



FARM EMPLOYERS LABOR SERVICE
PERSONNEL & LABOR AUDIT CHECKLIST

Company: _____ Company Representative(s): _____ Date: _____

REQUIRED POSTERS:

- Posting of Notices, Locations and Availability
- Fill-in Notices where necessary

WAGES & HOURS OF WORK:

MINIMUM WAGE:

- Federal \$7.25 (7/24/09); **State \$8.00**
- Sub-Minimum Wages Exceptions:
 - Opportunity Wage, federal, under 20 years,
 - Learners, state, 18 years and older, 85% min. wage
 - Board & Lodging - Credit against minimum wage
- Piece Rate; based on weekly Reg. Rate of Pay
 - RRP = Gross earnings ÷ Total hours worked
 - Extra compensation for employer-directed non-production time
 - Compensation at minimum wage or established rate
- Workday and Workweek defined - Default = calendar week & day
- Exemption - Employers own parent, spouse or child

OVERTIME:

- Agricultural Occupation
 - 1½ times regular rate of pay
 - * Over 10 hours/workday,
 - * 1st 8 hours on 7th day of work in a workweek
 - 2 times regular rate of pay
 - * Over 8 hours on 7th day of work in a Workweek
 - **Note:** If employee handles product of another farmer FLSA will control, i.e. 40-hour week.
- Non-Agricultural Occupations/Industries
 - 1 ½ times regular rate of pay
 - * Over 8 hours/workday
 - * Over 40 **straight-time** hours/workweek
 - * 1st 8 hours on 7th day of work in a Workweek
 - 2 times regular rate of pay
 - * Over 12 hours in workday
 - * Over 8 hours on 7th day of work in a Workweek

WAGE-HOUR ISSUES:

- Mechanics
- Winery Employees
- Working under two IWC Orders

OVERTIME EXEMPTIONS:

- Truck Drivers; state vs. federal
 - **Intrastate Vehicles**
 - * Generally three axles & >= 10,000 lbs. GVW,
 - * Truck tractors; buses; farm labor vehicles; trailers designed or used to transport more than 10 persons.
 - * Two-axle trucks towing combination exceeds 40 feet in length, transporting hazardous material or towing a trailer with a GVW of more than 10,000 pounds.
 - * Applies during workday.
 - **Interstate;** Driver is ready, able to drive interstate.
 - * Includes "driver's helper"

* Applies during workweek.

* 4-month rule restricted to only drivers driving covered vehicles

- Exempt Status vs. Non-Exempt
 - Performs, primarily (over half time) exempt work,
 - Exercises independent judgement, and
 - Salary (2 times Min. Wage @ 40/week, \$2,440/mo.)
 - Deduct only whole days for voluntary absence - partial days from PTO accounts
 - DLSE Exempt Status Analysis - DLSE Management Memo 93-3
- Salespeople (Inside & Outside Sales)
- Part-time Employee - 7th day of work; max. 6 hours/day & 30 hours/week; Ag only
- Irrigators; spends >50% time performing duties as an irrigator
- Shepherders; \$1,200/mo. minimum wage
- Exemptions: Employers own parent, spouse or child

OTHER WAGE CONSIDERATIONS

- Split Shift Premiums; one hour at min. wage
- Bonuses, Incentives, Commissions
 - Example
 - \$10.00 RRP = \$15.00 O.T.
 - \$3,000 bonus divided by 3,000 hours worked = \$1/hour
 - \$1 Bonus + RRP = \$11.00 or \$16.50 O.T. A \$1.50/ hour short fall
 - Back-out overtime to reduce impact
- Indemnification of Employee Losses
- Reporting Time Pay; ½ scheduled (a min. of 2 to a of max 4)
- Waiting time; free to leave work site
- Stand-by Time; controlled vs. uncontrolled
- Preparation Time
- Alternative Workweeks; (Non-Ag Only)
 - 4-10 hour days, voted by 2/3 of employees
 - Make up time at request of employee; must be in writing, work up to 11 hours/day, at request of EE
 - See: <http://www.fels.net/Data/Laws/AB60update.htm>
- Compensatory Time Off, (IWC 4 in Ag only), salary exempt,
- 72-Hour Max Weekly Hours of Work; IWC Orders 8 & 13
- Travel Time Pay;
 - Home to work, and work to home, not compensable
 - In company provided transportation (voluntary vs. non voluntary),
 - Performing work before or after work - Compensable
 - Home to another work site, meetings - Compensable
 - Between job sites - Compensable
 - Travel time at min. wage if arranged in advance with EE
- Weekend and Holidays - Premium pay & Overtime

WORKING CONDITIONS:

- Tools & Equipment
 - Must provided tools unless employee earns 2 times min. wage
 - Security Bonds
- Uniforms; required to wear items of designative design or color

- Required Personal Protective Equipment (PPE)
- Day's Rest - Agricultural Exemption, 4 days off in each month
- Change room, Resting facilities, Seats, Temperature, Elevators
- Meal Periods
 - ½ hour after working 5 hrs -
 - Unless workday can be completed within 6 hours
 - Where not practical, voluntary agree to eat when possible
 - Must be recorded, unless "operations cease"
 - Fail to provide, must pay 1 hour at RRP
- Rest Periods;
 - Rate: 10 minutes per 4 hours of work in workday or major fraction
 - Fail to provide, must pay 1 hour at RRP
- Lactation

CHILD LABOR

- Posting Notice
- Agricultural Zone of Danger
- Age requirements; 16-17 most jobs, <16 very restrictive
- Certificates of age, federal
- Work Permits; acquired from school, required any time of year
- Hours & Times of Work; listed on back of work permit

CAL/OSHA:

- Posters
- Cal/OSHA, 300, 300A & 301 (or Form 5020 Rev 7 for Form 301)
- Dual Employer: Engaging a FLC - Direct contact
- Multi-Employer: Exposing, creating, controlling or correcting employer)
- Injury and Illness Prevention Program (§3203)
 - Records
 - Cal/OSHA required to review during inspection
- Written Hazard Communication Program (§5194)
 - Inventory hazardous substances
 - Insure secondary containers are labeled
 - Acquire and provide to employees MSDS's
 - Train employees in substance safety and MSDS's
- Respiratory Program (Title 8, CCR,§5144 and Title 3,CCR§,6739)
 - Written program
 - Qualified administrator selected
 - Medical evaluations
 - Fit testing and training
 - Voluntary use - Posting
- Medical Services (§3400)
 - Provide medical services within four minutes
 - Employees trained in first-aid and CPR
 - Remote locations, one per 20 employees trained in first-aid
 - First-aid kits, recommended by company physician
- Emergency Action Plan (§3220)
- Fire Prevention Plan (§3221)
 - Inspection of flammable areas
 - Fire extinguishers
- Lockout/Tagout; written program, training and self audit
- Hearing conservation (testing, and analysis)
- Heat Illness Prevention (§3395)
 - Water - 1 quart per employee per hour
 - Shade < 85°F EE requests, => 85°F for 25% of employees
 - High-Heat Procedures >95°F
 - Training
 - Written Emergency Procedures
- Occupational Carcinogens Control Act - Example: Asbestos
- Smoke-free Workplace
- Proposition 65 (Clean Water Act)
 - Postings - clear and reasonable warning
- Access to Medical Records (§3204)
- Weeding, Thinning & Hot Capping (§3456)
 - * Employees use of short-hand tool or hand weeding prohibited

- * Hand weeding - Exemptions:
 - When there is no readily available, reasonable alternative
 - Hand weeding is occasional or intermittent and incidental (20%)
 - The commodity plants being weeded:
 - planted 2 inches apart;
 - registered as organic;
 - seedlings; or
 - horticultural - grown in 15 inches or less containers
- * Regardless of meeting above conditions: an additional 5-minute rest period when not occasional or intermittent, and
- * Employees supplied with gloves and kneepads
- Sanitation Facilities
 - Alternative Compliance (<5 employees, <2 hours)
 - Toilet and Handwashing-1/4 mile or 5 minutes
 - One per gender, 5 or more in crew
 - One per 20 employees per gender
 - Drinking Water-Readily Accessible
 - Maintenance Records (2 years)
 - Employee Notices; hand-washing water only, good hygiene
- Permits/Inspections:
 - Pressure vessel; Air tank >= 6" dia. And >= 15 psi
 - LPG tank; > 60 gallons, DOT approved exempt
 - NH3 tanks not covered
 - Excavation, scaffolding (3-stories), demolitions, elevators
 - Pressure Vessel Dept (510) 622-3066
- Accidents reported to Cal/OSHA; within 8 hours when hospitalization > 24 hours, dismemberment or death
- Ergonomics standard (§5110)
 - =>2 RMI's, same job diagnosed by physician, 50% job related, within 12 month period
 - Evaluation, exposure control, employee training
- Roll Over Protection (ROP):
 - All tractors after 10/26/76, except: Orchards, hops, vineyards, inside barns and greenhouses, when used with mountable equipment incompatible with ROPs , and stationary power units, e.g. pumping units
 - Seat belts
- Safety Training:
 - New employees, new assignments, new processes
 - Supervisory Safety Training
 - Equipment; forklift, tractor (annually)
 - Pesticide Safety
 - Emergency action plan training
 - First Aid & CPR
 - Medical & Exposure Records - Access
 - Hearing Conservation - use of hearing protection devices
 - Heat Illness Prevention
 - Tree Work
 - Fire prevention, fire extinguisher
 - Lockout/Tagout
 - Welding & Cutting Safety – Hot Work Safety
 - Wheels or Rims – Servicing
 - Medical responders, first-aid/CPR
 - Personal Protective Equipment
 - Respiratory Protection
 - Confined space entrants and rescue teams
 - Battery charging
 - Cotton Dust
 - Ergonomics - When triggered by §5110
 - Fall Protection
 - Bloodborne pathogens, doesn't apply to agriculture
 - Hazard Communication
 - Other non-agricultural jobs may have specific training requirements

HOUSING:

- Postings
- Inspection & Permits;
 - MSWPA one or more migrant worker housed
 - State >=5 employees house in connection to employment
- Housing agreement recommended

PESTICIDES:

- Postings:
 - PSIS; Safety Info. A-8 and A-9
 - Field Postings, REI (up to 24 hours prior to applications)
 - Storage signs:
 - Applications at Central Locations,
 - Pesticides applied through irrigation water
 - Fumigations; emergency response plan
 - Voluntary respirator use notice
- Hazard Communication Procedures
 - Notice of application to persons know to be within 1/4 mile
 - Describe location, time of application and REI, orally or written based on product label instructions
- Qualifications of Trainers: written training program
- Respiratory Procedures; Administrator, Medical evaluation, Training
- Decontamination Facilities
- Records/Documents
 - Training records - Handlers, Field Workers 2 years
 - Written Training Program 2 years
 - Respirator program procedures During Use
 - Medical evaluation (respirator use) During Use
 - Accident response plan (fumigants) During Use
 - Pesticide label During Use
 - Pesticide Safety Information Series 2 years
 - Material Safety Data Sheet 2 years
 - Treatment notification method -PCO 2 years
 - Pesticide use records 2 years
 - Emergency medical care notice During use
- Medical supervisor; Danger or Warning and Organophosphate or carbamate;
 - Identity of medical supervisor notice During Use
 - Medical supervisor recommendations 3 years
 - Employer/medical supervisor agreement 3 years
 - ChE blood test results; baseline, 6 days in 30-day period 3 years
 - Employer's work practice review 3 years
 - Employee exposure records 3 years

TRANSPORTATION:

- Any vehicle, including tractors (transporting employees):
 - Valid drivers license, meet safety regulations, seat belts
 - Insurance (WC or \$100,000/seat - max.. \$5 million + \$50,000 liability insurance)
- Tractor drivers (drawing certain items) must be licenced
- Farm Labor Vehicle
- DOT Drug and Alcohol Testing
- PULL Notice Program; Class A and B drivers
- Liabilities FLC, Supervisors, Going and coming rule

Migrant & Seasonal Ag. Worker Protection Act (FLC/Grower):

- Postings
- Worker Information - Provided to migrant at recruitment
- FLC Registration - FLC Employees - Housing & Transportation Endorsements
- FLC Payroll Records (retain for 3 Yrs.)
- FLC W.C. Certificate
- Joint Employment Relationship

Farm Labor Contractor (State):

- Postings
- Copy FLC License - DLSE FLC Verification
- Day Hauler

- Land or Vineyard-Management Services
- Labor Contractor Agreement - Rebuttable presumption
- County Agricultural Commissioner Registration
- Verify FLC's compliance with minimum requirements

RECORDS:

- Record Retention
 - Most records 3 years, except in the following instances:
 - **Two-year retention:**
 - * Application for Employment - filed with DLSE - Retained 2 years after employment
 - * Applicant Identification Record
 - * Employment announcements, referrals, training announcements
 - * Promotions, overtime made to employees
 - **Four-year retention:**
 - * Employee Identification Information (name, address, gender, etc.)
 - * Workweek/Workday, Hourly/Piece Rate, Overtime
 - * Payroll earnings, deductions, dates of payroll
 - * FICA, FUTA, Income Tax Withholding
 - * Written Employment Contracts
 - **USCIS Form I-9:** one year after employment and 3-year minium
 - **Five-year retention:**
 - * Cal/OSHA Form 300, 300A,301
 - * Drug and Alcohol Testing Results
 - * Affirmative Action Programs & Documents
 - **ERISA** - Reporting or disclosing the information - 6 years
 - **IRS** - Records documenting business expenses- 7 years, but preferably forever. No time limit in cases of fraud.
 - **Discrimination Lawsuits** - Until "final disposition" of the charge or lawsuit
 - **Employee Health Records** - 30 years after employment
- Documents Filed in Separate Files:
 - Medical Records, e.g. Respiratory Medical Questionnaire
 - EEOC Documents: e.g. Applicant Identification Record
 - Self-Identify Disability or Veterans Status
- Recommended:
 - USCIS Form I-9
 - Safety Training Records
- Employee Personnel Information
 - Name of Employee (MSWPA & IWC)
 - Permanent Address (MSWPA) - Home Address (IWC)
 - Occupation (IWC)
 - Social Security Number (MSWPA & IWC)
 - Birthday, if under 18 years (IWC)
- Payroll Information:
 - Beginning & Ending Times (IWC)
 - Meal Periods (IWC)
 - Split Shift Intervals (IWC)
 - Total Daily Hours Worked (MSWPA & IWC)
 - Workweek/Workday (Calif. Labor Code)
 - Basis for Wages Paid (MSWPA & IWC)
 - Piece Rate Units Produced (MSWPA & IWC)
 - Explanation of Incentive Plan Formula (IWC)
 - Specific Sums Deducted (MSWPA & IWC)
 - Total Pay Period Earnings (MSWPA & IWC)
 - Applicable Rates of Pay (IWC)
 - Net Pay (MSWPA & IWC)
 - Pay Day (Calif. Labor Code)
 - Location of Pay (Calif. Labor Code)
 - Value of Board, Lodging or Other Compensation (IWC)
- Paycheck Itemization (paycheck stub):
 - Name of Employee (MSWPA & IWC)
 - Social Security Number (last four digits) or Employee Identifier
 - Basis for Wages Earned (MSWPA)
 - Total Hours Worked (MSWPA & Labor Code)

- Number of Piecework Units Earned (MSWPA)
- Total Pay Period Earnings (MSWPA & Labor Code)
- Specific Sums Withheld & Purpose (MSWPA & IWC)
- Net Pay (MSWPA & Labor code)
- Employer's Name (MSWPA & IWC)
- Employer's Address (MSWPA & Labor Code)
- Employer's IRS Identification Number (MSWPA)
- Inclusive Dates of the Pay Period (IWC)

WORKERS' COMPENSATION INSURANCE:

- Posting of Notice
- New Employee Orientation - WC Carrier Pamphlet
- Employees covered by labor provider, e.g FLC, payroll company - Must have a written agreement to extend WC coverage to using ER.
- Employee Physician Pre-designation (if covered by ER health plan)

EDD: UI - SDI - PFL

- Posting Notice
- SDI Pamphlet DE 2515 - PFL Pamphlet DE-2511 (At Hiring)
- New Employee Reporting Act; DE34, within 20 days
- Independent Contractor Reporting; DE 542, within 20 days
- Layoff, Termination or Change of Status Notice
- Earned Income Tax Credit - Sent with W-2 earnings
- UI-SDI Pamphlet DE2320 (At Discharge)
- Order EDD Forms at (916) 322-2835

PAYMENT OF WAGES:

- Time and Location Notice
- Within 7 days of the end of payroll period, 4 days FLC
- Discharge or Layoff
- Quitting Employees - 72 hours, unless, 72-hr. pre-notification by employee
- Set Offs, Deductions from Wages
 - Written approval for all paycheck deductions, except governmental
 - Lost of equipment, cash shortage and breakage
 - Uniforms and equipment
 - Loans, balloon payments
- Retaliation prohibited for disclosure of wages by employees
- Garnishment of Wages - Child Support

SOCIAL SECURITY - INCOME TAXES:

- No-match Letters from Social Security Administration
- Withholding - Form W-4

DISCRIMINATION:

- Posters
- Sexual Harassment Notice
- Supervisor Harassment Training (50 or more employees, 2hr/2years)
- American's With Disabilities Act (ADA)
- Pregnancy Leave provisions
- Civil Rights Act (Title VII) & FEHA
- Privacy In Employment, Privacy-Off the job
- Sexual Orientation, Gender Identity
- Leaves of Absence - Domestic Violence Leave Act, Literacy, etc.
- EEOC Report (100 or more employees)

AG LABOR RELATIONS ACT:

- Protected Concerted Activities
- FLC Employees
- Supervisor Training-ULP'S, Access

IMMIGRATION:

- Verification of Employee Status (USCIS Form I-9)
- Anti-Discrimination Provisions

EMPLOYMENT BENEFITS:

- Health Insurance-COBRA/Conversion
- Health Insurance Portability and Accountability Act (HIPPA)
- Pension ERISA
- Vacation Pay Benefits-Suastez
- Family and Medical Leave Act
- Paid Sick Leave; Must allow ½ toward personal reason
- WARN - Worker Adjustment and Retraining Notification Act

EMPLOYMENT CHECKLIST:

- Pre-Employment:
 - Required:
 - Worker Disclosure Information (MSPA)
 - Applicant Identification Record (DFEH)
 - Optional:
 - Application for Employment
 - Job Testing and Investigate References
- At Time of Hire:
 - Required:
 - Issue Disability Insurance Pamphlet DE-2515
 - Issue Paid Family Leave Pamphlet DE-2511
 - Sexual Harassment handout or in employee handbook
 - Workers' Compensation - Physician Pre-designation form
 - IRS Form W-4
 - USCIS Form I-9 (Employment Eligibility Verification Form)
 - Pesticide Haz Comm & Training (Field/Handlers)
 - Payroll Deduction Authorization (e.g., Health Ins., Housing, etc)
 - Wages & Benefits explained to employee
 - Safety Training provided to employee
 - Explain Hazard Communication Program and MSDS's
 - Location of Sanitation Facilities & Good Hygiene Practices
 - New Employee Registration Act, DE-34
 - Work Permit for Minors
 - Optional:
 - Issue Employee Handbook, Signed Receipt
 - Orientation Company Rules/Procedures
 - Tools & Equipment Loan Agreement
 - Housing Agreement
 - Bonding for Employees Handling Funds
 - Physical Examinations
- Annually:
 - Required:
 - Earned Income Tax Credit
 - IRS Form W-2
 - EEOC Report (100 or more employees)
- Terminations:
 - Required:
 - Written Notice of Termination, Layoff
 - Payment of Non-Forfeited Benefits (vacation, etc.)
 - Return Deposits for Loaned Equipment Plus Interest
 - EDD Pamphlet DE 2320 "For Your Benefit . . ."
 - COBRA 60-Day Notification for Group Health Plan
 - Health Insurance Premium Payment Act Notice (state)
 - Health Insurance Portability and Accountability Act (HIPPA)
 - Optional:
 - Notice to Vacate Housing
 - Exit Interview (Voluntary Quit)
 - USCIS Form I-9 to Inactivate File