

# 30

THE AGRICULTURAL WORKER PROTECTION ACT AT 30

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WORKER  
PROTECTION  
ACT  
AT 30

A REPORT BY FARMWORKER JUSTICE

# UNFINISHED HARVEST: THE AGRICULTURAL WORKER PROTECTION ACT AT 30

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Farmworker Justice  
1126 16th Street NW  
Suite 270  
Washington, D.C. 20036  
(202) 293-5420  
farmworkerjustice.org

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# INTRODUCTION

IN 1983, CONGRESS PASSED THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (AWPA; ALSO KNOWN AS MSPA).<sup>1</sup> To mark the thirtieth anniversary of its enactment, Farmworker Justice has produced this report, which examines the impact of AWPA on farmworkers. In doing so, we have examined the law's historical and legislative background, consulted court cases interpreting its provisions, and sought insight from leading farmworker advocates around the country.

The enactment of AWPA was an important step forward, but the wages and working conditions for most workers who cultivate and harvest our fruits and vegetables are still inadequate. Many farmworkers continue to experience wage theft, dangerous housing<sup>2</sup> and transportation, and other illegal employment practices. Several factors contribute to this disappointing reality: our broken immigration system, the exclusion of farmworkers from important labor and employment laws, geographic isolation, language barriers, inadequate government resources, and lack of access to the justice system. The AWPA has made a difference in the lives of many farmworkers, but in order to reduce abusive practices that harm farmworkers and undermine the agricultural sector of our economy, improvements must be made with regard to enforcement, implementation, and the law itself.

# FARMWORKERS, AGRICULTURAL WORK, AND FARM LABOR CONTRACTING

## KEY CHARACTERISTICS OF FARMWORKERS

Our nation relies heavily on hired labor to work our farms and ranches. There are approximately 2 million farmworkers, including those who cultivate and harvest crops and those who raise livestock. Most fruits, vegetables, and dairy products come from relatively large farms; the industrialization of farming began many decades ago, and consolidation into larger and fewer farms continues to the present day. Even though machines are used to harvest many crops destined for canning or processing, most fresh produce sold in retail stores and restaurants is still harvested by hand.



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More than 80% of farmworkers are Latino and 70% of farmworkers are immigrants, primarily from Mexico. At least half of the farm labor force lacks authorized immigration status, at least two thirds have fewer than 10 years of schooling, and two thirds speak little to no English. In recent years, many new immigrants have come from indigenous communities in southern Mexico and Guatemala with different languages and other cultural characteristics. About 75% of field workers are male and 25% are female.<sup>3</sup>

Farm work is dignified but hard work, and farmworkers and their families live arduous lives. Data from the Department of Labor (DOL) shows that agriculture ranks as one of the most dangerous industries for both fatal and non-fatal injuries.<sup>4</sup> In addition, most farmworkers earn low annual incomes due to low wages and the seasonal nature of their work. Household incomes average less than \$20,000 per year.<sup>5</sup> Most farmworkers receive no fringe benefits. And while poor U.S. citizens and long-term lawful permanent resident immigrants may be eligible for public benefits like food stamps and Medicaid, undocumented workers and recently documented immigrants are ineligible for almost all public benefits.

Most farmworkers perform seasonal work near their homes and, in the course of a year, may work on several farms within commuting distance. Migrant workers—a substantial

minority of farmworkers who travel long distances for work—live especially difficult lives. They invest time and money in a search for uncertain employment in distant places where housing is often expensive, crowded, and unsafe. Migrant families frequently struggle to find affordable childcare, and their children suffer due to lack of continuity in school. In the past, workers were based in the southern states and would travel north to farms on the East Coast, the Midwest, and the West Coast, but now migrant farmworkers move around the country in various directional patterns.

### Farm Labor Contractors

Many farm operators—including thousands of fruit and vegetable growers—retain the services of farm labor contractors (FLCs), or “crewleaders,” to perform a variety of tasks, from recruiting, transporting, and housing workers to supervising field work and running payroll. In some cases, farmworkers rely on contractors called “*raiteros*” solely to provide transportation to the fields each day.

A large minority of seasonal farmworkers (both migrant and non-migrant) are hired, supervised, and paid by FLCs who are retained by the farm operators. Some migrant farmworkers depend on FLCs to set up jobs in distant locations, as well as to transport, house, and feed them. In many cases, the workers



do not know the name of the farm operator. Workers hired through FLCs can often do nothing more than hope that the labor contractors' promises of work are fulfilled; migrant workers are especially vulnerable since they invest time and money to travel to jobs that may not be as promised.

Many FLCs are small, thinly capitalized, and only marginally profitable businesses that have little choice but to accept the contract terms dictated by growers seeking to minimize labor costs. Workers who successfully sue small FLCs often cannot collect on the judgment because the FLCs lack substantial assets. There are also relatively large FLCs with complex operations involving subcontractors who provide thousands of workers to large farming operations. In some situations, the FLC is an association of employers who cooperate to recruit and hire workers for member growers.

FLCs often compete for business by offering to provide workers at a lower price. However, the cost is often so low that it becomes impossible for the FLC to properly pay workers,

comply with other legal obligations (such as transmitting Social Security contributions to the IRS), or provide workers with safe and humane working conditions, housing, or transportation. Many FLCs supplement their income by lending money to workers at usurious rates and charging workers exorbitant amounts for decrepit housing or unsafe transportation.

A common and longstanding problem related to the use of FLCs is the effort by many growers to escape responsibility under employment and immigration laws by claiming that their farmworkers are employed solely by the FLC.<sup>6</sup> When an FLC violates workers' rights with respect to minimum wage or protections under AWPA, workers must often resort to lawsuits where they seek to prove that the farm operator and the FLC are acting as joint employers and are thus jointly liable. Those growers who pay a reasonable price for workers, sufficient for the FLC to comply with the law, can suffer a competitive disadvantage due to higher labor costs. Thus, the FLC system can hurt not only workers but also law-abiding farm operators.

## WORKER STORIES

### Leroy Smith

In 2010, Leroy Smith's life changed dramatically. He had no job, no home, and was struggling with drug addiction. Then one day, while Smith was playing chess in a park in Orlando, an FLC recruited him to work in a potato-packing shed operated by Bulls-Hit Ranch and Farm. Smith accepted, thinking it would be a good opportunity to make some money. Instead, the contractor took Smith and other homeless men to a squalid, overcrowded labor camp. The contractor provided them with decrepit housing, along with food, alcohol, and crack cocaine on credit—at an interest rate of up to 100 percent. On payday, after deductions were made for rent, food, and other debts, Smith ended up with no money. By the end of two months he owed the FLC hundreds of dollars and had never received any wages despite his hard work. Fortunately, Smith escaped and turned his life around. He sought legal assistance to stop what was happening at Bulls-Hit.

Farmworker Justice and Florida Legal Services represented Smith and three other former employees in a federal lawsuit against the FLC, Bulls-Hit, and its owner for violating AWPA and other laws. It turned out that Bulls-Hit had been sued in 2004 for using a different FLC who committed similar abuses. When the workers settled the case, in addition to getting back pay, the workers made Bulls-Hit and its owner promise to change their practices. In particular, the settlement agreement required the grower to hire only reputable licensed contractors, to take over payroll responsibilities rather than channel money through an FLC, and to allow legal aid attorneys to speak to workers in order to ensure that Bulls-Hit complied with the law.

# A BRIEF HISTORY OF LABOR LAWS AND THE DEVELOPMENT OF AWPA



Ray Stephens is a 60-year-old migrant farmworker who has worked for 44 years, since he was 16. He has worked in tomatoes, cucumbers, strawberries, raspberries, carrots, apples, oranges, grapefruit, watermelon, cantaloupe, and potatoes. Ray says that FLCs have gotten worse over the years. “A lot of the older guys I grew up working with, they would never tolerate what’s going on with the crewleaders. They would stand up to them. [Now], they tell you lies to get you on the job, then you find whatever they were telling you was a crock. They say, ‘We gonna pay you such and such,’ say \$10 an hour. Then you get in the field, and they give you \$7 or \$8 an hour.”

Farmworkers were not covered under the minimum wage provisions of the Fair Labor Standards Act of 1938 (FLSA) until it was amended in 1966—although certain small farms (unlike other small employers) are still exempt. Today, even the largest agricultural employers are still exempt from the FLSA’s overtime requirement of paying time-and-a-half wages beyond 40 hours a week. And they may employ children at younger ages than employers in other occupations. The National Labor Relations Act, which established protections against retaliation for joining or organizing a labor union and established a framework for collective bargaining, excludes agricultural employers and employees. Discriminatory standards in federal law for unemployment compensation and other benefits and programs also deprive many farmworkers of resources and protections that other workers enjoy.

In 1960, one day after Thanksgiving, Edward R. Murrow’s powerful documentary “Harvest of Shame” exposed farmworker conditions to American television viewers in vivid detail. Partly in response to that exposé, Congress passed the Farm Labor Contractor Registration Act (FLCRA) in 1963 with the goal of improving conditions for farmworkers and their families. As its name implies, the FLCRA was chiefly concerned with regulating the activities of FLCs, but not the agricultural businesses that used them to supply farm labor.

By 1982, Congress had determined that the FLCRA had failed to achieve “fairness and equity for migrant workers.”<sup>7</sup> A U.S. House of Representatives report found that even the FLCRA amendments had “failed to reverse the historical pattern of abuse and exploitation of farmworkers,” who remained, “as in the past, the most abused of all workers in the United States.”<sup>8</sup> And so, concluding that the time had come for “a completely new approach,” Congress passed AWPA and, on January 14, 1983, President Reagan signed it into law.<sup>9</sup>

The most significant changes from FLCRA to AWPA were: (1) a set of requirements that applied to farm operators and (2) introduction

of the “joint employment” concept, making it possible for workers to hold the farm operator jointly responsible with its FLCs for violation of AWPA’s substantive requirements. According to AWPA’s legislative history, the “use of this term [employ] was deliberate and done with the clear intent of adopting the ‘joint employer’ doctrine as a central foundation of this new statute; *it is the indivisible hinge* between certain important duties imposed for the protection of migrant and seasonal workers and those liable for any breach of those duties.”<sup>10</sup>

The Act recognizes that economic power generally resides with the grower and not the labor contractor and that a law-abiding farm labor system depends primarily on decisions made by the grower. If the grower selects an FLC that is financially able and willing to comply with the law, directs the FLC to comply with the law, and pays the FLC an amount sufficient for compliance with the law, the FLC is likely to comply with its legal obligations. The grower may include in its contract with the FLC a provision that requires the FLC to reimburse the grower for attorneys’ fees, back pay, and other damages if the grower is sued and held jointly liable for violations committed by the FLC.

If growers accept their responsibilities as employers, it will be in their best interest to prevent other companies from obtaining a competitive advantage by violating the law and escaping their responsibilities as employers.

## SUMMARY OF AWWPA'S PROTECTIONS

In enacting AWWPA, Congress sought to improve farmworker conditions by regulating FLCs, establishing basic disclosure requirements to inform workers of job terms and conditions, setting wage payment and record-keeping requirements, and holding accountable not only FLCs but also employers who use FLC-supplied labor. The statute also established health and safety standards for farmworker housing and transportation.

Unfortunately, AWWPA only protects farmworkers who perform temporary or seasonal work. The many year-round workers employed at dairies or egg farms are excluded from AWWPA's protections, as are some workers employed year-round at greenhouses and farms. Foreign workers who are brought into the United States under the federal H-2A temporary agricultural worker visa program, often through FLCs, are also excluded from coverage under AWWPA. Also, certain small employers are exempt from AWWPA requirements.

### The key provisions of AWWPA are:

**FLC Registration:** FLCs must register with the U.S. Department of Labor and obtain an FLC license, which they may lose if they are found to have violated their obligations under AWWPA. To obtain an FLC license, applicants must (among other requirements) certify that they have not been convicted of a felony or certain other crimes in the last five years. Growers and other covered

employers are required to use only licensed FLCs.

**Disclosure Requirements:** Employers must provide farmworkers with written disclosures of employment terms, including the place of employment, wage rate, nature and duration of the work, pending labor disputes, whether workers compensation coverage exists, and the cost of any transportation or housing provided. If the workers are not fluent in English, this information must be provided in a language they understand.

### Payment of Wages When Due, Payroll and Recordkeeping Requirements:

Employers must pay farmworkers their wages, in full, on the day they are due. At a minimum, farmworkers must be paid every two weeks. Employers must keep complete and accurate records for each worker and provide accurate pay stubs that include the basis on which wages are paid, number of units earned (if the worker is paid a piece rate), hours worked, total earnings for that pay period, any amounts withheld or deducted and the reason for the deduction, and the worker's net pay for that period.

**Safety:** FLCs who provide farmworker transportation must receive special permission to do so when they register with DOL. Vehicles must meet certain safety standards, the driver must be licensed, and the employer must maintain a certain amount of insurance.<sup>11</sup>

*The AWWPA has fallen far short of its goal of ensuring that farmworkers are transported safely. Farmworkers are still frequently transported in overloaded vehicles with no seatbelts or safety inspections, sometimes by unlicensed drivers. In a 1999 California incident, for example, a van carrying 13 farmworkers—riding on bare benches with no seatbelts—collided with a semi truck. All of the workers were killed. During the 1990s, more than 100 farm workers were killed in similar*

## WORKER STORIES Ignacio Villalobos

Ignacio Villalobos is a 75-year-old, life-long farmworker. Villalobos most recently worked on a California onion farm where workers were housed in RV trailers, tents, cars, and makeshift structures. There was no plumbing for washing or bathing; workers had to wash themselves in an irrigation reservoir visible from a public road. Because onion harvesting takes place in the evenings and early morning hours, workers would often sleep in the field between evening and morning shifts.

Villalobos and his fellow onion workers were also cheated out of their wages. Nobody kept accurate work records for the workers or gave them required information about the job. As Villalobos asked: "Who protects the worker? Who enforces the law?"

On behalf of Ignacio and his co-workers, Farmworker Justice and California Rural Legal Assistance have sued the grower and the FLCs, seeking to hold them jointly liable for violations of AWWPA's wage payment, record-keeping, working arrangement, and housing requirements.

*accidents and 10 times that number were injured, some of them permanently maimed. These accidents spurred the passage of farmworker vehicle safety laws in California, but AWWPA regulations still do not require vehicles carrying farmworkers to have seatbelts. Transportation accidents continue to claim farmworker lives.<sup>12</sup>*

**Farmworker Housing Standards:** FLCs that provide farmworkers with housing must also obtain permission to do so from DOL when they register.



LaKimbria Hickman is a migrant farmworker who lives in Lake Placid, Florida, where she works in the citrus orchards in the winter. In the summer, LaKimbria travels to North Carolina with a crew to work in tobacco, potatoes, watermelon, and peas. LaKimbria always works with an FLC, and in all her time doing farm work, she has never received a written disclosure of job terms.

LaKimbria has been working for the same FLC for about five summers, picking watermelons in North Carolina. She says that although packing the trailers with watermelons is hard work, it used to pay good wages. That was not her experience this past summer. When the crew arrived at the watermelon fields, there was no work for the first three weeks. And since they were staying in a hotel for \$240 a week, the workers were already \$720 in the hole by the time work finally began.

Then, LaKimbria was shorted for some of the hours that she worked. LaKimbria also worries that the FLC is not making the required Social Security contributions to the federal government because she is paid in cash and receives no pay stub.

The AWPA requires those who own or control farmworker housing to ensure that the housing complies with applicable federal and state health and safety standards. The issue of who controls housing is an important one, as many employers rely on rental units and motels to house farmworkers and thereby try to escape responsibility for meeting minimal housing standards.

**Working Arrangements:** A key provision of AWPA prohibits employers from violating the terms of any working arrangements made with farmworkers. This provision allows farmworkers to enforce their employment terms, such as those listed in the job disclosure. While AWPA does not define what constitutes a working arrangement,<sup>13</sup> Congress's remedial purpose in passing the law suggests that the term should be interpreted expansively. Most courts have held that all employment-related laws and regulations are implicit terms of AWPA's working arrangement. For example, if an employer violates a workplace safety standard of the Occupational Safety and Health Act, such as failing to provide farmworkers with access to toilets, hand-washing facilities, or drinking water, a worker could sue under AWPA, claiming that the safety violation is a violation of the working arrangement. However, a minority of courts have interpreted the working arrangement as consisting only of employment-related promises expressly communicated to the worker. This interpretation fails to achieve justice for farmworkers; an employer may simply choose not to promise to comply with employment-related laws.

**Freedom from Retaliation:** The AWPA prohibits anyone from retaliating against farmworkers who assert their AWPA rights.

**Joint Employer Liability:** As discussed above, Congress purposely defined employment relationships broadly,<sup>14</sup> borrowing the expansive standards of the FLSA, rather than a more restrictive definition under common law. The AWPA considers that a migrant or seasonal farmworker may simultaneously have two or more employers who will be held jointly liable for violations. Under AWPA, courts and the DOL decide whether a given entity is a joint employer by considering several factors that, when taken together, may show the worker's economic dependency on the purported employer. Courts often, but not

always, conclude that a grower is the joint employer with its labor contractor.

**A few years ago, a large citrus farm invited some of us to learn about its operations. Standing in the field, watching the farmworkers harvest the crop on ladders, we asked the foreperson a few questions.**

**Q. Who are you employed by?**  
**A. The farm.**

**Q. Who owns these fields?**  
**A. The farm.**

**Q. Who owns the ladders and buckets the workers are using?**  
**A. The farm.**

**Q. Who tells the workers which field to pick each day?**  
**A. I do.**

**Q. And who employs you?**  
**A. The farm.**

**Q. Now, who employs the farmworkers?**  
**A. The labor contractors.**

**Q. Doesn't the farm employ the farmworkers?**  
**A. No.**

**Bruce Goldstein, President,  
Farmworker Justice**

**Government Enforcement:** The Department of Labor's Wage and Hour Division (WHD) investigates AWPA violations, may assess fines and penalties of up to \$1,000 per violation, and can recover back wages for farmworkers. The DOL may also ask the court to order the employer to correct its behavior in order to bring it in compliance with AWPA (i.e., injunctive relief). Criminal sanctions are also available under AWPA, but are rarely used.

**Private Right of Action:** If an employer violates AWPA, any affected worker may sue the employer in federal court without having to rely on the government. Farmworkers who win an AWPA suit are entitled to money damages equal to any loss actually caused by an employer's illegal behavior or statutory damages of up to \$500 per worker per violation, capped at \$500,000 for a class action suit. When certain egregious safety violations result in injury or death, such as knowingly permitting a drunk driver to transport farmworkers, the statutory cap is \$10,000 per violation. However, when workers' compensation is available, workers may not receive damages for the safety violations that caused the injury or death. Workers may also ask for injunctive relief, however, AWPA does not require losing defendants to pay the plaintiff's attorney fees.

# HAS AWPA MADE A DIFFERENCE?

**“I do think that AWPA has improved the situation of farmworkers, though that improvement has not been as much as we would have hoped for thirty years ago. Though not necessarily the fault of AWPA itself, we never thought that thirty years later, we’d still be seeing workers dying of heat stroke, assaulted in the fields, or coming into the country indentured to labor contractors and growers.”**

**— Rebecca Smith, National Employment Law Project**

Clearly, the lofty goals held by AWPA supporters have not come to fruition; far too many farmworkers still live and work in atrocious conditions. To be sure, AWPA has been successful in a number of important ways. Farmworker advocates interviewed for this report universally regarded the law’s joint employer liability provision as a major achievement—though some courts have not implemented it as consistently as desired. It has encouraged some growers to either ensure their FLCs are complying with the law or to take over payroll and other duties themselves.<sup>15</sup>

Farmworker advocates interviewed for this report also widely valued AWPA’s requirement that employers comply with their wage promises and other job terms, as well as the record-keeping requirements. These provisions help prevent and remedy wage theft, including pay abuses directed toward piece-rate workers (those paid by the bucket, box, or other unit). Advocates in some parts of the country report that housing standards established under AWPA have helped workers attain living conditions that are at least marginally humane.

The law’s private right of action, allowing farmworkers to sue their employers in federal court, is critically important, especially because advocates believe that DOL lacks the enforcement resources, and at times the political will, to enforce the law on its own. In many areas, state courts are viewed as less sympathetic to farmworkers’ claims, and they have fewer resources than federal courts.

Yet overwhelmingly, farmworker advocates agree that AWPA has not resulted in a demonstrable improvement in farmworker conditions.

While there are many law-abiding employers, advocates in the field believe that many of the abuses that Congress was targeting with AWPA still persist on a broad scale. Workers continue to be employed on farms where farm operators use unscrupulous FLCs that often provide no pay stubs whatsoever, make illegal deductions from workers’ pay, and fail to pay Social Security and unemployment insurance taxes for workers. Large numbers of farmworkers are victims of wage theft; many employers misstate the number of hours worked to make it appear as if piece-rate workers have earned the required minimum hourly wage. Farmworkers still typically live in overcrowded and substandard housing, rarely visited by government inspectors. They are transported to and from worksites by unlicensed drivers in vehicles that often lack seat belts and other basic safety equipment. These rampant violations of workers’ rights in agriculture were revealed in an earlier report by Farmworker Justice and Oxfam America, *Weeding Out Abuses: Recommendations for a law-abiding farm labor system*.<sup>16</sup>

The shortcomings of the substantive provisions of AWPA could be improved, as described below, but these are not the only reasons for the statute’s failure to fulfill its remedial purposes: Our broken immigration system is a major factor. Many farmworkers, due to their undocumented immigration status, are taken advantage of, but they are too fearful of deportation to challenge illegal conduct. In addition, there are practical and legal obstacles for workers who live in employer-controlled labor camps, making it difficult for workers to connect with legal services workers, union organizers, and others.



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Another major factor is the lack of a credible threat of enforcement, which causes some employers to risk violating the law. Those farmworkers who wish to pursue legal action have difficulty finding attorneys to take their cases. Legal aid programs funded by the federal government are prohibited from representing undocumented workers—the majority of the farm labor force—and from bringing class action lawsuits; they are also underfunded. Private attorneys generally will not take AWPA cases because the potential compensation is low and because the law does not provide an attorney's fee award to prevailing AWPA plaintiffs.

Current enforcement efforts are limited and often ineffective. Inadequate funding by Congress for enforcement by the WHD and Solicitor of Labor severely limits the number of investigations and cases brought forth each year. For example, the number of AWPA investigations by WHD decreased during President Obama's first term compared to the last years of the George W. Bush administration.<sup>17</sup> However, even when enforcement does occur, AWPA's fines and statutory damages are too low to deter many employers from violating the law. In addition, because many FLCs have limited assets, and because there is no obligation under AWPA for FLCs to post a bond when obtaining a license,

there is often no money to collect. For FLCs who violate the law, it is all too easy to continue operating after DOL cancels their license; often, a family member or friend will obtain a license and provide the grower with the same workers under the same conditions.

The DOL has not always been vigorous or wise in its enforcement efforts, and there are agency policies that should be improved. However, the Obama administration has made some significant efforts towards improving AWPA enforcement. Although WHD has conducted fewer total investigations, the investigations have covered more workers; this may be a sign that investigations are having more impact than before. Some advocates have seen a greater level of professionalism and increased communication with farmworker advocates. Under the Obama administration, WHD has sought to improve enforcement in agriculture by using its resources more strategically, such as by targeting certain problem crops or geographic areas to achieve a broader impact. The fear of coming forward to challenge unlawful conduct will diminish if workers see that enforcement efforts succeed.

# RECOMMENDATIONS

Our experience and research have led us to make several recommendations regarding AWP provisions, DOL regulations for implementing these laws, and enforcement efforts. Protections should be strengthened to prevent the abuses that Congress sought to deter. Enforcement should be increased and improved to help victimized farmworkers and to stop law-abiding employers from being undermined in the marketplace by businesses that cut labor costs through illegal employment practices.

## Improvements to the Law

**All farmworkers should be covered by AWP's full range of protections.** The beneficial impact of AWP should be extended to all agricultural workers, including H-2A guestworkers and year-round workers. The rationale for excluding these workers, if ever valid, no longer exists. Congress should eliminate the distinction between migrant and seasonal workers; all workers deserve to live in decent housing, and all workers deserve disclosure of accurate information before they commit to a job.

**Increase fines and statutory damages and require FLCs to post bonds.** Congress should amend AWP to increase outdated maximum statutory damages and fines. Damages for payroll and wage violations should be tripled or quadrupled. Some state laws require FLCs to post a bond when they register, and Congress should follow their lead. The bond should be set high enough to cover significant wage violations. Workers could then recover damages from the bond if they are unable to collect from the FLC.

*In a recent case in North Carolina, DOL found that an FLC had been transporting farmworkers through the mountains in a vehicle whose brakes were not in good working order; the fine was only \$50.<sup>18</sup>*

**Expand AWP's anti-retaliation language to protect farmworkers who join or organize a labor union or engage in other concerted activities.** Many farmworkers have improved conditions at their place of employment by forming and joining labor unions, and they should not be fired for doing so.

## Growers should be liable for any violations that occur when using unregistered FLCs.

Growers who negligently hire an unlicensed FLC should be held liable for all violations committed by the FLC, without the need for a determination of whether the grower was a joint employer with the FLC or played a role in the violations.

## Provide farmworkers with access to attorneys and the courts.

Like the FLSA, the Equal Employment Opportunity Act, and other civil rights laws, AWP should encourage attorneys to take cases by providing an attorney's fee award for prevailing plaintiffs. The AWP should provide legal and government service providers with access to labor camps when invited in by workers.

## The DOL needs more resources to enforce

**AWPA.** Congress should appropriate more funding to enforce AWP. The WHD needs more investigators in rural areas and to conduct more investigations. The Solicitor of Labor's office needs more funds to litigate AWP claims and collect unpaid fines.



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## Improvements to Administration Policy and Enforcement

**The DOL should improve its enforcement of AWPA.** The DOL should continue to improve its strategies and actions in order to maximize compliance with AWPA, including enhancing its communication with farmworker organizations and advocates, improving investigator training, and specifically targeting systemic abuses. The DOL must continue to pursue cases where the agency and the courts hold growers and their labor contractors jointly liable for wage theft, failure to make Social Security contributions, and other illegal employment practices. The DOL should maximize recovery of damages, set higher fines, and strenuously litigate cases in court when employers exercise their right to appeal administrative action.

**Solidify expansive interpretation of the term “working arrangement.”** The DOL should make clear by policy that the requirement under AWPA to comply with a working arrangement includes the obligation to comply with other employment-related laws and regulations, such as the DOL requirement that employers provide toilets, hand-washing water, and drinking water in the fields. The concept of the term “working arrangement” is a broad one that was intended to protect farmworkers, and DOL should prevent it from being narrowed.

**Improve transportation protections by requiring seatbelts, holding employers responsible for unsafe transportation, and better regulating FLCs.** The AWPA should require the provision of seatbelts in all vehicles used to transport farmworkers. The DOL should improve interpretive guidelines and focus enforcement efforts on employers who arrange

to transport farmworkers in dangerous vehicles but then deny that they are responsible for using those vehicles or causing them to be used. When an FLC uses the employer’s workers compensation coverage instead of liability insurance to get authorization to transport farmworkers, the registration certificate should specify that the FLC is only allowed to transport workers employed by that specific employer. Currently, some FLCs move on to the next employer, who may not provide workers compensation, and use the same registration certificate to continue transporting workers without insurance.

**The DOL should focus enforcement efforts on businesses that arrange unhealthy, unsafe housing for farmworkers and then seek to deny that they own or control the housing.** The DOL should hold employers responsible for ensuring safe housing conditions for farmworkers when they or their FLC play a role in providing housing.



# CONCLUSION

The Migrant and Seasonal Agricultural Worker Protection Act of 1983 (AWPA) sought to address serious, systemic problems in the agricultural labor system in the United States. The AWPA improved prior law in important ways and has helped many farmworkers avoid wage theft, dangerous transportation practices, and unsafe housing. By requiring employers to disclose and live up to their promises regarding job terms and by giving farmworkers and the DOL the right to enforce those promises in federal court, many abuses have been prevented and remedied. Unfortunately, conditions for most farmworkers in this country remain poor. Several factors explain this unsatisfactory situation, and AWPA's shortcomings cannot be blamed for all labor abuses that farmworkers experience. This report identifies the problems that AWPA sought to address, but for which more action is needed. Improvements in the law and in DOL policies and enforcement would help achieve the goals that Congress set 30 years ago. Such improvements would benefit not only farmworkers but also decent, law-abiding employers and the many consumers who desire a fair food system.



# ENDNOTES

- <sup>1</sup> AWPAs is codified at 29 U.S.C. §§ 1801–1872. The U.S. Department of Labor has issued regulations under the AWPAs as well, which are located at 29 C.F.R. §§ 500.0–500.271. DOL refers to the statute as the “MSPA.”
- <sup>2</sup> For a discussion of farmworker housing, see *Housing Conditions for Farmworkers*, Housing Assistance Council (2013) available at <http://www.ruralhome.org/information-and-publications/information-sheets/demographics-high-need-areas-and-special-populn/85-housing-conditions-for-farmworkers>.
- <sup>3</sup> Philip Martin and J. Edward Taylor, *Ripe with Change: Evolving Farm Labor Markets in the United States, Mexico, and Central America*, The Migration Policy Institute (2013) available at <http://www.migrationpolicy.org/pubs/RMSG-Agriculture.pdf>.
- <sup>4</sup> Centers for Disease Control and Prevention, Agricultural Safety, <http://www.cdc.gov/niosh/topics/aginjury/> (last visited Nov. 6, 2013); Department of Labor, Occupational Safety & Health Administration, *Agricultural Operations*, <https://www.osha.gov/dsg/topics/agriculturaloperations/> (last visited Nov. 6, 2013).
- <sup>5</sup> *Inventory of Farmworkers Issues and Protections in the United States*, United Farm Workers and Bon Appétit Management Company Foundation (March 2010) available at [http://www.ufw.org/pdf/farmworkerinventory\\_0401\\_2011.pdf](http://www.ufw.org/pdf/farmworkerinventory_0401_2011.pdf).
- <sup>6</sup> For a further discussion of subcontracted labor across industries, see *From Orchards to the Internet: Confronting Contingent Work Abuse* by Catherine Ruckelshaus and Bruce Goldstein (2002), available at <http://www.farmworkerjustice.org/sites/default/files/documents/7.6.b%20OrchardstoInternet.pdf>.
- <sup>7</sup> AWPAs’s Legislative History, H.R. Rep. 97-885, 1, reprinted in 1982 U.S.C.C.A.N. 4,547, 4,547.
- <sup>8</sup> *Id.* at 4,548 – 49.
- <sup>9</sup> *Id.* at 4,549.
- <sup>10</sup> *Id.* at 4,552.
- <sup>11</sup> See *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 643 (1990).
- <sup>12</sup> Agriculture Worker Health Project, CRLA and CRLAF, Farmworker Transportation, <http://www.agworkerhealth.org/RTF1.cfm?pagename=Transportation> (last visited Nov. 6, 2013).
- <sup>13</sup> See *Colon v. Casco*, 716 F. Supp. 688, 693 (D. Mass. 1989).
- <sup>14</sup> AWPAs specifically adopts the Fair Labor Standards Act’s definition of employment: “to suffer or permit to work.” 29 U.S.C. § 1802(5); 29 C.F.R. § 500.20(h). As the Supreme Court has said, “A broader or more comprehensive coverage...would be difficult to frame.” *United States v. Rosenwasser*, 323 U.S. 360, 362 (1945).
- <sup>15</sup> E-mail interview with Mary Lee Hall, Legal Aid of North Carolina (July 26, 2013).
- <sup>16</sup> Available at <http://www.farmworkerjustice.org/sites/default/files/documents/7.2.a.7%20weeding-out-abuses.pdf>.
- <sup>17</sup> The number of WHD AWPAs investigations between 2006-08 and 2009-11 decreased by 12.64%, though the number of H-2A and FLSA investigations in agriculture increased over the same period. Farmworker Justice has a pending Freedom of Information Act request with DOL for the number of investigations in agriculture in 2012.
- <sup>18</sup> E-mail interview with Caitlin Ryland, Legal Aid of North Carolina (July 26, 2013).

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FARMWORKER  
JUSTICE

1126 16th Street NW, Suite 270  
Washington, DC 20036  
202.293.5420  
[www.farmworkerjustice.org](http://www.farmworkerjustice.org)

