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
- CA: 1/1/17: $10 for employers of 25 or less; $10.50 for employers of 25 or more; 1/1/18: $10.50 less than 25; $11 for more than 25; 1/1/19: $11 for less than 25; $12 for more than 25; 1/1/20: $12 for less than 25; $13 for more than 25; 1/1/21: $13 for less than 25; $14 for more than 25; 1/1/22: $14 for less than 25; $15 for more than 25; 1/1/23: $15 for less than 25

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 exceeding 40 feet in length, transporting hazardous material or towing a trailer with a GVW of more than 10,000 pounds
    - FLSA: fruits or vegetables which are "just-harvested" exemption
    - 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
  - Performs exempt work primarily (over 50% of time per workweek)
  - Exercises discretion & independent judgment
  - Monthly salary (2 times CA min. wage @ 40 hours/week)
  - DLSE Exempt Status Analysis - DLSE Management Memo 93-5
- Salespeople (Inside & Outside Sales)
- Part-time Employee - 7th day of work; max. 6 hours/day & 30 hours/week
- Irrigator: spends >50% time performing duties as an irrigator
- Sheepherder: $1956/mo. for employers of 26 or more, $1867/mo. for employers of 25 or fewer in 2018
- Exemptions: Employer’s own parent, spouse or child

PIECE-RATE COMPENSATION
- Averaging # of pieces produced over hours worked in a workweek or pay period no longer permissible in CA
- Employees must be separately compensated for hours when producing pieces, hours when not producing pieces (other non-productive time, and IWC rest and heat illness recovery time

-Required rates:
  - Rest & Recovery Periods: No less than the greater of Minimum Wage or average hourly rate (total compensation for the workweek minus any rest/recovery period compensation and any overtime premium compensation, divided by total hours worked minus rest and recovery periods)
  - Other non-productive time: no less than Minimum Wage

Minimum Wage Exception
- CA: Learners 18 years of age and older: 1st 160 hours in a job w/no previous experience: 85% of min. wage

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 after 8 hours on 7th day of work in a workweek
  - Note: Recent legislation changing ag overtime rules beginning 1/1/19 does not invalidate overtime exemptions for irrigators, truck drivers regulated by state or federal hours-of-service regulations, salaried managers, and immediate family members until at least 2019
  - Note: Under FLSA, employee gets 1½ times regular rate of pay for hours worked over 40 in a workweek in which employee handles product of another farmer

- Non-Agricultural Occupations/Industries
  - 1½ times regular rate of pay
    * Over 8 hours/workday
    * Over 40 hours/workweek
    * 1st 8 hours on 7th day of work in a workweek
- 2 times regular rate of pay
  - Over 12 hours/workday
  - Over 8 hours on 7th day of work in a workweek
PAID SICK LEAVE
- Posting (DLSE Paid Sick Leave Posting, 11/2014)
- Employee eligible to earn PSL after working for a CA employer for 30 days
- Eligible to use accrued PSL after working for current employer for 90 days
- Employer can choose to award 3 days paid sick leave
- Employees accrue 1 hour PSL for every 30 hours worked
- May limit accrual to 6 days or 48 hours
- May limit use to 3 days or 24 hours
- Use must be permitted by employee’s oral or written request
- May not require doctor’s note
- PSL paid at usual rate of pay
- PSL benefit must be explained in LC § 2810.5 notice

OTHER WAGE CONSIDERATIONS
- Split-Shift Premium: one hour at min. wage in addition to min. wage for that workday
- Bonuses, Incentives, Commissions
  - Example
    - $10/hour RRP = $15/hour O.T.
    - $3,000 bonus divided by 3,000 hours worked = $1/hour
    - $1 Bonus + RRP = $11/hour or $16.50/hour O.T. – a shortfall of $1.50/hour
    - Back out (out of value of bonus) overtime to reduce impact
- Indemnify employees for their expenditures & losses
- Reporting Time Pay: ½ usual or scheduled hours (2 hrs. min., 4 hrs. max)
- Waiting time: free to leave work site
- Standby 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 employee
  - See: fels.net/Data/Laws/AB60update.htm
- 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
- Weekends and Holidays - no special treatment required

WORKING CONDITIONS
- Tools & Equipment
  - Must provide tools unless employee earns 2 times min. wage
- Uniforms: required to wear items of distinctive design or color
- Required Personal Protective Equipment (PPE)
- Change room, Resting facilities, Seats, Temperature, Elevators
- Meal Periods
  - Ag: After each 5-hour work period
  - Non-Ag: 1st after 5 hours worked; 2nd after 10 hours worked
  - Must relieve employee of all duty for 30 minutes, but employee may, with employer consent, choose to work through meal period
  - Waiver of duty to provide meal period
  - On-duty meal periods
- Must be recorded (unless “operations cease”)
- Failure to provide: Must pay 1 hour at employee’s RRP

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 (T.8, CCR §3203)
  - Records
  - Cal/OSHA required to review during inspection
- Written Hazard Communication Program (T.8, CCR §5194)
  - Inventory hazardous substances
  - Insure secondary containers are labeled
  - Acquire and provide to employees SDS (Safety Data Sheets in compliance with Global Harmonized System)
  - Train employees in substance safety and using SDS’s
- Respiratory Program (T. 8 CCR §5144 and T. 3, CCR §6739)
  - Written program
  - Qualified administrator selected
  - Medical evaluations
  - Fit testing and training
  - Voluntary use – Posting
- Medical Services (T. 8, CCR §3400)
  - Provide medical services “near proximity to the workplace”
  - Employees trained in first-aid and CPR
  - Remote locations, one per 20 employees trained in first-aid
  - First-aid kits nearby, and in supervisor’s vehicle(s)
- Emergency Action Plan (T. 8, CCR §3220)
- Fire Prevention Plan (T. 8, CCR §3221)
  - Inspection of flammable areas
  - Fire extinguishers
- Lockout/Tagout; written program, training and self-audit
- Hearing conservation (testing, and analysis) (exceeds time-weighted average sound level of 85 db)
Heat Illness Prevention (T. 8, CCR §3395)
- Drinking Water - 1 qt./employee/hour; suitably cool
- Shade available on request < 80°F; shade present >
  80°F; sufficient for the number of employees taking a
  rest, cool-down break or the number of employees
  remaining on-site during a meal period
- High-Heat Procedures >95°F
- Training
- Written Compliance & Emergency Procedures available
  for Cal/OSHA inspection in field

Proposition 65 (Clean Water Act)
- Postings - clear and reasonable warning
- List of Prop 65 chemicals at:
  https://oehha.ca.gov/proposition-65/proposition-65-list

Access to Medical Records (T. 8, CCR §3204)

Weeding, Thinning & Hot Capping (T. 8, CCR §3456)
- Use of short-handled tool: Prohibited
- By hand: Generally prohibited; Exceptions:
  * When there is no readily available, reasonable
    alternative
  * Hand weeding is occasional or intermittent and
    incidental (20%)
  * The commodity plants being weeded are any of
    these:
      - Planted 2 inches apart
      - Registered as organic
      - Seedlings
      - Horticultural & grown in tubs or containers with
        an opening of no more than 15 inches
  * Whenever not intermittent: must provide additional
    5-minute rest period and supply gloves and
    kneepads

Field Sanitation Facilities (T. 8, CCR §3457)
- Alternative Compliance (<5 employees, <2 hours)
- Toilet and Handwashing: within 1/4-mile walk or 5
  minutes
- One toilet per sex, 5 or more in crew, 1/20 employees/sex
- Drinking Water: Pure and readily accessible; dispensed
  by fountain or single-use cups
- Handwashing water, soap, single-use towels
- 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 Office Phones: (510) 622-3066; (714)
  567-7208

Report accidents to Cal/OSHA within 8 hours when
hospitalization > 24 hours, dismemberment or death

Ergonomics standard (T. 8 CCR §5110)
- = or > 2 RMLs, same job, diagnosed by physician, 50%
  job related, within 12 months
- 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
  - Seat belts
- Safety Training

HOUSING
- Postings
- Inspection & Permits
  - MSWPA one or more migrant worker housed
  - MSWPA Housing Notification - Post WH-521
  - 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
Qualifications of Trainers: written training program
Respiratory Procedures; Administrator, Medical evaluation,
Training
Decontamination Facilities
Records/Documents - See PSIS A-8
Medical supervisor, Danger or Warming and
Organophosphate or carbamate

TRANSPORTATION
- Any vehicle, including tractors (transporting employees)
  - Valid driver’s license, meet safety regulations, seatbelts
  - Insurance (WC or $100,000/seat - max. $5 million +
    $50,000 liability insurance)
- Tractor drivers (drawing certain items) must be licensed
- 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 Workers’ Comp 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/DISCLOSURES:
- 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
    - USCIS Form I-9: one year after employment and 3-year minimum
    - 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
    - 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
  - Required Records - General
    - USCIS Form I-9
    - IRS Form W-4/FTB Form DE-4
    - Time Worked/Payroll Records
      * Beginning & Ending Times (IWC)
      * Piece Rate Units Produced (MSWPA & IWC)
      * Meal Periods (IWC)
      * Split Shift Intervals (IWC)
      - Workweek/Workday Defined (Calif. Labor Code)
      - Value of Board, Lodging or Other Compensation (IWC)
    - See also these specific sections of this checklist: 1) Cal/OSHA, 2) Pesticides, 3) Time Records & Paycheck Itemization, 4) Farm Labor Contractor (Federal) & (State) 5) Employment Benefits - FMLA, 6) Child Labor and 7) Discrimination
- Required Personal Records
  - Documents with employee’s signature
  - Records relating performance or grievance
  - Records relating to promotion, compensation, or disciplinary action, including termination.
  - Applications for employment (2 years – 4 years recommended)
- 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)
- 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)
  - Paid Sick Leave (earned & used)
  - Employer's Name (MSWPA & IWC)
  - Employer's Address (MSWPA & Labor Code)
  - Employer's IRS Identification Number (MSWPA)
  - Inclusive Dates of the Pay Period (IWC)
  - FLC include grower & grower address engaging services (LC)
- Disclosures (not otherwise noted in another section)
  - Children's Health Insurance Program Reauthorization Act of 2009
  - Affordable Care Act notice (upon hire; after Mar. 2014, 14 days)
  - LC §2810.5 - Wage Theft Prevention Act with PSL notification
  - LC §2751 - Written Contract for Commission Pay
  - Health Insurance Premium Payment Act Notice (state)
  - Time Off to Vote
  - Notice of right to take job-protected leave for domestic violence, sexual assault or stalking

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
PAYMENT OF WAGES
- Time and Location Notice
- Pay period: at least twice each month on days designated in advance
- Within 7 days of the end of the 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
  - Deductions from "Promised Rate"
  - Lost of equipment, cash shortage and breakage
  - Uniforms and equipment
  - Loans, balloon payments
- Garnishment of Wages - Child Support
- Retaliation prohibited for disclosure of wages by employees

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) including Abusive Workplace Conduct training
  - FLC’s: train supervisors annually
  - train all ee’s at time of hire and every two years thereafter; can comply by reviewing DFEH-185
- 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.
- Applicant Identification Record (DFEH)
- EEOC Report (100 or more employees)

LABOR RELATIONS ACT (ALRA/NLRA)
- Protected Concerted Activities
- FLC Employees
- Supervisor Training-ULPs; Access

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

EMPLOYMENT BENEFITS
- Patient Protection and Affordable Care Act
- Health Insurance-COBRA/Conversion
- Health Insurance Portability and Accountability Act (HIPPA)
- Pension ERISA
- Vacation Benefits ; Suastez
- Family and Medical Leave Act - California Family Care Act
- WARN - Worker Adjustment and Retraining Notification Act

EMPLOYMENT CHECKLIST
- Pre-Employment Required
  - Worker Disclosure Information (MSPA)
  - Applicant Identification Record (DFEH)
- Application for Employment
- Job Testing and Investigate References
- At Time of Hire Required
  - Disability Insurance Pamphlet DE-2515
  - Paid Family Leave Pamphlet DE-2511
  - Sexual Harassment Pamphlet DFEH-185 or Sexual Harassment handout or in employee handbook
  - California Family Rights Act Pamphlet DFEH-E03B
  - Workers’ Compensation - Physician Pre-designation form
  - Affordable Care Act notice (upon hire; after Mar. 2014 14 days)
  - IRS Form W-4 (or FTB DE-4)
  - CA Form DE-35 (informs employee that employer must furnish a copy of W-4 or DE-4 if employee claims more than 10 allowances, or employee claims exemption from withholding and employer expects weekly wages to exceed $200)
  - 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 - LC §2810.5 Written Notice
  - Written Contract for Commission Pay
  - Safety Training provided to employee
  - Explain Hazard Communication Program and 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
  - Children's Health Insurance Program (CHIP) Notice each Group Health Plan Year
  - Earned Income Tax Credit
  - IRS Form W-2
  - IRS Forms 1095 A/B/C Affordable Care Act reporting
  - EEOC Report (100 or more employees)

- Terminations Required
  - Final Paycheck
  - Written Notice of Termination, Layoff
  - Payment of Non-Forfeitable 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

(Revised May 2018)