	.59		
TOTAL DEDUCTIONS			3.10
NET PAY			37.40

EMPLOYEE'S STATEMENT - DETACH AND RETAIN

Employment- Records

ALL WORKERS SHOULD MAINTAIN THEIR OWN RECORDS OF:

- Name of employer and address of work location (if no address, use landmarks)
- Hours worked
- Wages earned and wages paid– how much and when
- Any incidents occurring at work – personal injuries, sick days
- Meetings or conversations with employer or supervisor(s)
- Days taken off of work

ALL WORKERS SHOULD KEEP:

- Copies of their job applications
- Copies of their working arrangement/contract
- Paystubs
- Rental or housing agreements



Apply the “Just in Case” / “Por Si Acaso” Rule: Just in case a problem arises, keep everything the employer gives you and ask for copies of whatever you are asked to sign.

Employment - Records

2015		Junio/June				2015	
Domingo Sunday	Lunes Monday	Martes Tuesday	Miércoles Wednesday	Jueves Thursday	Viernes Friday	Sábado Saturday	
	1	2	3	4	5	6	
7	8	9	10	11	12	13	
14	15	16	17	18	19	20	
21 <small>Día del Padre Father's Day</small>	22	23	24	25	26	27	
28	29	30		<small>¡Ojo! No deje de anotar el nombre del patrón, el lugar donde trabajó, el número de horas, y cantidad pizcada cada día.</small>	<small>Note: Remember to note your employer, where you worked, hours, and amount picked for each day.</small>		

What are your rights when your job ends?

□ **Examples:**

- You live in a migrant camp & are laid off or quit working for camp owner. Grower tells you that your family must leave the camp immediately (or within days) . . .
- Or the boss says that you won't receive your last paycheck until after you move out of the camp . . .
- Sometimes the owner may threaten to have the police remove you or turn off your utilities, or changes the locks . . .

What are your rights when your job ends?

- You cannot be forced to leave migrant camp UNLESS owner has a court order signed by a judge to evict you and your family. Employer **cannot** evict you otherwise!
- Employer **cannot** withhold a paycheck to force you to leave – if work as hand-harvester, must be paid within 1 day (if fired/laid off) or 3 days (if quit) after your last day of work.
- “At-will” employment means you can be fired or laid off without any reason, BUT you **cannot** be fired because you complained about your work, housing, or wage conditions.



Housing – basic rights



- ❑ Nondiscrimination-
 - ❑ It is illegal to discriminate on the basis of:
 - ❑ Race, religion, national origin, color, sex, height, weight, marital or family status, and age

- ❑ Proper Eviction Procedure
 - ❑ Common violations:
 - ❑ Evictions through threats
 - ❑ Employers who withhold paychecks until workers move out

Housing – basic rights

- Health and Safety Standards
- Common Health & Safety Violations:
 - Lack of screens
 - Drainage problems
 - Structural problems
 - Lack of bed frames
 - Exposed electrical wires
 - Overflowing pit toilets
 - Overflowing garbage
 - Rodents, insects
 - Ventilation Problems
 - Overcrowding
- **Housing with fewer than 5 migrant farmworkers** is required to be inspected (MIOSHA & DOL rules)
- **Any housing with 5 or more migratory/agricultural workers** should have a license posted. (OSHA “State Plan” (1974075) pledges that the State of Michigan will “conduct field inspections at all migrant labor camps on a statewide basis...annually before the agricultural labor season starts to insure that all camps meet minimum standards.”)



Reporting workplace discrimination and harassment



Where to seek help

- **Federal Law: The U.S. Equal Employment Opportunity Commission (“EEOC”)**
 - If a worker suffers discrimination at the workplace based on his or her national origin, color, race, religion, gender, age, or disability, he or she may have a claim of discrimination under federal laws.
 - Federal laws also protects workers from retaliation – negative action taken by the employer because the employee filed a charge or because they complained about the discrimination.
 - The EEOC enforces the provisions of the Title VII. Michigan’s EEOC office is located in Detroit.
 - A worker may file his or her complaint directly with an EEOC investigator, but must do so **within 300 days** of the discriminatory or retaliatory incident.
 - 1-800-669-4000
 - www.eeoc.gov

Where to seek help (continued)

❑ State law: The Michigan Department of Civil Rights

- In addition to the federal protections of religion, color, national origin, gender, age, and disability, Michigan's Elliott-Larsen Civil Rights Act also protects employees from discrimination based on height, weight, or marital status (e.g., pregnancy).
 - A worker may file his or her complaint directly with an EEOC investigator, but must do so **within 180 days** of the discriminatory or retaliatory incident.
 - 1-800-482-3604
 - <http://www.michigan.gov/mdcr> (can file a complaint online)
- ❑ The worker may also choose to seek legal counsel before filing a complaint.
- Farmworker Legal Services: 1-800-968-4046
 - Migrant Legal Aid: 1-800-418-3390

 **NOTE the three "R"s - WORKERS SHOULD REJECT (THE BEHAVIOR), RECORD (WHAT HAPPENED), & REPORT (SEEK HELP)!**

Workplace Sexual Assault & Harassment (WSAH) – a form of gender discrimination

Nearly 200 complaints by female farmworkers have been made to the U.S. Equal Employment Opportunity Commission (EEOC) over the past 15 years. But Human Rights Watch notes that because many women are too afraid to speak out, actual numbers of assaults in the fields are hard to ascertain. **WHY?**

- ❖ Aggressor may be the one in charge of continuing the victim's employment
- ❖ Lack of regulation & standards among supervisors
- ❖ Isolation
- ❖ Ignorance of legal rights

What is Sexual Harassment (under the law)?

- ❖ **Basic definition of WSAH:** any physical or verbal conduct of a sexual nature that indicates or implies that the acceptance or denial of the conduct will impact the employee's (victim's) job.
- ❖ **Definition of workplace:** any location where the employer permits the employee to work.
- ❖ The law prohibits retaliation by the aggressor *or* employer – a change in working conditions *as a result* of rejecting or complaining against the harassment.
- ❖ **Examples:**
 - Employee feels he/she has to accept the conduct in order to get a job, receive a raise, or keep hours or their position.
 - The conduct's effect is to block an employee's work or create a hostile, offensive, or threatening work environment.

What can we do about WSAH?

- ❖ **Outreach:** listen well, judge not, provide assistance and/or referrals. **Remind workers to keep records!!**
- ❖ **General Remedies:** civil, administrative, criminal – call FLS for more information
- ❖ **Immigration remedies:** For victims of WSAH who have undocumented status: you can seek a U Visa, which is available to victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.
 - ❖ NO actual arrest or conviction of the perpetrator is required
 - ❖ Perpetrator's immigration status is irrelevant
 - ❖ Family members of victim may apply through derivative status
- ❖ **PLEASE NOTE:** Generally, DEADLINES APPLY to any remedy. **Don't wait to seek help!**
 - ❖ E.g., if a case involves discrimination or retaliation, you must file within specific deadlines:
 - ❖ U.S. Equal Employment Opportunity Commission: Must file within 300 days of the discrimination or retaliatory treatment
 - ❖ Michigan Department of Civil Rights: Must file 180 days of the discrimination or retaliatory treatment



NOTE the three "R"s - WORKERS SHOULD REJECT (THE BEHAVIOR), RECORD (WHAT HAPPENED), & REPORT (SEEK HELP)!

The H-2A Program – what is it?

- Don't think of these jobs as "H2A jobs". They are just "jobs" – they could be filled by U.S. workers, but could ultimately be filled by foreign workers.
- In 2015, fewer than 2,400 Michigan farmworker positions were filled by H2A workers. As of June 8, 2016, over 2,800 potential H2A positions were posted.
- In 1986, Congress created the agricultural guest worker "H-2A" Program as part of the Immigration Reform and Control Act (IRCA).
- The H-2A program is a federal program under the purview of the U.S. Department of Labor ("USDOL") that allows employers to bring temporary guest workers ("H-2A workers") into the United States for agricultural work that lasts 10 months or less.
- However, to import an agricultural guest worker under the H-2A program, both the employer and the foreign national must meet certain requirements . . .

The H-2A Program – how does it affect migrant & seasonal farmworkers?

- *Before* being able to import H-2A guest workers, employers must certify to the U.S. Department of Labor (USDOL) in its application that **the guest worker positions sought to be created will not adversely affect domestic workers.** To do this, an employer must show:
 - **NEED** – the employer must demonstrate there aren't sufficient domestic farmworkers who are able, available, willing, & qualified to perform the labor involved.
 - **WAGES** – the employer must also show that employing a guestworker will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.
 - This is achieved by providing the highest of certain government-set wage rates to BOTH the H-2A worker AND the U.S. worker.

The H-2A Program – how does it affect migrant and seasonal farmworkers?


- **BENEFITS** – employer must provide certain benefits to ALL PROSPECTIVE WORKERS, whether foreign or domestic.
- **WORK GUARANTEE** – employer must assure the USDOL that they will follow the “50 Percent Rule.”
 - **EXAMPLE:** The employer says that the job for which he seeks H-2A workers will last from May 1 to August 1.
 - For a qualified U.S. worker to be hired within the 50 percent contract period, he/she must apply on or before July 1 – the “halfway point” in the contract period.
- **IN SUM:** The H-2A Program is a “Plan B” for employers when they *cannot* find U.S. workers who are qualified, available, and willing to do the same job that an H2-A worker would do. U.S. workers must always be the first choice for employers’ labor needs.



Benefits & rights of all those working in an H-2A contract

- ✓ Federal law & U.S. Department of Labor regulations **provide the same benefits and rights to foreign and U.S. workers** who work under an H-2A contract:
 - ✓ a **specified wage** – \$12.02 in Michigan in 2016
 - ✓ **free housing in good condition** in compliance with federal regulations
 - ✓ **worker's compensation** for medical costs and payment for lost time from work & for permanent injury
 - ✓ **Guaranteed employment** for seventy-five percent of the hours specified in the work contract
 - ✓ **travel reimbursement** as soon as the worker finishes 50% of contract period (and travel reimbursement home if worker stays on job until end of contract); and
 - ✓ be **protected by health and safety regulations**

Workers who have an H-2A contract have their rights and responsibilities listed in the job order/contract they **must** receive at the time of hire. It **must** be provided to them in their own language and explained to them by their employer before starting work.



TIP

Realities of the H-2A program

Risks Posed to U.S. workers:

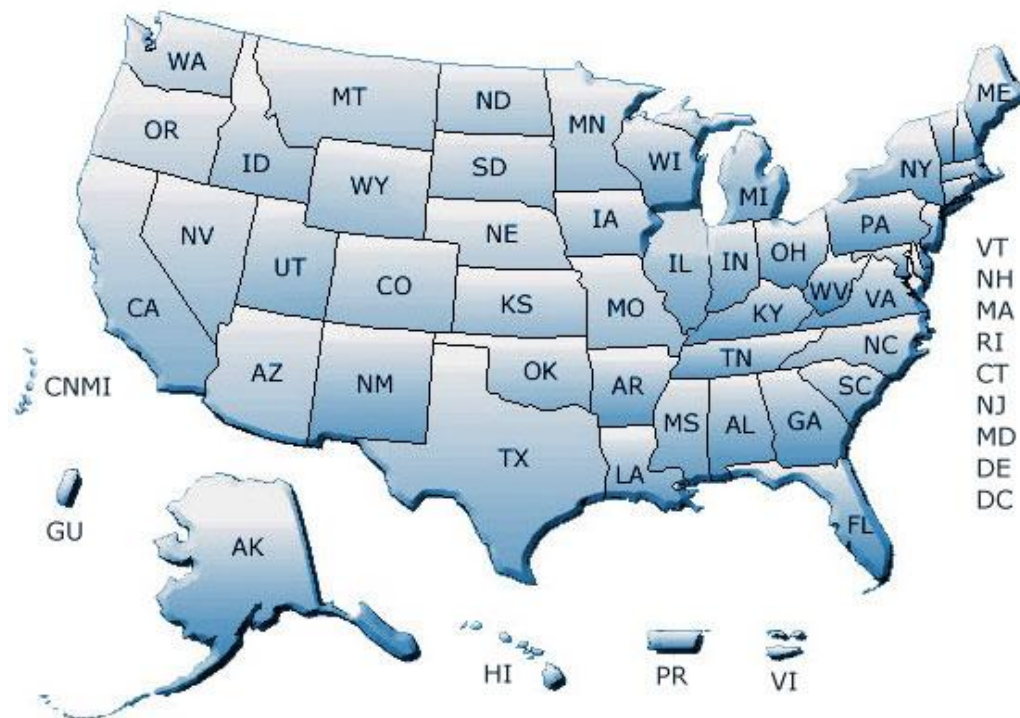
- Wage theft
- Displacement by H-2A workers
- Discrimination – race, gender, age, etc.
- Unsafe & unsanitary working conditions
- Unhealthy housing conditions
- Retaliation

Risks Posed to H-2A workers

- Wage Theft
- Unsafe & unsanitary working conditions
- Unhealthy housing conditions
- Visa Fraud
- Fraud in Foreign Labor Contracting
- Human trafficking
- Fear of not being re-hired encourages silence
- Often uncompensated for work-related injuries due to state-to-state worker's compensation rules
- Retaliation

Sharing H2A Information

- FLS Compilation of Michigan posted positions (English & Spanish): www.farmworkerlaw.org/h2a
- US Dept of Labor public job registry: <https://icert.doleta.gov/>



Driving in Michigan

- Michigan Law: To obtain a driver's license or state ID card, the applicant must be a U.S. citizen or be "legally present"
- Brief History
 - Pre-2008: no immigration status requirement in the law or in policy
 - 2008: MI Atty General opinion: LPR's
 - 2009: Sec of State: limited licenses to citizens and LPR's (excluded all others here legally)
 - 2009: legislature changed law: "legally present"

Driving in Michigan

- Now: those who cannot prove citizenship or legal immigration status cannot get licenses or state ID cards
- Secretary of State has no discretion; the state legislature would have to change state law in order for licenses to be issued to immigrants without legal status

Driving in Michigan

- Results for immigrants w/o legal status
 - ▣ They don't drive
 - ▣ They drive without a license
 - They don't buy car insurance
 - They aren't tested on rules of the road
 - Increased risk of arrest by police, detention by ICE
 - ▣ Lack of official identification

Driving in Michigan

- Drivers who have a license issued by their home country can drive legally in Michigan.
 - Over 100 countries (including USA) have signed two treaties. See https://www.michigan.gov/documents/reciprocity_chart_20508_7.pdf
 - Due to Public Act 138 of 2016, citizens of other countries (not part of the treaties) can drive in Michigan with their foreign licenses IF they have legal presence.
 - All drivers with foreign licenses should carry translations.
 - Beware of “International Drivers Licenses” – They Don’t Actually Exist!
 - MI State Police: <http://www.farmworkerlaw.org/msp-idp>
 - Federal Trade Commission: <http://www.farmworkerlaw.org/ftc-idp>

Unemployment Benefits

- You may be eligible for benefits if:
 - You are authorized to work in the U.S.
 - Have earned enough income in the last 18 months
 - Are able and available to work
 - You did not voluntarily quit your last job without good cause attributable to your employer
- Apply online at <https://miwam.unemployment.state.mi.us/> or by phone at 1-866-500-0017

Unemployment Benefits

- Two possible deadlines
 - 10 days to respond to an inquiry questionnaire from the Unemployment Insurance Agency
 - 30 days to protest with a determination that you disagree with.
- Call FLS **immediately** if you receive a letter from Unemployment that you do not understand or that you disagree with.

Unemployment Benefits

- Common problems
 - Worker says he was laid off; employer says he quit.
 - Agency accused the worker of committing fraud during the application process – **quadruple penalties!**
 - Employer accuses the worker of committing “misconduct”.
Poor work performance should not be a reason to be found ineligible for unemployment.
 - Agency denies the worker’s application because the employer received a “seasonal” designation from the Agency
- Count on the Agency believing the employer at first.

FOR FURTHER INFORMATION



FARMWORKER LEGAL SERVICES

WWW.FARMWORKERLAW.ORG

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