

FELS

Farm Employers Labor Service



Serving Agriculture in Labor Management Relations

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
- 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

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:

- o 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)
- o Other non-productive time: no less than Minimum Wage

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
- Shepherd: \$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

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
- Rest Periods
 - Rate: 10 minutes per 4 hours (or major fraction of 4 hours) worked based on total daily hours worked
 - Counted as hours worked
 - Fail to provide: Must pay 1 hour at employee's RRP
- Lactation accommodation
 - One-day's-rest-in-seven – applies to ag as of 1/1/17
 - Employer may not "cause" an employee to work more than six days in seven (workweek) without providing an equivalent day of rest elsewhere in the same calendar month
 - "Cause" means to compel or induce employee to work more than six days in seven
 - Employee may work seven straight days if not compelled or induced and with understanding of the right to a day of rest
 - Use a signed acknowledgment for maximum employer legal protection

CHILD LABOR

- Posting Notice
- Agricultural Zone of Danger
- Age requirements; 16-17 most jobs, <16 very restrictive
- 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 (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, 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
 - 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 Warning 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

- UI-SDI Pamphlet DE2320 (At Discharge)
- Order EDD Forms at (916) 322-2835

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 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
- 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) 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)
- Optional
 - 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 SDS'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

- 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

