

# Best Practices for Growers & Farm Labor Contractors Working Together

**Presented by:**

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**We wish to express confidence in the information contained herein. Used with discretion, by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which commonly give rise to legal liability. However, this text should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.**

**The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.**

# Growers Dealing with FLC Supervisors/Forepersons/Employees

**While it may be hard to avoid FLC employees, it is VERY IMPORTANT that the Grower's Field Representatives limit interactions with any employees of an FLC. If a Field Representative does not like how an FLC employee is performing their work, the Field Representative should let the FLC or the FLC's Supervisor or your FLC Contact Person know what your concerns are...*away from the employees/crew.***

**Do NOT reach out to the FLC's:**

- **Crew Bosses/Forepersons**
- **Employees**

# Growers Dealing with FLC Supervisors/Forepersons/Employees

**Under NO circumstances should a Grower Field Representative reprimand, direct, or correct, the FLC's Crew Bosses and/or Crew Members directly.**

**It is important that Grower's Field Representatives are not overseeing the working conditions of the FLC's employees or that the FLC employees are given the appearance that the Grower or its Field Representatives oversee their working conditions.**

# Visitors in the Workplace

**Private individuals can generally be prohibited from entering or being on employee land.**

**It is EXTREMELY IMPORTANT that when you encounter visitors, that you follow Company policy: NO VISITORS and NO SOLICITATIONS. You should have a written policies for these issues.**

**There are a few instances in which you are required to allow the visitor to enter the property, so it is important to know 1) who may NOT BE DENIED entry; and 2) who may DENIED entry.**

# Greeting Government Visitors

- The best approach for greeting government visitors is to approach them before they enter the worksite.
- Do not wait for the government representative to approach you in the field.
- Try to minimize the representative's contact with employees as much as possible so that the representative is not gaining any more knowledge than what is absolutely necessary.
- After greeting the visitor, immediately contact management and ask the visitor to wait until a manager is available to meet with them.

# Who May NOT BE DENIED Entry (“Enforcers”)

Representatives of the following agencies (“Enforcers”) may be allowed entry but attempt to get management involved first:

- Division of Labor Standards Enforcement aka Office of the Labor Commissioner (“DLSE”)
- Division of Occupational Health & Safety aka DOSH or Cal-OSHA (“DOSH”)
- California Civil Rights Department (“CRD”) (formerly the Department of Fair Employment and Housing (“DFEH”))
- California Agricultural Labor Relations Board (“ALRB”)
- U.S. Department of Labor (“DOL”)
- U.S. Department of Homeland Security Immigration and Customs Enforcement (“ICE”)
- U.S. Equal Employment Opportunity Commission (“EEOC”)
- U.S. National Labor Relations Board (“NLRB”)

# What to do during a visit from Labor Agencies ("Enforcers")

- Engage all visitors immediately! DO NOT wait for them to approach you!
  - Ask them their reason for being at the work location.
- Have them wait outside the property.
  - If they insist on entering, escort them to the work location and introduce them to your employees. Stay with them but do not interfere with their work.
- Call the owner or manager immediately.
- Write down the date, time, and place of visitation.
- Get the cards, names, and license numbers of the visitors.
- DO NOT try to physically stop the representatives from entering the property.



# Who MAY BE DENIED Entry (“Non-Enforcers”)

The following are groups (“Non-enforcers”) that are not entitled to take access to work locations:

- Legal Aid Services
- Labor Union Agents
- Private Attorneys
- Private Investigators
- Private Consultants
- News Media Reporters
- Legislators

# What to do during a visit from Non-Enforcers

- Engage all visitors immediately. DO NOT wait for them to approach you.
  - Ask them their reason for being at the work location, and politely ask for identification.
- Have them wait outside the property.
- Call the owner or manager immediately.
- Once your manager arrives at the work location, direct him/her to the visitor.
- Do NOT answer questions about working conditions or employees.
- Never give unauthorized personnel permission to enter the work location.
- If the visitor is a union organizer, document any access or unfair labor violations (threats to employees, blocking vehicles, etc.).

# Union Awareness

**Unions are very good at keeping their organization campaigns quiet, even more so now in the age of technology.**

**Always be alert or on the lookout for signs of union organization.**

# Union Awareness

## Why Do Employees Join Unions (their perception)?

- **Poor Communication with Management**
- **They feel insecure in their jobs**
- **Poor leadership attitude and practices**
- **Inconsistent application of policies & procedures**
- **Lack of appreciation**
- **Poor working conditions / environment**
- **Lack of support / training**
- **Low wages and benefits**

# Union Awareness

## Signs of Union Organization:

- **Employees wearing union apparel**
  - **Do not treat the obvious signs as inconsequential.**
  - **Look for employees wearing union t-shirts, hats, buttons, etc.**
- **Turnover Rate Change**
  - **If the turnover rate goes up when there have been no changes in company policies, wages, or benefits, a union might be making promises concerning better working conditions**

# Union Awareness

- **Employee language (Union Buzz Words)**
  - Watch for changes in the language of employee language because it may become more formal and legal in nature.
  - For example, employees may start using words like “grievance,” “arbitration,” “job security,” “employee rights,” “prevailing wage,” and “unfair labor practices”)
- **Emotions Run High**
  - Be on the lookout for small groups that gather in unusual places as emotions run high and everything seems urgent. Unions blatantly provide advice on the organization of a union while also agitating employees with small group discussions on workplace issues that are presented in a negative matter.

# Union Awareness

- **Change in Employee Communication & Behavior**
  - You may notice employees who were previously friendly suddenly becoming less communicative or difficult.
  - Employees may stop talking when you approach them or come near.
- **New Employee Alliances**
  - You may notice new employee friendships or alliances develop when the union wants to unionize the workplace. People who normally did not talk or spend time together may not seem to have a lot to talk about. The typical strategy involves getting some employees to serve as the volunteer organizing committee whose job is to get other employees interested. You may notice a lot of whispering.

# Union Awareness

## What Can You Do When You See Signs of Union Organization?

- **Let Management know as soon as you begin to see any signs of union organization.**
- **DO NOT approach and FLC supervisors, forepersons or employees with your suspicions of union organization.**



# Union Awareness

## Protected Concerted Activity (“PCA”)

- Group action vs. Individual employee acts
- AB 2183-Disciplinary Actions:

If you demote, discharge, suspend or otherwise discipline an employee during a ~~mail balloting~~ **card check** campaign, the action will be presumed to be retaliatory and a violation unless the employer can prove by “clear and convincing and overwhelming evidence” that the action would have been taken anyway. (**AB 113 slightly amended the employer’s burden of proof by removing the “overwhelming” evidence requirement. See LC 1156.37(k).**)
- Examples of Protective Concerted Activity:

Work stoppages, strikes and complaints based upon wages, hours of work and working conditions; safety in the workplace; heat illness non-compliance; field sanitation conditions; COVID-19; union activity; filing a complaint with a State or Federal agency, and more.

# Union Awareness

## **Protected Concerted Activity-Examples of Unfair Labor Practices:**

- **Termination of employees for failing to reinstate strikers who leave work and return when there are still jobs available;**
- **Failing to recall workers due to PCA in the prior season;**
- **Termination of an employee for filing a wage claim with the DLSE for retaliation;**
- **Termination of an employee for filing a retaliation or sexual harassment claim with the DFEH or EEOC;**
- **Termination or discrimination against an employee for his or her support of a union;**
- **Interrogating an employee about union or protected activities;**
- **Threatening a worker to not engage in union activities;**
- **Promises to workers of benefits if they do not engage in union activities;**
- **Adverse actions taken against workers who refuse to work due to unsafe work conditions, such as excessive muddy rows, or the employer's failure to comply with the Field Sanitation, Heat Illness and COVID-19 regulations;**
- **Termination for complaints about incorrect wages and wage statements;**
- **Termination for complaints about excessive hours of work without overtime;**
- **Termination for complaints about the need for fringe benefits, like health insurance, pensions, transportation, etc.**
- **Surveillance of employees engaged in union or protected concerted activities; and**
- **Complaints about the number of hours worked.**

# Union Awareness

## REMEMBER TIPS!

- ***No Threats!***
- ***No Interrogation!***
- ***No Promises!***
- ***No Surveillance!***

# Managing Complaints

Employee complaints are a reality of all companies' labor relations. It is **ALWAYS** important to *deal with employee complaints* and to document every complaint made to you. It is better for the company and the FLC to have FLC employees come forward with complaints or concerns than having them talk to government agencies, unions or attorneys.

Direct the employee to their crew boss or foreperson, or to the FLC supervisor/contact person you deal with. Do not tell the FLC employee or give the FLC employee the impression that you will pass it on to the FLC. Document the complaint after you leave the vicinity of the FLC employee so that you don't give the impression you are taking notes to pass on to the FLC.

# Managing Complaints

**The worst thing a supervisor can do when faced with a complaint is fail to act. It is the supervisor's job to take these complaints and ensure employees that complaints are being investigated and that an attempt to resolve the complaints is underway.**

**If an FLC employee came to the grower supervisor first, and the grower supervisor informed the FLC, then the grower supervisor should follow-up with the FLC to see what happened regarding the FLC employee's complaint.**

# GENERAL WORKING CONDITION ISSUES

## Rest Breaks

- Rest breaks must be provided for every four hours worked, or major fraction thereof.
  - An employee working 10 hours in one workday is entitled to 3 rest breaks.
- Rest breaks must be a minimum of a net 10-minutes and should be taken in the middle of every four-hour period. Supervisors must wait give employees a reasonable amount of time to reach the rest area.
  - A net 10-minutes means that employees must be given 10 minutes to rest. Time walking to and from the work area must not be counted in rest break.
  - Supervisors should consider the work environment and determine how much time it reasonably takes to get to the rest area, so employees are not using part of their rest breaks to walk to the rest area.

# Rest Breaks

- **Supervisors should notify employees every morning of the rest break policy and request that employees notify them of any late or missed rest break.**
- **Supervisors should inform employees every morning of their right to take rest and recovery breaks throughout the day as necessary. (these breaks are separate from the mandatory “cool down” breaks required under Cal/OSHA).**

# Rest Breaks

- Rest breaks **CANNOT** be used to leave early or extend meal breaks.
- Rest breaks are treated as time worked and must be **DUTY FREE**.
  - Employees cannot be required to answer company calls or radios.
- **ALL** employees are required to take rest breaks.
- Failure to provide or missed rest breaks means that the employee must be paid 1 hour at their regular rate of pay.
- Supervisors should inform employees at the start of the workday to report any missed or late rest breaks.



# Recovery Breaks & Cool Down Breaks

- **“Recovery breaks” are rest breaks that employees request and are entitled to take when they feel they need to rest to prevent overheating.**
  - **Supervisors are required to closely monitor employees during these breaks for signs of heat illness.**
- **Cool Down Breaks are breaks that must be given during high heat days (95 degrees and above). They may coincide with designated rest and meal breaks but must be given every two hours.**
  - **These breaks must be monitored for signs of heat illness, such as dizziness, nausea, sweating, fatigue, etc.**

# Meal Breaks

- **Employees are entitled to one 30-minute meal break for five or more hours worked in one workday, and employees are entitled to a second meal break for hours worked over 10.**
- **The first meal break must start no later than 4 hours and 59 minutes into the workday. The second meal break must start no later than 9 hours and 59 minutes into the workday.**
  - **If employees start the workday at 7AM, the meal break must start at 11:59 AM (BEFORE 12PM). Take it earlier!**
  - **Do not wait until exactly 5 hours of work, leave some leeway.**

# Meal Breaks

- **FLC Supervisors should notify FLC employees every morning of the meal break policy and request that employees notify them of any late or missed meal breaks.**
- **Employees must be relieved of ALL duty and free to leave the premises during meal breaks.**
- **An employee working 8 hours in one workday, is required to take one 30-minute meal break. An employee working more than 10-hours in one workday is entitled to a second meal break.**

# Meal Breaks

- The meal break must be a net 30-minutes.
  - “Net 30-minutes” means that employees must be given 30 minutes for their break, not counting any time it took to go to and from the work area.
  - Supervisors must wait to start counting the meal period until after the employees have reached the break area and should call meal breaks about one-two minutes before the scheduled meal break time so that employees are not using part of their meal break to walk to the break area.
- Employees are required to take their first meal break and may only waive their second meal break if the workday does not exceed 12 hours.
- Waiver must be a written agreement and mutually agreed upon by the employee and employer.

# Monitoring Heat Stress

**One of the most important jobs a supervisor has is to monitor employees for heat illness. As temperatures rise throughout the workday, employees' physical and mental state can also rapidly change into a serious medical condition. Supervisors should be able to answer questions regarding heat illness and effectively monitor employees for any signs or symptoms. Supervisors should:**

- Monitor the Weather**
- Check for Signs/Symptoms of Heat Illness**
- Know the Steps to Prevent Heat Illness**
- Know How to Deal with Heat Illness**

# Monitoring Heat Stress

## Weather

**Supervisors should always stay alert to weather conditions and should:**

- Monitor the weather at the specific working locations before each workday;**
- Measure the temperature at worksites every day; and**
- Continue to stay updated throughout the work shift on the changing air temperatures and other environmental factors.**

**Cal OSHA inspectors and CA law requires supervisors be aware of weather conditions so that they may prepare for working in heat.**

# Monitoring Heat Stress

- **FLC supervisors should remind employees during tailgate meetings and throughout the day to drink up to one quart of water per hour when working in hot conditions.**
- **During an employee's acclimatization (first week or so of work), employees should be notified that they may need more frequent breaks, and informed to drink water in small amounts, about 3 to 4 cups per hour. FLC supervisors should:**
  - **Closely monitor new employees for signs of dizziness, fatigue, or nausea.**
  - **Assign them a "buddy" so employees can watch each other closely for signs of heat illness.**
  - **Give them more frequent breaks and remind them to take breaks.**
  - **If paper cone cups are being used for drinking water, these cups typically hold 4 oz, and so employees should be drinking 8 paper cone cups every hour.**

# Monitoring Heat Stress

- **Ensure that shade is present and set up.**
  - **Shade must be open to the air, ventilated, or cooled.**
  - **Employees must have access to it during the entire shift.**
  - **Shade must be available upon request.**
  - **Shade must be propped up if the forecast is 80 degrees Fahrenheit.**
  - **Shade must be located as close as “practicable.”**
    - **Cal OSHA inspectors have been known to interpret this to mean as close as possible.**
  - **Shade must be DETACHED from the bathrooms.**



# Questions?