Protection of Migrant Agricultural Workers in Canada, Mexico and the United States

---

Commission for Labor Cooperation

Acknowledgments

This report was prepared by a team of researchers led by Kevin Banks, Senior Labor Law Advisor, and also comprising Tequila Brooks, Labor Law Advisor, Marcelle Saint-Arnaud, Research Documentation Coordinator, and Emily LaBarbera Twarog, Labor Research Intern. Administrative support was provided by Melisa Gadi, Administrative Assistant. The report was drafted by Kevin Banks and Tequila Brooks.

Parts of the report incorporate material from papers prepared by Bruce Goldstein, Executive Director of the Farmworker Justice Fund (Washington, D.C.) and Maria Teresa Guerra Ochoa, Professor of Law at the University of Sinaloa (Culiacán, Mexico). Research assistance was provided by Sara Slinn, Jack Walker, Elias Aoun and Erick Tinoco in 1999 and 2000. Research assistance was provided by Christopher Debicki, Assata McCreary-Peterson and Carolina Sevilla in 2001. Valuable comments on earlier drafts of the report were received from Roxane DeLaurell, then International Coordinator of Cooperative Activities, Michael McDermott, then Interim Executive Director, Sandra Polaski, then Director of Labor Law and Economic Research, and Héctor Toledano, Publications Coordinator.

The Secretariat of the Commission for Labor Cooperation is solely responsible for the contents of this report. Nothing in this report necessarily reflects the views of the Council of Ministers, of any government agency or of any of the outside contributors or reviewers.

Published by the Secretariat of the Commission for Labor Cooperation

Copyright © 2002 by the Secretariat of the Commission for Labor Cooperation.

For additional copies, contact the Secretariat of the Commission for Labor Cooperation at:

1211 Connecticut Ave. N.W.
Suite 200
Washington, D.C. 20036
USA

e-mail: clcpubs@naalc.org
website: www.naalc.org

This book is also available in French and Spanish.

ISBN (English): 1-58454-018-4
ISBN (Spanish): 1-58454-019-2
ISBN (French): 1-58454-020-6

CONTENTS

INTRODUCTION 1

SYNOPSIS 3

1. Who are the Migrant Agricultural Workers? 3

2. Protection of Migrant Agricultural Workers 3

A. Protection of Migrant Agricultural Workers under General Labor and Employment Laws and Social Programs 3

B. Special Laws and Programs Affecting Migrant Agricultural Workers 4

C. Rules under Temporary Foreign Agricultural Worker Programs 5

3. Equality of Protection: Nationals and Nonnationals 5

A. Canada 6

B. Mexico 6

C. United States 6

CANADA 7

1. Background Information on Migrant Agricultural Workers 7

A. Nationalities and Ethnic Origins of Migrant Agricultural Workers 7

B. Locations of Migrant Agricultural Work 7

C. Common Hiring Arrangements 7

1) Formal Government Programs 7

2) Private Arrangements 8

D. Legal Jurisdiction over the Protection of Migrant Agricultural Workers 9

E. Immigration Rules Applicable to External Migrants 9

2. Protection of Migrant Agricultural Workers 9

A. Constitutional Rights to Equal Protection of Laws 9

B. Protection of Migrant Agricultural Workers under General Labor and Employment Law and Social Program Benefits 10

1) Labor Relations Laws 10

2) Protections against Discrimination in the Workplace 10

3) Minimum Employment Standards 11

4) Child Labor Laws 12

5) Occupational Health and Safety 12

6) Compensation for Occupational Accidents and Injuries 13

7) Health Insurance 13

8) Employment Insurance 13

9) Public Retirement and Disability Pensions 13

10) Social Assistance 14

11) Workers without Valid Work Permits 14

C. Special Laws and Programs Affecting Migrant Agricultural Workers 14

1) Pesticides in the Workplace 14

2) Workplace Housing 15

3) Regulation of Piece Rate Systems ... 16
4) Clean Water and Hygiene in the Fields ... 16
5) Farm Labor Contractors ... 16
6) Employment Agreements of CCMSAWP Workers ... 17
7) Legal Aid ... 17
D. Due Process ... 18

MEXICO ... 23

1. Background Information on Migrant Agricultural Workers ... 23
A. Internal Migrant Workers ... 23
B. Temporary International Migrant Agricultural Workers ... 24
C. Common Hiring Arrangements ... 24
D. Legal Jurisdiction over the Protection of Migrant Agricultural Workers ... 24
E. Immigration Rules Applicable to International Migrant Workers ... 24

2. Protection of Migrant Agricultural Workers ... 25
A. Constitutional Rights to Equal Protection of Laws ... 25
B. Protection of Migrant Agricultural Workers under General Labor and Employment Law and Social Program Benefits ... 25
1) Collective Labor Relations Laws ... 26
2) Protections against Discrimination in the Workplace ... 26
3) Equal Pay for Men and Women ... 26
4) Minimum Employment Standards ... 26
5) Child Labor Laws ... 27
6) Occupational Health and Safety ... 28
7) Compensation for Occupational Accidents and Injuries ... 28
8) Social Security: Health Insurance, Public Retirement and Disability Pensions and Other Benefits ... 28
9) Enforcement Procedures ... 29
C. Special Laws and Programs Affecting Migrant Agricultural Workers ... 30
1) Pesticides in the Workplace ... 30
2) Workplace Housing ... 31
3) Obligations of Agricultural Employers Using Labor Intermediaries ... 31
4) Transportation ... 31
5) Other Rights and Benefits under the LFT Particular to Agricultural Workers ... 31
6) Special Programs ... 31
7) International Conventions ... 32
8) Legal Representation Assistance ... 32
D. Due Process ... 32

UNITED STATES ... 37

1. Background Information on Migrant Agricultural Workers ... 37
A. Nationalities and Ethnic Origins of Migrant Agricultural Workers ... 37
B. Locations of Migrant Agricultural Work ... 37
C. Common Hiring Arrangements ... 37
1) Formal Government Programs ... 37
2) Private Arrangements ... 38

D. Legal Jurisdiction over the Protection of Migrant Agricultural Workers . . . 38
E. Immigration Rules Applicable to External Migrants . . . 38

2. Protection of Migrant Agricultural Workers . . . 39
A. Constitutional Rights to Equal Protection of Laws . . . 39
B. Protection of Migrant Agricultural Workers under General Labor and Employment Law and Social Program Benefits . . . 40
1) Labor Relations Laws . . . 40
2) Protections against Discrimination in the Workplace . . . 40
3) Equal Pay for Men and Women . . . 41
4) Minimum Employment Standards . . . 41
5) Child Labor Laws . . . 42
6) Occupational Health and Safety . . . 43
7) Compensation for Occupational Accidents and Injuries . . . 43
8) Health Insurance . . . 44
9) Unemployment Insurance . . . 44
10) Social Security Benefits . . . 44
11) Social Assistance . . . 45
C. Special Laws and Programs Affecting Migrant Agricultural Workers . . . 45
1) Farm Labor Contractors . . . 45
2) Worker Housing . . . 47
3) Transportation . . . 47
4) Field Sanitation Standards . . . 47
5) Pesticides in the Workplace . . . 48
6) Employment Rights under the H-2A Program . . . 48
7) Legal Services Programs for Agricultural Workers . . . 49
D. Due Process . . . 50

ABBREVIATIONS . . . 55

BIBLIOGRAPHY . . . 57

INTRODUCTION

The gradual integration of North American markets for agricultural products is a significant aim of the North American Free Trade Agreement. At the same time workers in agriculture, particularly migrant workers, are often among the most vulnerable, receiving low pay and responding to highly fluctuating demand for their labor. Significant changes in agricultural production in response to North American economic integration may have important impacts on these workers.

The North American Agreement on Labor Cooperation (NAALC) is specifically concerned with the protection of migrant workers. Article 1 of the NAALC sets forth the Agreement's Objectives and Article 2 details its Obligations. Together these Objectives and Obligations define the scope of the Agreement. One of the Objectives is to ensure the effective enforcement and transparent administration of labor laws, defined in the NAALC to include "laws and regulations that are directly related to the protection of migrant workers." In accordance with these Objectives, the NAALC countries agreed to a set of six Obligations that cover the effective enforcement and transparent administration of labor law. The Objectives also include promoting to the maximum extent possible 11 basic Labor Principles, including "Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions."

The NAALC member countries committed themselves to the Obligations and undertook to promote the Labor Principles. While those Obligations and Principles do not establish common laws or standards, the countries have agreed to open themselves to reviews and consultations among the three countries on all labor matters within the scope of the Agreement.

This report aims to provide a concise description, for each NAALC member country, of the laws, practices, and administrative procedures that relate to the protection of migrant workers in agriculture. In so doing, it will pay particular attention to the extent to which those laws provide international migrant workers with the same legal protection as the Party's nationals in respect to working conditions. The larger goal of this report is to provide the reader with a greater understanding of the legal systems of each country as they affect migrant agricultural workers, by providing an accurate picture of how each works and by facilitating comparisons between them. The report does not, however, cover trends in the implementation and enforcement of the law. Nor is it intended as an examination of the economic and social conditions of migrant agricultural workers or the particular economic, language, literacy and other difficulties that they may face in exercising their legal rights. [1]

Agriculture in Canada, Mexico and the United States employs migrants from within and from outside national borders. Reflecting this important feature of agricultural production, this report covers both internal and external migrant workers. A migrant worker is defined as any person who for the purpose of obtaining work moves from his or her permanent residence or place of origin and takes up temporary residence elsewhere.

In the labor laws of all three countries "agriculture" covers the cultivation of the earth and the raising of animals for the purposes of producing food and other products. Differences between countries arise in the way countries draw boundaries around the agricultural industry. However, these differences are generally not material to this discussion. The general definition provided in this paragraph will apply unless the context clearly indicates otherwise.

The report begins with a brief synopsis that summarizes some of the key points. The remainder of the report is divided into three parts that set out, for Canada, Mexico and the United States, respectively, a summary of the law and procedures relevant to the protection of migrant workers in agriculture.

Each country part is divided into two sections. Section 1 presents a general introduction containing background information on migrant agricultural workers, the location of migrant agricultural work, immigration programs, common hiring arrangements, and labor law jurisdiction. Section 2 describes the rights and protections provided to migrant agricultural workers by the labor laws of the country in question, the general enforcement procedures for those rights and general due process protections available. It also focuses specifically on laws and programs of particular relevance to migrant agricultural workers, such as those regulating farm labor contractors, workplace housing, and workplace pesticide use.

Notes

1. For an examination of the economic and social conditions of migrant agricultural workers in Canada, Mexico and the United States, please see R. Hinojosa-Ojeda, D. Runsten, K. Lee, R. Mines, *The Extent, Pattern, and Contributions of Migrant Labor in the NAFTA Countries: An Overview*, The North American Integration and Development Center, February 2000, at http://naid.sppsr.ucla.edu/pubs&news/wr00800.html

SYNOPSIS

There are approximately five million migrant agricultural workers in North America today. There are important similarities in the working conditions of these workers in each North American country. This synopsis will provide a brief introduction to the migrant agricultural workforce in the three NAALC countries. It will then survey the broad similarities and differences in laws and programs relevant to protecting migrant agricultural workers in each NAALC country. Finally it will discuss the extent to which national and nonnational migrant agricultural workers, including workers without immigration work permits, receive the same protection within each of the NAALC countries.

1. WHO ARE THE MIGRANT AGRICULTURAL WORKERS?

The extent of statistical information on migrant agricultural workers varies greatly between the three countries. The available evidence suggests that in each country ethnic minorities and recent immigrants constitute an important part of the migrant worker population. Each country has a different formal program for admitting foreign agricultural workers on a temporary basis. These programs supply a relatively small proportion of the total agricultural workforce. In the case of Canada and the U.S., the programs require a test of the labor market to determine if there are insufficient numbers of domestic workers available to perform the work before authorization is given to use temporary foreign agricultural workers. A significant proportion of the workers who participate in these programs are Mexican. In the case of Mexico, the labor authorities do not intervene in the immigration process for the admission of Guatemalan agricultural workers.

2. PROTECTION OF MIGRANT AGRICULTURAL WORKERS

In each country many of the laws and programs protecting workers in general also apply to migrant agricultural workers including those without valid immigration work permits. In addition, each country has laws intended to protect agricultural workers and migrant workers from risks and hazards specific to their line of work. Finally, the foreign temporary agricultural worker programs of Canada (the Commonwealth Caribbean and Mexican Seasonal Agricultural Worker Program - CCMSAWP) and the United States (the H-2A Program) have specific rules applying to such workers.

In Canada most programs and laws related to the protection of migrant agricultural workers fall within the exclusive jurisdiction of the country's provinces (subject to certain exceptions such as unemployment insurance and public pensions). In Mexico the power to establish such laws and programs generally belongs to the federal government, while responsibility for legal enforcement generally rests with state authorities, except in the case of a few branches, activities and matters for which enforcement rests with the federal authorities. In the United States the relevant laws and programs generally fall within the federal jurisdiction (subject to exceptions such as workers' compensation laws, federal laws that delegate enforcement powers to states, and the power of states to provide protections that supplement federal protections, such as labor relations laws applying to agricultural workers.)

A. Protection of Migrant Agricultural Workers under General Labor and Employment Laws and Social Programs

Collective Labor Relations Laws

Collective labor relations laws in each country give workers the right to organize unions and other associations and the right to bargain collectively and to strike. In Canada those laws cover agricultural workers in every province except Ontario and Alberta. However, in New Brunswick and Quebec many of those who work on small farms are excluded from the coverage of the relevant statutes. In Mexico the Federal Labor Law covers all agricultural workers. In the United States the National Labor Relations Act excludes agricultural workers, but some states such as California and Maine have enacted agricultural labor relations acts.

Protection against Discrimination in the Workplace

In Canada and the United States antidiscrimination laws prohibit employment discrimination of many kinds. These statutes generally apply to agricultural workers and to migrant workers. Some exceptions apply in cases of foreign workers (see below). Moreover, in the United States the key federal civil rights statutes do not apply to employers with fewer than 15 employees, which is often the case for agricultural employers. Most U.S. states have employment discrimination statutes that apply to smaller employers, however. In Mexico the law provides rights to equal pay for equal work and prohibits several forms of discrimination in employment. These protections apply to migrant agricultural workers.

Minimum Employment Standards

In each country there are laws providing minimum employment standards (such as minimum wages, hours of work and overtime, prohibitions on child labor, and in some cases vacation time, etc.). The types of standards found in these laws

vary widely between the countries. In Mexico minimum employment standards apply to migrant agricultural workers. In Canada and the United States many agricultural workers are excluded from the coverage of some or all of the standards contained in these laws. The Canadian provinces of Saskatchewan, Manitoba and Alberta exclude most agricultural workers from the coverage of most standards. New Brunswick and Prince Edward Island exclude those who work on small family farms from the application of many standards. The other provinces have exclusions limited to specific standards, most commonly those relating to hours of work and overtime. In the United States the Fair Labor Standards Act's (FLSA) overtime provisions do not apply to agricultural workers, and the standards for employment of children in agriculture are different from the standards for employment of children in other industries or occupations. In addition, the FLSA does not apply to employment on many small farms.

Child Labor Laws

All three countries set minimum ages for employment and establish time and industry limits on the work done by children of certain ages. In Mexico and most Canadian provinces, child labor laws apply equally to agricultural and other workers. Statutory child labor restrictions do not apply to agricultural workers in the Canadian provinces of Manitoba and Ontario, except for compulsory schooling laws. In the United States, different child labor laws apply to agricultural workers than apply in other types of employment.

Occupational Health and Safety and Compensation for Occupational Accidents and Injuries

Occupational health and safety laws in each country seek to reduce or eliminate workplace safety and health hazards. Agricultural workers are generally covered by these laws in Mexico, the United States and in every Canadian province except Ontario, Alberta and Prince Edward Island. However, in the U.S., Congress has prohibited the use of congressionally appropriated funds for enforcement of the Act with respect to agricultural employers that have fewer than 11 employees and do not maintain a temporary labor camp.

Programs designed to provide workers with compensation for injuries and accidents arising out of or in the course of employment exist in each country. In Canada, provincial laws require agricultural employers to provide workers' compensation insurance coverage to their workers, except in Alberta, Saskatchewan, Manitoba and Prince Edward Island, where employers may elect to apply for such coverage. In the United States, 36 jurisdictions (including the District of Columbia, Puerto Rico, and the Virgin Islands) require that employers provide such coverage for agricultural workers. Coverage is optional in five states, and in the remaining 12 agricultural workers are excluded. In Mexico similar benefits are provided to workers through the national social security system. Workers must be registered with the national social security agency (IMSS) to receive them. The IMSS has faced a number of challenges in seeking to register migrant agricultural workers, and as a result a relatively small proportion of those workers are currently registered. Workers who are not registered must claim compensation directly from their employer.

Public Health Insurance

Public health insurance systems vary widely between the countries. Canada's provinces each provide comprehensive public health insurance which is generally available to all residents, including migrant agricultural workers. Some foreign workers are not eligible for coverage (see below). In Ontario, most new or returning residents are subject to a three-month waiting period before they are eligible for coverage. In the United States, public health insurance is provided only to the aged and the very poor. As with Canada, this coverage is not available to some foreign workers. In addition, some recent immigrants are excluded from these programs. In Mexico the social security system provides health care benefits to all workers who are registered with the federal social security agency (IMSS).

Income Security Programs

Public retirement and disability pension programs generally cover migrant agricultural workers in Canada and the United States, though workers who do not have documentation of their work history may face difficulty in proving entitlement to benefits. In addition, in both countries workers with highly intermittent work histories may have difficulty meeting minimum earnings thresholds for eligibility. Retirement and disability pension programs are available to workers in Mexico who are registered with the IMSS. Eligibility for retirement benefits in Mexico requires 1250 weeks of contributions, and thus workers with intermittent work histories may have difficulty meeting eligibility requirements.

In both Canada and the United States migrant agricultural workers often fail to meet eligibility requirements for unemployment insurance benefits. In Canada, participants in the CCMSAWP program cannot receive unemployment insurance benefits, even though more than two percent of their salaries are deducted as contributions to the program. Mexico does not have an unemployment insurance system. It has a legal requirement for severance pay. That requirement applies to migrant agricultural workers. However, workers whose limited term of employment expires are not entitled to severance pay.

In each country some foreign workers may not be eligible for some income security program benefits (see below). In the United States some recent immigrants are also not eligible.

B. Special Laws and Programs Affecting Migrant Agricultural Workers

Pesticides in the Workplace

Exposure to pesticides in the field is a safety hazard common to agricultural workers in all three NAALC countries. Each country has enacted legislation at the federal level re-

quiring the registration, labeling, packaging, and safe storage and use of pesticides and other hazardous chemicals. Pesticide labels in all three countries must communicate both the hazard level and the potential health risks of the contained pesticide. In addition, Canadian provinces have statutes regulating the application and storage of pesticides. However, these do not create requirements to notify agricultural workers when and which kinds of pesticides are being used or stored on a farm.

All three countries require that workers be trained before being allowed to apply pesticides. In Canada (except for Ontario, Alberta and Prince Edward Island) and Mexico, specific occupational safety and health standards regulating the use of hazardous substances in the workplace apply to pesticide safety in the field. In the United States, regulation of pesticides in the field does not come under the scope of general occupational and safety laws. Instead a federal Worker Protection Standard administered by the Environmental Protection Agency obligates employers to restrict workers from accessing fields during pesticide applications and during a period of time after pesticides have been applied to the fields. Whether by special or general legislation, each country's laws require that employers provide workers with first aid measures such as having clean water and soap readily available in the event of pesticide poisoning.

Agricultural Labor Intermediaries (Farm Labor Contractors)

In each country migrant agricultural workers often obtain work through intermediaries who recruit and supply workers to agricultural producers. These intermediaries seldom have much capital of their own. In Canada and the United States they are generally referred to as "farm labor contractors." The United States, Mexico and the Canadian province of British Columbia have special legislative provisions regulating such intermediaries. Under the Mexican Federal Labor Law (Ley Federal de Trabajo – LFT) an enterprise that makes use of workers supplied by a labor contracting agent such as a farm labor contractor is jointly and severally liable with the agent for all obligations to those workers under that law. In the United States the federal Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors to obtain a farm labor contracting certificate from the U.S. Department of Labor; to provide detailed information to migrant agricultural workers concerning wages, benefits and working conditions in a language understood by the workers; and to keep accurate records regarding the employment of workers. Legislation in British Columbia imposes similar requirements and in addition requires the contractor to post a bond equal to 80 hours at the minimum wage for each worker.

Legal Representation Assistance

Each Canadian province has a legal aid program providing certain services at no or minimal cost to low income individuals. Many migrant agricultural workers would qualify for such services. However, in most provinces some or all labor, employment and immigration matters are excluded from the scope of the legal aid program. In the United States a number of states have publicly funded rural legal assistance programs that focus on representing agricultural workers and conducting outreach to educate those workers about their legal rights. In Mexico workers are entitled to free legal assistance from the Federal Office of the Labor Public Defender of the Mexican Department of Labor and Social Welfare (STPS).

C. Rules under Temporary Foreign Agricultural Worker Programs

The H-2A program in the United States establishes a minimum rate of pay, notice requirements for contractual terms, reimbursement of certain travel expenses, record keeping, and rights to acceptable housing. Canada's CCMSAWP requires employers participating in the program to meet similar standards as well as standards concerning permissible deductions from wages and insurance for occupational and nonoccupational injury and disease. These programs also impose certain restrictions upon participating workers.

3. EQUALITY OF PROTECTION: NATIONALS AND NONNATIONALS

The constitution of each country provides limited guarantees of equal protection under the law to nonnationals within their territory. In Canada the Charter of Rights and Freedoms mandates that government action should be free of discrimination on the basis of noncitizenship but permits residency-based eligibility requirements for public benefits programs. In the United States, state governments must be able to show a compelling interest that necessitates any state law that discriminates against noncitizens, otherwise the courts may strike down such laws as unconstitutional violations of equal protection. However, the Supreme Court has applied a more deferential standard to reviewing federal laws dealing with noncitizens, on the grounds that such laws may implicate relations with foreign powers. In Mexico the federal Constitution gives every person in Mexico the right to enjoy the individual rights provided in the Constitution, but the Supreme Court of Mexico has decided that certain preferences for Mexican workers contained in the Federal Labor Law do not violate the Constitution.

In general, the laws and programs protecting migrant agricultural workers in each of the three countries treat nationals and nonnationals in the same way. Certain exceptions to this rule are noted below. Common exceptions include limitations on the income support benefits provided to foreign workers without valid immigration work permits and special rules for foreign temporary agricultural workers.

A. Canada

Residency-based Program Eligibility Requirements

- In some provinces public health insurance will not be avail-

able to some nonnational migrant workers because of residency-based eligibility requirements.
- In some provinces workers must be resident or ordinarily resident in the province or in Canada in order to be eligible for workers' compensation benefits.

Workers without Valid Work Permits
- Workers without valid work permits are not covered by some labor and employment laws in Quebec and may not be covered by some labor and employment laws in other jurisdictions.
- Workers without valid work permits are often ineligible for unemployment insurance benefits under the national Employment Insurance program.

CCMSAWP Workers
- The employment agreement of workers in the CCMSAWP provides them with terms and conditions of employment which are in some respects more advantageous than terms guaranteed by law to other migrant agricultural workers in some jurisdictions. On the other hand, the fact that workers face repatriation, in some cases at their own expense, if they are dismissed distinguishes their situation sharply from that of other migrant agricultural workers. Moreover, in the event of an employer breach of contract, CCMSAWP workers are provided with a different remedy and different procedures for obtaining redress than are commonly available to other workers. These remedies and procedures may work to the advantage or disadvantage of the individual worker, depending upon his or her circumstances.
- Workers under the CCMSAWP have very limited rights to accept employment with an employer other than the one for which they begin working upon entry into Canada, unless they are transferred of their own free will and with the approval of Human Resources Development Canada (HRDC) and proper notification to the consular representation of their country of origin, to another farm after their original contract has expired.
- A CCMSAWP worker would likely be repatriated promptly if his or her contract expired or he or she became unemployed and thus would not receive employment insurance benefits, since he or she would not be available for work in Canada, notwithstanding that employment insurance premiums are deducted from his or her paycheck.

B. Mexico

Preferences for Mexican Nationals
- Article 7 of the Federal Labor Law requires Mexican employers to employ at least 90 percent Mexican workers in every enterprise or establishment.
- Article 154 permits preference for Mexican workers by employers in hiring and promotion.
- Article 372 prohibits nonnationals from being on the board of directors of a trade union.

Unauthorized Workers
- Foreigners who are not authorized to work in Mexico do not have the right to be registered with the IMSS or to receive social security benefits.

Temporary Foreign Agricultural Workers
- Temporary agricultural workers admitted to Mexico from Guatemala under Mexico's Instituto Nacional de Migración Circular No. CRE – 247-97 must remain in the state of Chiapas and must remain in paid agricultural work as a condition of their permit to remain and work in Mexico.

C. United States

H-2A Program Workers
- H-2A workers are excluded from the application of the Migrant and Seasonal Agricultural Workers Protection Act and Title VII of the Civil Rights Act. On the other hand the H-2A program rules prohibit discrimination in employment and provide protections not available to many other migrant agricultural workers, such as rights to employer-provided housing.
- H-2A workers may not change employers because their immigration visas are tied to a particular employer.
- H-2A workers are excluded from federal social security programs and unemployment insurance benefits.

Unauthorized Workers
- There is some uncertainty over whether Title VII of the Civil Rights Act applies to foreign workers without valid work permits. The Equal Employment Opportunity Commission (EEOC) has a policy of considering discrimination complaints from foreign workers who do not have valid work permits.
- Foreign workers without valid work permits may not receive unemployment insurance benefits, may not accrue eligibility for federal social security program benefits, and are excluded from public welfare programs such as supplemental security income, temporary assistance for needy families, and food stamps.

Noncitizen Residents Excluded from Program Benefits
- Immigrants who entered the United States after August 1996 and who have not obtained citizenship are not eligible for certain income support program benefits such as food stamps, Supplemental Security Income, or Temporary Assistance to Needy Families. Some of these immigrants are also excluded from Medicare and Medicaid health insurance benefits.

Lower Workers' Compensation Death Benefits
- Several state workers' compensation laws limit death benefits for nonresident foreign beneficiaries or provide benefits which are lower than those provided to national workers.

CANADA

1. BACKGROUND INFORMATION ON MIGRANT AGRICULTURAL WORKERS

A. Nationalities and Ethnic Origins of Migrant Agricultural Workers

There is relatively little statistical information on migrant agricultural workers in Canada. In the largest agricultural producing regions a substantial part of the work is seasonal.[1] While the demand for labor generated by seasonal work probably attracts a substantial migrant workforce, it is not known to what extent seasonal work is done by migrants rather than local workers. Available census data tabulations do not indicate whether workers are migrants. Moreover, the national census is conducted after many crops have been harvested, and thus many seasonal agricultural workers are not counted as agricultural workers.

One informal survey conducted in 1998 by the government of British Columbia indicated that the vast majority of seasonal harvest workers hired by farm labor contractors in that province were of East Indian (specifically, Punjabi) origin, of whom about two-thirds had immigrated to Canada within the previous three years.[2] It is not known with certainty, however, to what extent the group of seasonal harvest workers hired by farm labor contractors overlaps with the total population of migrant agricultural workers in that province.

The federal government keeps records of the number of workers participating in the Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program (CCMSAWP), their country of origin, and their province of destination within Canada (see table 1). This program is described below. Most CCMSAWP workers are employed in the harvesting of fruits, vegetables and tobacco.[3] CCMSAWP workers form a relatively small part of the total Canadian seasonal agricultural workforce.[4] In addition, it is known that a number of Mennonite migrants come to Canada from Paraguay, Bolivia, and Belize, but statistical records on this migration are not available. On the basis of their countries of origin, it can be inferred that CCMSAWP and Mennonite migrant workers generally speak Spanish, French, or English. Undoubtedly a number of other migrants enter Canada, legally and illegally, each year to work in agriculture.

B. Locations of Migrant Agricultural Work

Canada's largest fruit and vegetable industries are located in Southern Ontario and British Columbia's Fraser Valley and Thompson-Okanagan regions. Its tobacco production is concentrated in Southern Ontario. The Prairie Provinces (Alberta, Saskatchewan and Manitoba) have a substantial grain industry that does not demand handwork since harvesting is generally performed by farmers using mechanical combines or by freelance combine owner-operators. Quebec also has a substantial fruit and vegetable industry, as does the Annapolis Valley region of Nova Scotia. The Atlantic Provinces (Prince Edward Island, Nova Scotia, New Brunswick and Newfoundland) have substantial potato and berry industries. Because of their cold climate, little if any agriculture is carried on in Canada's northern territories. For this reason laws in those territories will not be discussed.

There is relatively little statistical information available on where migrant agricultural workers work. The available information is provided in records kept by the CCMSAWP (see table 2). Ontario is the primary destination for CCMSAWP workers. Farmers in Quebec, Manitoba, Alberta, and Nova Scotia also hire CCMSAWP workers.

C. Common Hiring Arrangements

In addition to direct hiring arrangements between farmers and workers, agricultural workers are often hired through formal government-administered programs or through private arrangements involving intermediaries such as farm labor contractors.

1) Formal Government Programs

Commonwealth Caribbean Mexican Seasonal Agricultural Workers Program (CCMSAWP)

The federal government established the CCMSAWP in 1966. Its stated purpose is to ensure that crops are harvested in a timely fashion while maintaining job opportunities for Canadian workers whose livelihood is dependent upon the timely harvesting of such crops. The program facilitates the entry of seasonal workers for temporary employment in the growing and harvesting of fruit and vegetable crops. These workers are employed to the degree necessary to offset the estimated shortfall in Canadian labor by providing for the organized movement of foreign agricultural workers to Canada.

The entry of CCMSAWP workers into Canada is authorized under section 10(c) of the Immigration Act and the Immigration Regulations, 1978. These provisions deal generally with entry into Canada by persons who are neither citizens nor permanent residents and their authorization to work in the country. Section 20 of the Regulations permits the entry into Canada of foreign workers in accordance with international agreements between Canada and one or more foreign country. Since its initial implementation in 1966, the program has been extended through international agreements with Mexico (1974) and a number of Commonwealth Caribbean

Table 1
CCMSAWP Worker Arrivals by Country and Year, 1968-1998

Year	Total Workers	Mexico	Total Caribbean	Jamaica	Trinidad and Tobado	Barbados	Eastern Caribbean
1968	1,258	0	1,258	678	249	331	0
1969	1,449	0	1,449	747	376	326	0
1970	1,279	0	1,279	645	327	307	0
1971	1,271	0	1,271	640	348	283	0
1972	1,531	0	1,531	780	404	347	0
1973	3,048	0	3,048	1,473	825	750	0
1974	5,537	195	5,342	2,954	1,296	1,092	0
1975	5,966	382	5,584	3,301	1,214	1,069	0
1976	5,455	580	4,875	2,863	878	824	310
1977	4,929	510	4,419	2,590	766	744	319
1978	4,984	550	4,434	2,702	740	692	300
1979	4,968	584	4,384	2,624	669	716	375
1980	6,001	676	5,325	2,941	791	952	641
1981	5,798	668	5,130	2,957	686	859	625
1982	5,510	691	4,819	3,003	519	755	542
1983	4,564	612	3,952	2,608	394	553	397
1984	4,502	673	3,829	2,597	337	532	363
1985	5,005	832	4,173	2,934	350	549	340
1986	5,166	1,006	4,160	2,990	324	493	353
1987	6,337	1,535	4,802	3,450	389	583	380
1988	8,539	2,592	5,947	3,870	541	1,008	528
1989	12,237	4,475	7,762	5,234	833	1,052	643
1990	12,598	5,204	7,394	5,041	898	931	524
1991	12,131	5,151	6,980	4,878	859	766	477
1992	11,115	4,809	6,306	4,414	800	648	444
1993	11,212	4,862	6,350	4,449	834	657	410
1994	11,041	4,908	6,133	4,330	800	636	367
1995	11,393	4,886	6,507	4,607	872	630	368
1996	11,542	5,215	6,327	4,497	888	586	356
1997	12,482	5,664	6,818	4,741	1,106	619	352
1998	13,455	6,508	6,947	4,690	1,297	600	360

Source: *Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Programs.* Labour Market Services, HRDC, October 23, 1998

countries: Jamaica, Trinidad and Tobago (1967), Barbados (1967), Grenada, Antigua, Dominica, St. Kitts and Nevis, St. Lucia, St. Vincent, and Monserrat (all in 1976).

Each of these agreements is formalized in a Memorandum of Understanding to which is appended a set of Operational Guidelines. Annexed to the Operational Guidelines is a standard form Agreement for Employment to which the worker, the employer, Canada and the sending country become parties when a worker is recruited. Workers must enter into this agreement in order to be selected to participate in the program. The provisions of the agreement are discussed below (see section 2(C)(6)).

Workers are recruited by the government of their home country, and their applications for work authorization are generally processed at the Canadian embassy in that country. Many workers return year after year, and most workers in the program are requested by name by a particular farm employer.

2) Private Arrangements

Farm Labor Contracting

Many agricultural producers use farm labor contracting as their primary means of recruiting seasonal agricultural work. The practice is widespread in British Columbia. Farm labor contractors generally obtain contracts from farmers to provide workers to harvest crops that must be harvested manually. Such harvests generally require a relatively large workforce to be assembled on short notice and for a short period of time. Farm labor contractors recruit, transport to work and often pay directly agricultural workers who harvest the crops by hand. Farm labor contractors often directly supervise and discipline harvest workers. In many cases the contractors are themselves closely directed by the farmers with whom they contract.

The Mennonite Central Committee

Many Mennonite farmworkers who reside outside Canada

Table 2
Worker Arrivals by Region, 1994-1998

	1994	1995	1996	1997	1998
Quebec	862	860	835	839	934
Ontario	9,922	10,257	10,441	11,340	12,160
Manitoba	91	107	111	127	167
Alberta	129	121	120	139	146
Nova Scotia	34	37	33	33	48
TOTAL	11,038	11,382	11,540	12,478	13,455

Source: *Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Programs.* Labour Market Services, HRDC, October 23, 1998. Common Hiring Arrangements

but retain Canadian citizenship migrate annually to work on Canadian farms. Families usually migrate together. Most of these workers come from Mexico, Belize, Paraguay, and Bolivia to work in Manitoba, Alberta, and Ontario.[5] Some come only for the harvesting season, and others settle for a few years in Canada. Once in Canada, some workers will migrate internally between Manitoba and Ontario to do short-term hand harvesting. The Mennonite Central Committee in Alberta acts as a clearinghouse for the Mennonite workers, helping them to locate farm work and housing.

D. Legal Jurisdiction over the Protection of Migrant Agricultural Workers

Section 95 of the Canadian Constitution gives to each provincial government and to the federal government concurrent powers to make laws in relation to agriculture in the province or immigration into the province. Section 95 goes on to provide that any provincial law relative to agriculture or immigration shall have effect in and for the province "as long and as far only as it is not repugnant to any Act of the Parliament of Canada." This means that a provincial law relating to agriculture or immigration that expressly contradicts a federal law will be inoperative to the extent of the contradiction. A provincial law that merely supplements or duplicates a federal law will continue to operate. Section 92 of the Constitution gives provinces jurisdiction over "property and civil rights" and "local works and undertakings." Labor laws are seen as regulating the civil right of freedom of contract and thereby generally fall within the provincial jurisdiction. As a general matter federal laws do not contradict provincial laws regulating the employment relations of agricultural workers. Thus, provincial labor and employment laws apply to migrant agricultural workers. The extent of federal competence with respect to the employment relations of agricultural workers has not been clearly defined through case law.

Subsection 91(2A) of the Constitution gives the federal government jurisdiction over unemployment insurance. Section 94A of the Constitution Act, 1867 gives the federal government the power to make laws in relation to old age pensions and supplementary benefits, including survivor benefits and disability benefits regardless of age, while recognizing that provinces may also legislate with respect to such matters.

E. Immigration Rules Applicable to External Migrants

CCMSAWP workers stay in Canada a minimum of six weeks and a maximum of eight months.[6] CCMSAWP workers are not permitted to seek alternative or additional employment and are prohibited from transferring to another farm without the approval of the relevant provincial government representative. They are not permitted to reside in Canada longer than their contract stipulates and must leave the country within seven days of the expiration of their work contract. They are permitted to take their earnings, gifts, and purchases home. Under section 27 of the Immigration Act, a person who engages in employment contrary to the Regulations can be removed from the country.

The federal Immigration and Refugee Board will generally conduct an inquiry into allegations that a person has violated the terms of his or her employment authorization. The inquiry is a public administrative proceeding conducted by an adjudicator. The individual concerned is given an opportunity to show why he or she should not be removed from the country. A person with respect to whom an inquiry is held has the right to counsel (a lawyer or an immigration consultant or other advisor) but must exercise this right at his or her expense unless he or she is able to obtain assistance from a provincial legal aid program. At the conclusion of the proceedings the adjudicator may decide that the person should be allowed to remain in the country or that he or she should be removed.

Decisions of immigration inquiry officers to remove a worker from the country for violating the terms of his or her employment authorization can be appealed to the Appeals Division of the Immigration and Refugee Board. Appeals are *de novo*, and thus the Appeals Division can receive new evidence and consider all matters of fact or law relevant to the case.[7] The Appeals Division of the Immigration and Refugee Board may overturn decisions of immigration inquiry officers to remove a worker from the country for violating the terms of his or her employment authorization if it determines that there was no such violation.

Mennonite farmers often have family members living abroad who have Canadian citizenship. These family members are able to work, live, and travel within Canada.

2. PROTECTION OF MIGRANT AGRICULTURAL WORKERS

A. Constitutional Rights to Equal Protection of Laws

Section 15 of Canada's constitutional Charter of Rights and Freedoms provides that every individual is equal before and under the law and has the right to the equal protection and

benefit of the law without discrimination. In accordance with section 1 of the Charter, government actions[8] that infringe Charter rights are unconstitutional unless they can be shown to be "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Noncitizens are entitled to claim rights under section 15.

Section 15 expressly provides protection against discrimination on the basis of race, national or ethnic origin, color, religion, sex, age, or mental or physical disability and also protects against discrimination on the basis of characteristics analogous to those. "Analogous" characteristics tend to be those defining groups of persons that history and experience show to have been the subject of stereotypes that deny individual human dignity, as opposed to those relating to individual capacity, worth or circumstances.[9] They are often relatively immutable personal characteristics.[10]

The Supreme Court of Canada has found that noncitizenship is a characteristic analogous to those expressly protected by section 15 and thus that the Constitution protects persons against discrimination on the basis of noncitizenship.[11] However, courts have found that governments may condition access to publicly provided social benefits on residency within their jurisdiction without infringing section 15 equality rights.[12]

Occupational status has generally been found by Canadian courts not to be a personal characteristic protected against discrimination by section 15. This means that laws or other government actions which treat agricultural workers less advantageously than other groups of workers probably will not be found unconstitutional on the basis of that differential treatment alone.[13]

An individual seeking to claim constitutional rights such as the right to equal protection may do so by filing an action or application in court. An administrative tribunal such as a labor relations board, human rights commission, the Immigration Appeal Board, or an employment standards adjudicator may consider Charter of Rights questions which arise in the context of other matters before them, provided that it has an express authority to answer questions of law or has otherwise been granted an implied jurisdiction to consider Charter issues.[14]

Courts have the power to declare a law unconstitutional and of no force or effect. Courts also have wide powers to grant other remedies that they consider appropriate in the circumstances for violations of constitutional rights. An administrative tribunal with the power to interpret the Charter of Rights and Freedoms as it applies to a matter before the tribunal may determine that a law is in violation of the Charter. Such a determination will generally be only for the purposes of the matter before the tribunal.

B. Protection of Migrant Agricultural Workers under General Labor and Employment Law and Social Program Benefits

1) Labor Relations Laws

Labor relations statutes in each province seek to ensure that workers have freedom of association, the right to organize unions, and the right to strike. The statutes define and prohibit unfair labor practices such as employer intimidation, coercion or interference with workers' exercise of their labor rights or discrimination or reprisal against workers for their exercise of those rights. Labor relations tribunals administer and enforce labor laws. Enforcement is complaint-driven. For more information on Canadian labor relations law, see the Commission for Labor Cooperation's *Labor Relations Law in North America* (2000).

The Alberta Labour Relations Code excludes most agricultural workers from its application.[15] The Ontario Labour Relations Act does not apply to a person employed in agriculture or employed in horticulture by an employer whose primary business is agriculture or horticulture. The New Brunswick Industrial Relations Act requires that any bargaining unit of agricultural workers comprise five or more employees. This effectively excludes many small farmers and their workers from the coverage of the Act. Similarly, the Quebec Labour Code does not permit workers employed "in the operation of a farm" to apply for certification of a union as their collective bargaining representative unless there are at least three such workers ordinarily and continuously employed.

On December 21, 2001, the Supreme Court of Canada ruled that the exclusion of agricultural workers from the Ontario Labour Relations Act violated the Section 2(d) guarantee of freedom of association of the Canadian Charter of Rights and Freedoms.[16] The Supreme Court suspended the portion of the Ontario Labour Relations Act excluding agricultural workers for 18 months, giving time for the Ontario Legislature to review the issue and pass new legislation.

2) Protections against Discrimination in the Workplace

All Canadian jurisdictions have antidiscrimination statutes referred to as human rights codes or human rights acts. Antidiscrimination laws expressly prohibit employment discrimination based on race, color, religion, age, sex, mental or physical disability, and one or more of national or ethnic origin or place of origin.[17] Human rights codes generally cover a wide range of employment practices, including hiring, firing, layoffs, transfers, promotions, discipline or otherwise disadvantaging employees on a prohibited basis. They also prohibit retaliation by employers against workers for the exercise of their rights under the code.[18]

Human rights codes generally cover all employees within the jurisdiction including migrant agricultural workers. In interpreting antidiscrimination statutes, courts and tribunals have often used a broad definition of employment. A num-

ber of authoritative decisions have held that the word "employment" in these statutes covers any arrangement in which one person agrees to execute work on behalf of another.

Enforcement Procedures

Government enforcement of human rights codes is generally carried out by the human rights commission or similar administrative agency established to serve the relevant jurisdiction. These agencies generally consist of independent commissioners assisted by a permanent staff. The responsibilities of the commission generally include investigating discrimination complaints filed by private charging parties and public education concerning the human rights code.

Human rights commissions have the power to make such orders as are necessary to restore the victim of unlawful discrimination to the position that he or she would have been in had the discrimination never occurred. This generally includes the power to order an employer to cease and desist its discriminatory actions, to compensate the victim for lost wages and benefits and any expenses incurred as a result of the discrimination, and to order the employer to take affirmative actions to eliminate discriminatory practices.

3) Minimum Employment Standards

Minimum employment standards laws provide for minimum wages, maximum weekly and daily hours after which overtime must be paid, regulation of the manner and interval of wage payments, permissible deductions from pay, daily rest and meal periods, weekly rest periods, statutory holidays, minimum annual vacations, minimum notice of termination of employment, maternity and parental leave, bereavement leave and other matters. Employment standards laws also prohibit retaliation by an employer against any person for claiming rights under their provisions or for giving evidence in any employment standards proceeding.

Enforcement Procedures

Each jurisdiction has an employment standards office or branch, board, or commission to administer and enforce minimum employment standards. An employee or former employee has the right to file a complaint with the relevant enforcement agency alleging a violation of employment standards by his or her employer. In rare cases of apparent serious violations of the law, an employer may be subject to quasi-criminal prosecution. Generally such prosecutions may be initiated only with the consent of a designated administrative or government official.

Employment standards officials have the power to order employers to comply with the provisions of the relevant employment standards statute. An employer found in contravention of the statute or of a final and binding decision of an employment standards tribunal may be found guilty of an offense and subject to a fine and/or prison term.

Coverage

Saskatchewan, Manitoba and Alberta exclude most agricultural workers from the coverage of most minimum employment standards.[19]

New Brunswick and Prince Edward Island exclude small family farms from most of the obligations imposed upon employers under their respective employment standards statutes.[20]

Other jurisdictions use a set of exemptions limited to a number of specified employment standards:

- In Ontario the provisions of the Employment Standards Act, 2000 relating to overtime pay, public holidays, hours of work, vacations with pay and the minimum wage do not apply to most agricultural workers.[21] However, fruit, vegetable and tobacco harvesters, subject to length of service requirements, can qualify for a paid vacation (or vacation pay) and public holidays. Regulations also create a special minimum wage regime for these workers, allowing employers either to pay a set minimum wage or to pay piecework rates in some cases, provided that under such a system an employee exercising reasonable effort could earn at least the set minimum wage. Employers are also allowed to deduct from wages the cost of room and board, up to modest maximum amounts, provided that housing accommodation meets minimum standards of habitability.[22]
- Under the Nova Scotia Labour Standards Code most agricultural workers are excluded from the application of provisions relating to holidays with pay and hours of work and overtime.[23]
- In Newfoundland, persons employed in the planting, cultivating and harvesting of farm produce – other than the production of fruit and vegetables in greenhouse and nursery operations – or employed in the raising of livestock are not covered by the overtime provisions of the Labour Standards Act.[24]
- In Quebec farmworkers are exempted from the hours of work and overtime provisions of the Act Respecting Labour Standards.[25] Minimum wage provisions do not apply to employees of farm operations with three employees or fewer, who are hired on an occasional basis, or who work for fruit or horticultural enterprises and are principally involved in nonmechanized operations. Annual leave provisions do not apply to supernumerary (temporary) employees during the harvesting period.
- In British Columbia "farm workers"[26] are excluded from the application of the hours of work and overtime provisions of the Employment Standards Act, except that: (1) if a farmworker works more than 120 hours in a two-week period the employer must pay him or her at double the regular wages for hours worked in excess of that amount, or allow him or her to bank the overtime as deferred pay or time off; (2) an employer is not allowed to require a farmworker (or any other worker) to work excessive hours detrimental to his or her health and safety.[27] Regulations accompanying the Act create minimum piecework rates which may be paid to farmworkers employed to hand harvest certain fruit, vegetable, berry or flower crops instead of the usual minimum wage.[28] Employers who pay these farmworkers in accordance with this piecework rate system are exempted from statutory holiday and vacation pay

requirements since holiday pay and vacation pay amounts are included in the minimum piecework rates. The Act's statutory holiday provisions do not apply to farmworkers not paid on a piecework basis. Instead, after 30 days of employment, they are entitled to a day off with pay on a statutory holiday or, if required to work on that day, within six months thereafter. Alternatively, their employer may pay them, on each pay cheque, an amount equivalent to 3.6 percent of gross earnings as holiday pay.[29]

Migrant workers are most often hired for a specified task or term of employment. Employees who are hired to complete a specified task or for a specified term are not entitled to notice of termination of employment (or pay in lieu of notice) upon the completion of the task or term, since notice is considered to have been given at the outset of the employment contract. Migrant agricultural workers may still in some cases be entitled to notice of termination of employment where their employment contract is terminated prematurely. In each jurisdiction, however, employees must work a period of months before being entitled to their first week of notice. The period generally ranges between one month and six months and is most often three months.

Most jurisdictions also impose other qualifying requirements for certain rights. These requirements operate in a way that excludes a number of migrant workers from entitlement to a vacation (but not to vacation pay), to paid statutory holidays or to maternity and parental leave, because of the relatively short duration of their employment.[30]

4) Child Labor Laws

All Canadian provinces have compulsory schooling laws and, with a few limited exceptions, generally prohibit the employment of children during school hours. In New Brunswick, a young person must attend school until graduation from high school or until he or she reaches the age of 18. In Newfoundland and Quebec, a young person must attend school until the end of the school year in which he or she reaches the age of 16 or, in Quebec, at the end of which he or she obtains a diploma awarded by the Minister of Education. In other provinces, there is compulsory school attendance until the age of 16.

Many provinces restrict child labor by limiting the number of hours young people of a certain age may work. In Alberta, children aged 12 to 14 may work up to two hours outside normal school hours on a school day or eight hours on other days. In New Brunswick, Newfoundland and Prince Edward Island, children under 16 may work no more than eight hours (six hours in New Brunswick) on a nonschool day and three hours on a school day. The restrictions are the same in Nova Scotia, except that they apply to children under 14. In New Brunswick, Newfoundland and Nova Scotia, work and school combined may not exceed eight hours for covered children. All five of these provinces, as well as the province of Quebec and the federal jurisdiction, prohibit night work for children.

In addition, a minimum age has been set for working in certain more hazardous occupations or environments such as, in many jurisdictions, those involving the use of toxic substances, including pesticides. Agriculture-related work is specifically mentioned in the Prince Edward Island Youth Employment Act, which states that, in regard to industrial undertakings and plants processing agricultural products, the occupational health and safety authorities may prohibit the employment of young persons where a toxic substance or equipment or machinery is potentially dangerous to them. In the province of Manitoba, some provisions prohibiting the employment of children under 16 do not apply to agriculture, unless the employment is in a business where the safety, health or well-being of the child is likely to be adversely affected or in an operation in which a substantive part of the work is done with machinery.

Enforcement Procedures

In Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Nova Scotia, the employment or labour standards branch of the Labour ministry accepts and investigates child labor complaints. Anyone may file a complaint in these provinces. In Manitoba, the law is silent on whether third parties may file a complaint, but there is a practice of accepting third-party complaints. Complaints must be in writing in Alberta and British Columbia. Labor officials may initiate investigations without a complaint in British Columbia and Manitoba.

Complaints may be filed with both the Employment Standards Branch and the Occupational Health and Safety Branch in Prince Edward Island, Quebec and Saskatchewan. In Quebec, the complaint must be in writing.

In Ontario, the Occupational Health and Safety Branch accepts and investigates child labor complaints. These may be lodged by telephone, in writing or in person.

Complaints of violations of legislative provisions regarding child labor in the federal jurisdiction may be lodged with the nearest regional office of Human Resources Development Canada (HRDC).

Nova Scotia is alone among the provinces in imposing fines on the parents or guardians of children who are working illegally.

Coverage

Statutory child labor law restrictions apply to the agricultural industry in all of the provinces except Manitoba and Ontario. However, in these provinces, the requirement for children to attend school until the age of 16 and the prohibition against employment during school hours apply.

5) Occupational Health and Safety

Occupational health and safety statutes in every Canadian province place general duties upon employers to ensure that workplaces are safe and that workers and their supervisors receive safety and health instruction and training, are aware of safety and health hazards, and are familiar with health and safety protection devices. Workers have the right to refuse to carry out work that they reasonably believe to be unsafe.

Employers are prohibited from retaliating against workers for exercising this right or for seeking to enforce any other right under health and safety laws.

Alberta's Occupational Health and Safety Act excludes from coverage most farming or ranching operations.[31] Ontario's and Prince Edward Island's statutes exclude farming operations from their coverage.[32]

Enforcement Procedures

Health and safety laws are enforced by two means. First, the laws require that employer-employee joint committees or worker health and safety representatives be established or appointed to identify and correct health and safety hazards in the workplace. Second, government inspectors monitor compliance with the law and investigate fatalities, work refusals and complaints about hazards in the workplace. The decision to inspect or not is at the discretion of the inspector, except in cases where a worker exercises a right to refuse work on health and safety grounds. Inspectors may enter workplaces without prior notice and take samples, seize documents or things, and consult with outside experts and employees. Inspectors may issue orders to remedy a hazard within a fixed time or cease work. They may also recommend prosecution, which can lead to the imposition of fines or jail terms, in more serious cases of violation.

6) Compensation for Occupational Accidents and Injuries

Workers' compensation laws in each jurisdiction establish a system through which workers can seek compensation for injuries or illnesses arising out of or in the course of employment. Alberta, Saskatchewan, Manitoba and Prince Edward Island exclude most agricultural workers from the compulsory coverage of workers' compensation statutes.[33]

In those provinces, employers may apply to the Workers' Compensation Board for elective coverage. In some provinces workers must be resident or ordinarily resident in the province or in Canada to be eligible to receive workers' compensation benefits.[34] Workers who move between Canadian provinces will generally be covered thanks to interprovincial agreements and/or the workers' compensation laws in their province of origin. Some temporary foreign workers will be ineligible to receive benefits, however. Workers' compensation statutes generally provide reemployment rights to ill or injured workers after their partial or complete medical recovery for a defined period (which can be years) after the disability begins. Rights to reinstatement under workers' compensation statutes generally do not apply to workers who have been employed less than 12 months at the time of injury and thus would not apply to many migrant workers.

7) Health Insurance

Each jurisdiction has a comprehensive public health insurance plan that covers most health services provided by hospitals and medical practitioners for residents of the province. A resident is generally defined as a Canadian citizen or lawful permanent resident who makes his or her home in a province and is present in that province for a portion of the year (generally six months). Provinces generally continue to provide coverage to former residents who move to other provinces until they become eligible in the other province. In Manitoba, persons from outside Canada with work authorizations for less than one year generally are not eligible for coverage. In Ontario most new or returning residents are subject to a three-month waiting period before they are entitled to coverage. Because of residency requirements, many international migrants are not eligible for public health insurance unless special arrangements are made for them to obtain coverage (see section 2(C)(6) below).

8) Employment Insurance

The federal Employment Insurance Act protects workers against an involuntary interruption of earnings from employment due to layoff or termination of employment. To be entitled to benefits under the Act a worker must have 910 hours of insurable work in the 52 weeks prior to making his or her first benefits claim or if he or she is reentering the Canadian workforce after an absence of two or more years. For subsequent benefits claims, a worker must have between 420 and 700 hours of insurable employment, depending on the local unemployment rate, during the previous 52 weeks or since his or her last benefits claim, whichever is shorter. Given the seasonal nature of the work that they do, some agricultural workers will not be able to meet these thresholds on the basis of agricultural work alone. Thus many migrant farmworkers who do not obtain additional employment in Canada will not be eligible for Employment Insurance benefits.

The Employment Insurance Act also excludes from the definition of insurable work agricultural employment by a particular employer for less than seven days a year. In order to ensure eligibility for Employment Insurance benefits, many workers will seek employment with a farm labor contractor who can provide continuous employment over a longer period of time than an individual farmer seeking workers to harvest a particular crop.

Finally, it should be noted that agricultural employment for which the employee receives noncash remuneration (such as food or lodging) in whole or in part is excluded from the definition of insurable employment and thus does not count towards Employment Insurance eligibility.[35]

9) Public Retirement and Disability Pensions

The Canada and Quebec Pension Plans (CPP and QPP) provide retirement benefits based upon worker contributions to their respective plans. Because of the way that pension benefits are calculated, workers with a very intermittent history of work in Canada are unlikely to receive substantial or any benefits.[36] The plans also exclude employment by an agricultural employer who either pays the employee less than $250 in cash remuneration in a year or employs the employee,

on terms providing for payment of cash remuneration, for a period of less than 25 working days a year. However, because they return to work in Canada each year, many workers in the CCMSAWP are eligible for pension benefits under the CPP. Retired workers may receive benefits while residing outside Canada.

CPP and QPP disability provisions provide modest income support to the severely disabled. To receive disability benefits a worker generally must have worked in Canada four of the last six years and earned in excess of $3740 in each year.[37] Many CCMSAWP workers are eligible to receive disability pensions.

The Old Age Security Program provides a modest taxable monthly benefit to all persons aged 65 and over who meet residency-based eligibility requirements.[38] To qualify for an Old Age Security pension, a person must have a minimum of 10 years' residence in Canada. He or she must also be a Canadian citizen or legal resident of Canada on the day preceding the approval of his or her application for benefits or, if no longer living in Canada, must have been a Canadian citizen or a legal resident of Canada on the day preceding the day he or she stopped living in Canada.

10) Social Assistance

Social assistance programs in each province provide modest financial assistance to low-income individuals and families with few or no assets. Each jurisdiction sets its own eligibility requirements for social assistance, subject to federal guarantees of mobility rights which prohibit such measures as the imposition of substantial waiting periods for those moving between provinces. In general, only residents of a jurisdiction are eligible to receive benefits under the social assistance program of that jurisdiction. Therefore some migrant workers may not be eligible for benefits in the province in which they are working.

11) Workers without Valid Work Permits

There is some uncertainty about whether workers without valid work permits are entitled to protection under labor and employment laws. Section 18(1) of the Immigration Act provides that no person other than a Canadian citizen or permanent resident shall engage or continue in employment in Canada without a valid and subsisting employment authorization. Courts have ruled that section 18(1) makes the contract between an employer and a worker without a valid work permit illegal. The illegality of the employment contract under immigration law raises the question of whether the worker should be considered an employee for the purposes of particular labor and employment laws. This is an important question because most labor and employment-related laws cover only employees. The answer to the question appears to depend upon the wording of each statute and the law of each jurisdiction. Workers without valid work permits have been found ineligible for workers' compensation benefits or to claim damages for wrongful dismissal in Quebec.[39] A worker without a valid work permit may be eligible to receive unemployment insurance benefits where his or her failure to comply with legal requirements was due to good faith error and not deception.[40] An employment standards adjudicator in Ontario found that the previous Employment Standards Act applied to workers without valid work permits,[41] and the Ontario Labour Relations Board made a similar finding with respect to the coverage of the Ontario Labour Relations Act, 1995.[42]

C. Special Laws and Programs Affecting Migrant Agricultural Workers

1) Pesticides in the Workplace

(i) Occupational Health and Safety Acts and Regulations

The general obligations on employers to ensure the health and safety of employees contained in provincial occupational health and safety statutes and regulations imply a duty to ensure safety in the workplace use of pesticides. In addition, those laws contain specific employer obligations regarding hazardous substances in the workplace. Particular obligations vary by jurisdiction.[43] Finally, each province has a Workplace Hazardous Materials Information System (see immediately below). Note, however, that occupational health and safety legislation in Ontario, Alberta and Prince Edward Island does not apply to agricultural work (see section 2(B)(5) above).

Workplace Hazardous Materials Information Systems (WHMIS)

WHMIS programs have three key sets of requirements. The first is the labeling of hazardous materials used in the workplace. The programs require two kinds of labels. The first is a supplier label, which is placed on hazardous material containers by the supplier of the material. The second is a workplace label, which is generally required only when the hazardous material is transferred to another container or in a piping system, tank truck or other means of conveyance, unless of course the employer is the producer of the product. Labels must provide, among other things, the following information: the name of the hazardous product, the supplier, a hazard symbol identifying the hazardous product as such and enabling quick semiliterate identification of the class of product, the risks posed by the product, appropriate precautionary measures, and emergency measures.

The second key requirement of the WHMIS program is the ready availability of material safety data sheets (MSDSs), which provide additional and more extensive information with respect to hazardous materials and emergency instructions in the event of harmful exposure. The third key requirement is to provide safety training to all workers who may reasonably be exposed to hazardous materials in the workplace. The supplier labeling and MSDS requirements of the WHMIS programs do not apply to pesticides. Similar requirements are instead found in the federal Pest Control Products Act (see immediately below).

(ii) Federal Pest Control Products Act

The federal Pest Control Products Act and Regulations require that pesticides be registered with the federal government and so labeled as to provide information on the chemical properties of the product, instructions for its use, hazards posed by it, and first aid instructions. The Act and its regulations make it an offense to use pest control products under unsafe conditions or otherwise than in accordance with the instructions for their use shown on the product label and set certain minimum standards for the storage and packaging of such products. The Act and Regulations do not, however, create requirements to notify agricultural workers of when and which kinds of pesticides are being used or stored on a farm.

Enforcement Procedures

The federal Pest Control Products Act is enforced and administered by the federal Department of Agriculture. Inspectors are empowered to enter premises to determine whether the Act is being violated, to examine products and materials for contamination, and to require that records be produced for inspection. When an inspector has reasonable grounds to believe that the Act is being violated, the inspector may seize the contaminated products and detain them until one of three conditions has been met: (1) the violation has been remedied; (2) the owner agrees to dispose of the products in a satisfactory manner; or (3) six months pass. Any contravention of the Act or regulations under the Act may be prosecuted as an offense. Offenses may be adjudicated before a tribunal established under the Canada Agricultural Products Act or before a provincial court judge within the jurisdiction where the offense occurred. Violations of the federal Pest Control Products Act can result in a fine of no more than $50,000, imprisonment for not more than six months, or both. Indictable offenses may result in a fine not exceeding $250,000 or imprisonment for no more than two years.

(iii) Provincial Pesticide Acts

Each province has a statute and/or regulation specifically governing the storage, use and application of pesticides.[44] These laws require those who sell, distribute, store or apply pesticides to meet licensing requirements, which generally include training and record keeping obligations. These laws also create detailed requirements for the safe storage, transportation and application of pesticides. Some laws also require advance public notice of pesticide application in some situations. Some laws explicitly or implicitly prohibit or sanction any use of pesticides that is likely to impair human health. However, pesticide acts do not create any specific obligations to ensure the safety of agricultural workers or requirements to notify agricultural workers of when and which kinds of pesticides are being used or stored on a farm.

Enforcement Procedures

Provincial pesticide control acts are administered by the relevant provincial agricultural ministry or environmental ministry. The primary mechanism for controlling pesticide use and preventing contamination consists of a series of licensing requirements. Provincial statutes empower a minister or inspectors to issue licenses and permits to handle pesticides. Most enforcement officials have the power to deny a license if the applicant failed to comply with regulations in the past or to revoke, rescind or terminate licenses if the holder fails to comply with laws and regulations. In addition to enforcing pesticide laws through licensing, provincial governments empower inspectors to enter premises to conduct inspections, to seize contaminated products, and in some cases to destroy products that do not comply with pesticide laws and regulations. Most of the provincial pesticide statutes contain provisions for punishing violators by issuing fines or imposing jail terms.[45]

2) Workplace Housing

British Columbia, Alberta, Ontario, Quebec, Nova Scotia and New Brunswick have enacted regulations that set detailed minimum standards for temporary accommodations (such as tents or bunkhouses) for workers and that could be applied to the temporary accommodations of agricultural workers.[46] Regulations address such matters as the quality of the water supply, construction of buildings, ventilation, cleanliness and sanitation, eating facilities, sewage and waste disposal, and washing, bathing and laundry facilities. The Ontario regulation applies only where no local municipal government exists.

Enforcement Procedures

The regulations concerning workplace housing in British Columbia, Alberta, Ontario and Nova Scotia are made under the authority of the relevant provincial health statutes and enforced by the ministries of health. In Quebec, the workplace housing regulation is made under the authority of the province's environmental protection statute and enforced by environment ministry officials. In each of these provinces, the government maintains a staff of trained inspectors to monitor the sanitary conditions of housing. Inspections may be carried out in response to complaints. Inspectors are empowered to enter private property, without the consent of the owner if necessary, and to gather information to determine whether housing meets legal minimum standards. In Nova Scotia any employer establishing a camp or boarding house for the accommodation of employees must first obtain a permit in writing from the medical health officer for the area in which the housing is situated. In Quebec and Ontario employers opening a camp must notify the relevant enforcement officials of the location of the camp. In Ontario the notice must also contain the number of employees to be accommodated, plans for the camp, and the source of the water supply. Housing that does not meet minimum standards may be ordered closed. A property owner may be ordered to bring housing up to standard at his or her own expense. In addition, those who violate workplace housing laws can be sanctioned by fines upon conviction in a quasi-crimi-

nal prosecution.

In New Brunswick, workplace housing standards are contained in general occupational health and safety regulations, the enforcement of which is described above in section 2(B)(5).

3) Regulation of Piece Rate Systems

In British Columbia, if agricultural workers are paid on a piece rate basis, the employer must post notices stating the volume of the picking containers, the volume or weight of the crop needed to fill a container, and the piece rate for the crop.[47] In Ontario employment standards regulations allow agricultural employers in some cases either to pay a set minimum wage or to pay piecework rates, provided that under such a system an employee exercising reasonable effort could earn at least the set minimum wage.[48]

4) Clean Water and Hygiene in the Fields

Occupational health and safety statutes and regulations of each province except Ontario, Alberta and Prince Edward Island require employers to make clean drinking water available to all agricultural employees while at work.[49] Depending on the province, regulations require either that drinking water be clearly marked as such or that, where nonpotable and potable water sources both exist, such sources be clearly distinguished from each other. Such regulations also require employers, including agricultural employers, to provide employees with ready access to toilets and washing facilities and to keep such facilities in a sanitary condition in every province except British Columbia (whose regulations for agricultural operations do not specifically require toilets for workers).

5) Farm Labor Contractors

The only province specifically regulating farm labor contractors is British Columbia,[50] where such contractors (except contractors who operate solely in tree farming or in spraying or pruning trees) must be licensed under the Employment Standards Act. Land owners are not required to be licensed as farm labor contractors if they hire people only to pick crops on their own land. A licensed farm labor contractor is the employer of the farmworkers who perform work for that contractor.

Licensing Requirements

Applicants for a farm labor contractor license must pass a written and/or oral test on the Act and Regulations and post security in the form of a bond equal to 80 hours at minimum wage ($8.00 per hour, as of November 1, 2001) for each employee. If a farm labor contractor has not had a previous license canceled, a license may be issued for three years. The director of Employment Standards may cancel or suspend a farm labor contractor's license if the latter made a false or misleading statement when applying for the license, is in breach of a condition of the license or contravenes the Act or the regulation. A license is not transferable.

Unlicensed Contractors

A person, including a farm producer, who uses farmworkers provided by an unlicensed farm labor contractor is considered to be the employer of the farmworkers for the purposes of the Act and can be held liable for any unpaid wages as required under section 30 of the Act.

Prohibition on Charges for Hiring

A farm labor contractor must not charge a person for hiring or obtaining work for that person.

Obligations of Farm Labor Contractors

- A farm labor contractor must prominently display the wage rates being paid to farmworkers at work sites and on all vehicles used for transporting workers.
- Where a farm labor contractor transports a farmworker to a job site and then does not provide any work, the farm labor contractor must pay the worker at no less than the minimum hourly wage for the longer of four hours or the time spent travelling from and to the departure site or an alternative site that is no further away and is acceptable to the employee. This requirement does not apply if work is not available because of unsuitable weather conditions or other causes completely beyond the farm labor contractor's control.
- A farm labor contractor must keep the following records and make them available for inspection at each work site:
  - the name of each worker;
  - the name of the employer and work site location to which workers are supplied and the names of the workers who work on the site on that day;
  - the dates worked by each worker;
  - the fruit, vegetable, berry or flower crop picked on each day by each worker; and
  - the volume or weight picked in each day by each worker.

All records must be kept in English. Records must be kept by the employer for three years after the employment terminates.

In addition, a farm labor contractor must do all of the following:

- carry the farm labor contractor's license at all times while carrying on the licensed activities and display a copy of the license prominently on all vehicles used for transporting employees;
- show the license beforehand to all persons with whom the farm labor contractor intends to deal as a farm labor contractor;
- ensure that each vehicle used by the farm labor contractor for transporting employees has affixed to it an unexpired mechanical inspection certificate in accordance with British Columbia's Motor Vehicle Act Regulations.

6) Employment Agreements of CCMSAWP Workers

Employers and workers in the CCMSAWP must sign a standard agreement for employment. The agreement covers the scope and period of employment, lodging and meals, payment of wages, deductions from wages, insurance for occupational and nonoccupational injury and disease, maintenance of work records and statement of earnings, obligations of the employer and worker, and premature repatriation of the worker. Key features of the agreement include the following:

- The term of a worker's employment is to be not less than 240 hours in a term of six weeks or less.
- Workers are given a trial period of two weeks (one week for workers transferred between employers) during which they may not be discharged except for sufficient cause or refusal to work.
- Employers are required to provide workers with suitable accommodation without cost, approved either by the appropriate government authority or, in the absence of such authority, by the agent of the worker's home country government.
- Employers are required to comply with any applicable workers' compensation laws or, in the absence of same, to purchase insurance to provide compensation in the event of occupational injury or disease.
- Employers are required to pay the worker the greatest of any applicable minimum wage, the prevailing wage for the type of agricultural work being carried out by the worker, or the rate being paid by the employer to Canadian workers performing the same type of agricultural work.
- Employers are entitled to deduct from workers' pay: (1) the cost of workers' compensation insurance and, in provinces where workers are not covered by provincial health insurance, the cost of health insurance; (2) no more than $CDN 6.50 per day for the cost of meals provided to the worker; (3) the cost of maintaining the workers' living quarters in an appropriate state of cleanliness; (4) an amount between $CDN 150 and $CDN 425 to cover operational costs of the CCMSAWP. The employer is required to make any deductions, such as Canada Pension Plan or Employment Insurance contributions, that are required by law.
- The employer pays the cost of round-trip airfare for the worker from the capital city of his or her home country to Canada at the most economical fare.
- Following the completion of the trial period (see above), the employer is entitled to terminate the worker's employment "for non-compliance, refusal to work, or any other sufficient reason" and thus cause the worker to be repatriated. Unless the worker was requested by name by the employer, the worker may be required to pay the full cost of his or her repatriation.

In Ontario and Quebec the provincial health insurance programs cover migrant workers working under the CCMSAWP. In Alberta and Manitoba they do not. The Mexican government contracts with a private insurance provider for health insurance coverage for Mexican workers in Alberta and Manitoba.[51]

Enforcement Procedures

Under the Agreement for Employment the government of the country from which the worker originates agrees to designate an agent in Canada. The agent is responsible for a number of functions including: ensuring in some cases that workers' housing is suitable; ensuring that money owed to the worker reaches the worker in the event that the employer is unable to locate him or her; ensuring that workers' compensation insurance provided for the worker is acceptable; monitoring employer deductions, including those made for health insurance; receiving reports of worker injury or illness; handling arrangements in the event of the worker's death; receiving pay records from employers; approving transfers of workers between employers; consulting with employers concerning the termination of a worker's employment; rescinding the agreement on behalf of the worker in the event that the agent determines that the employer has not complied with it, and in that event seeking to transfer the worker to another employer or to obtain the compensation required by Article X.4 of the agreement (see immediately below).

The Agreement for Employment is a legal contract and as such could be enforced by the worker through court action. However, under Article X.4 of the agreement, if the government agent for the worker's home country determines that the employer has violated the agreement, the remedy is generally to rescind the contract and transfer the worker to another employer, or repatriate the worker, with some compensation in the event that the minimum term of employment has not been completed.[52] This is accomplished without court action. In any event, it is unlikely that CCMSAWP workers would have the time or resources to undertake a court action to enforce the agreement.

7) Legal Aid

Each province has a legal aid program providing certain legal services at no or minimal cost to low income individuals. Provincial legal aid offices contract services out through private attorneys and/or have staff attorneys who represent or advise potential clients. Many agricultural workers in Canada would qualify for legal aid representation. Most legal aid plans do not cover many types of employment or social security proceedings, however, and several do not cover immigration-related proceedings.

Like other workers, migrant agricultural workers are eligible to receive legal aid services for Employment Insurance proceedings in the provinces of Quebec, British Columbia, Alberta, Ontario and Newfoundland, but not in Nova Scotia, Manitoba, New Brunswick and Prince Edward Island. They may receive legal aid services for workers' compensation in Alberta, Manitoba, Ontario (appeals only), Newfoundland and Quebec, but not in the other provinces. They may receive legal aid services in cases regarding social assistance in

British Columbia (consultations only), Alberta, Manitoba, Ontario, Newfoundland and Quebec. The following provinces provide legal aid in deportation proceedings and some refugee proceedings: British Columbia, Ontario (appeals only), Prince Edward Island, New Brunswick, Nova Scotia and Newfoundland.

D. Due Process

Constitutional, judge-made administrative law and statutory rules of due process apply in labor, employment and immigration proceedings in all Canadian jurisdictions.

Canadian administrative law is a body of law which, among other things, provides a set of procedural due process protections that apply to actions by administrative tribunals that affect a party's legal rights or interests. Those due process protections are generally referred to as rules of procedural fairness or natural justice. The rules of natural justice or fairness are divided into two parts. The first is the duty to give a person affected by a decision a reasonable opportunity to present his or her case. The second is the duty to listen fairly to both sides and reach a decision free of bias. The specific requirements of these rules vary according to the nature and importance of the personal interests at stake in tribunal proceedings.

Procedural Protections

Notice of legal proceedings must be afforded to a party with interests directly affected by the proceedings. Parties have a right to present evidence and arguments in support of their positions, either orally or in writing.

Where a party has a right to a hearing and has limited comprehension of the language in which the hearing will take place, section 14 of the Canadian Charter of Rights and Freedoms generally provides that party with the right to a language interpreter to translate during the proceedings.[53]

Parties also have the right to know and respond to the evidence and arguments of other parties. Employment standards, occupational health and safety and immigration officials, labor relations boards and human rights commissions are generally empowered to use subpoenas to secure evidence and testimony in a case. In cases where parties do not agree on the facts giving rise to the case and the tribunal must determine whose evidence is more credible, parties most often have the right to a full hearing of evidence with examination and cross-examination of witnesses.

Hearings are generally open to the public. Tribunal decisions are issued in writing and made public. Decisions generally set out the reasons for conclusions reached, reciting relevant facts and analysis of the relevant law and its application to the facts. One provincial court of appeals has ruled that the failure of a labor relations board to give reasons for its decision when that decision resolves "substantial issues" is a breach of natural justice.[54] Similar principles may apply to other tribunals.

Independence and Impartiality of Decision Makers

The rules of natural justice in Canadian administrative law require that tribunals be and appear to be independent at the institutional level. In particular, tribunal members must have a combination of security of tenure, security of remuneration, and administrative control sufficient to ensure the independence of their decision making.[55] Lack of independence can void the decision of a tribunal.

Canadian administrative law requires that tribunal members be free from compulsion or pressure that could compromise their ability to decide cases according to their own conscience and opinions. A decision of a tribunal that has been subject to pressure from persons outside the tribunal, be they government officials, private organizations or individuals, can be declared void on judicial review. Procedures for consultation within a tribunal must be carefully designed to ensure that the tribunal members who hear a particular case remain free to decide that case without pressure or compulsion to follow the views of other tribunal members.[56]

A tribunal member can be disqualified from serving in a particular case in the event that there is a reasonable apprehension of bias on that person's part. Actual bias need not be proven. Any pecuniary interest in the subject matter of proceedings results in a presumption of bias. The person presiding over the hearings should not have had any recent professional relationship with either litigant. Tribunal members must decide cases on the basis of evidence presented and the relevant law, without unreasonable hostility toward a party or case being presented.

Judicial Review

There is in all Canadian jurisdictions a limited access to judicial review. Courts have generally exercised restraint in reviewing tribunal decisions and normally defer to the specialized expertise of immigration, labor and employment tribunal members in balancing competing policy concerns. Grounds for judicial review include: breach of administrative fairness or natural justice, constitutional grounds, exceeding the powers granted to the board by the legislature, error of law in interpreting a law beyond the scope of the tribunal's expected area of expertise, and patent unreasonableness of a decision made within the scope of the tribunal's expected area of expertise.

Notes

1. Government of British Columbia, *British Columbia Agricultural Workforce Profile* (April 28, 1999) p. 14. Foreign Agricultural Resource Management Services, *The Quest for A Reliable Workforce* (1995).
2. Government of British Columbia, *British Columbia Agricultural Workforce Profile* (April 28, 1999) p. 30.
3. See "CCMSAWP Worker Arrivals by Country and Year, 1968-1998," and "Worker Arrivals by Region, 1994-1998," information provided by Labour Market Services, Human Resources Development Canada, (Oct. 23, 1998); and see *Horticulture*

Industry, Organizing for the Future, prepared by Ernst and Young, for the National Steering Committee for the Human Resource Study of the Canadian Horticulture Industry, with the Assistance of Employment and Immigration Canada, 1995, p. 34.

4. Foreign Agricultural Resource Management Services, *The Quest for a Reliable Workforce* (1995).
5. Telephone interview by Emily LaBarbera-Twarog with Abe Fair, Mennonite Central Committee, Alberta, August 1999.
6. Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States Concerning the Mexican Seasonal Agricultural Workers Program. This Memorandum is typical of those concluded between Canada and participating CCMSAWP countries.
7. *Kahlon v. Canada (Minister of Employment and Immigration)* (1989), 97 N.R. 349 (F.C.A.).
8. The Supreme Court has ruled that the Charter applies only to government action and thus does not offer direct protection against the actions of private parties.
9. See the review of case law by Sharpe, J., in *Dunmore v. Ontario (Attorney General)* (1997), 37 O.R. (3d) 287.
10. See the review of case law by Sharpe, J., in *Dunmore v. Ontario (Attorney General)* (1997), 37 O.R. (3d) 287. Such government action may be unconstitutional if it can be proven that (1) the group of agricultural workers affected by the action in question share a set of characteristics, such as ethnic origin; (2) as a result of the action the members of that group suffer a disadvantage based upon grounds relating to those characteristics; and (3) this infringement of section 15 cannot be justified under section 1 of the Charter.
11. *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.
12. *Clarken v. Ontario Health Insurance Plan (General Manager)* (1998), 109 O.A.C. 363 (Ont. Ct. (Gen. Div.)).
13. *Dunmore v. Ontario (Attorney General)* (1997), 37 O.R. (3d) 287.
14. *Douglas Kwantlen Faculty Associaton v. Douglas College*, [1990] 3 S.C.R. 570; *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5; *Tetreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1991] 2. S.C.R. 22.
15. Specifically, it excludes all employees employed on a farm or ranch whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, game-production animals, poultry or bees.
16. *Dunmore v. Ontario (Attorney General)*, 2001 SCC 94, December 20, 2001.
17. Neither migrant nor temporary nor agricultural worker status is a prohibited ground of discrimination in any human rights code. Human rights codes thus do not specifically prevent an employer from treating migrant agricultural workers as a group in a manner less advantageous than it treats its other employees. They do however prohibit treating one group of agricultural workers less advantageously than another on the basis of a prohibited ground of discrimination, such as ethnic or national origin. Moreover, in some situations, adverse differential treatment of migrant agricultural workers as a group could constitute indirect discrimination on the basis of protected personal characteristics, such as ethnic or national origin. However, for this to be the case at least two things would have to be true. First, the agricultural workers in question would have to share personal characteristics which are protected by the relevant human rights code, so that being a migrant agricultural worker was related to having those characteristics. Second, the employer would have to be unable to justify the adverse treatment of migrant agricultural workers on the basis of factors distinguishing agricultural work from other work, such as the relative skill, effort, seniority, or responsibility of the workers.
18. See generally, England, Christie and Christie, *Employment Law in Canada* (3rd ed.). Toronto: Butterworths, 1998, at 2.5.
19. The Saskatchewan Labour Standards Act does not cover employees employed primarily in "farming, ranching, or market gardening" but deems that operation of egg hatcheries, greenhouses and nurseries, or bush clearing operations do not fall within those exclusions. Labour Standards Act, R.S.S. 1978, c. L-1, as amended, s.4(3).

    The Manitoba Employment Standards Code excludes persons employed in "agriculture... fur farming, or dairy farming, or in the growing of horticultural or market garden products for sale" from the coverage of its minimum wage, hours of work, overtime, general holiday, vacation, vacation allowance, weekly day of rest, work break, maternity and parental leave, notice of termination provisions and provisions prohibiting employment of children. Agricultural workers are covered by the provisions of the Act relating to time and method of payment of wages and equal wages for equal work. Minimum Wages and Working Conditions Regulation, M. Reg. 62/99, s.3.

    The Alberta Employment Standards Code excludes most agricultural workers from its provisions regarding hours of work, overtime and overtime pay, general holidays and general holiday pay, vacations and vacation pay, restrictions on the employment of children, and minimum wage regulations. Specifically, it excludes employees employed on a farm or ranch whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, game-production animals, poultry or bees. The Employment Standards Regulation adds cultured fish to this list. Employment Standards Code, S.A. 1996, c. E-10.3, as amended, s.2; Employment Standards Regulation, A.R. 14/97, as amended, s. 1.1.
20. Except for its provisions dealing with the employment of children, the New Brunswick Employment Standards Act does not cover employment for the "provision of agricultural services" to an employer with three or fewer employees (exclusive of employees who are in a close family relationship with the employer) over a substantial period of the year. Employment Standards Act, S.N.B. 1982, c. E-7.2, as amended, s.5.

    The Prince Edward Island Employment Standards Act excludes "farm labourers" from all provisions of the Act except those relating to the payment and protection of pay. Employment Standards Act, S.P.E.I. 1992, c.18, as amended, s. 2(5).

    Under the P.E.I. statute, an employee is not a farm laborer if he or she works in a "commercial undertaking." The Act also empowers the Employment Standards Board to exempt employers in seasonal industries from hours of work provisions. Employment Standards Act, S.P.E.I. 1992, c.18, as amended, s 15.
21. Specifically, the exemptions apply to employees whose employment is related directly to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boars and cultured fish. See Exemptions, Special Rules and Establishment of Minimum Wage Regulation, O. Reg. 285/01 s. 2.
22. Exemptions, Special Rules and Establishment of Minimum Wage Regulation, O. Reg. 285/01, s. 24-27.

23. The exclusions apply specifically to persons engaged in work on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle sheep, poultry or animal furs. However, persons employed at an agricultural establishment primarily involved in the production of flowers, fruit, grain, seeds, tobacco or vegetables in greenhouses or otherwise under cover are not considered to be farm employees, and are therefore covered by provisions regarding hours of work, overtime and general holidays. See Regulations pursuant to section 4(2) and 7 of the Labour Standards Code, N.S. Reg. 290/90, as amended, ss. 1 and 2(3).
24. Labour Standards Regulations, Consolidated N. Reg. 781/96, as amended, s.9.
25. Act Respecting Labour Standards, S.Q. 1979, c. 45 (R.S.Q. c. N-1.1), as amended, ss. 39.1, 54 and 77; Regulation Respecting Labour Standards, R.R.Q. 1981, c.N-1.1 r.3, as amended, s. 2.
26. A farmworker is defined in the Employment Standards Regulation as "a person employed in a farming, ranching, orchard or agricultural operation, but does not include:
    - a person employed to process the products of a farming, ranching, orchard or agricultural operation,
    - a landscape gardener or a person employed in a retail nursery, or
    - a person employed in aquaculture."
27. Employment Standards Regulation, B.C. Reg. 396/95, s. 34.1.
28. Employment Standards Regulation, B.C. Reg, 396/95, as amended, s. 18.
29. Employment Standards Regulation, B.C. Reg, 396/95, as amended, s. 36.1.
30. In Newfoundland, vacation entitlements depend upon having worked a defined number of regular working hours in a year, with the result that seasonal agricultural workers who do not obtain other work will often fail to be eligible. Most provinces, with the exception of Quebec, New Brunswick and British Columbia, require a minimum qualifying period for maternity and parental leave, ranging between 13 weeks and 12 months. In addition to other requirements, employees in six provinces (Newfoundland, New Brunswick, Prince Edward Island, Quebec, Alberta and British Columbia) must have been in the service of their employer for a specified period of time, ranging from 30 days to three months, to be entitled to statutory holidays with pay.
31. Occupational Health and Safety Act, R.S.A. c. O.2, section 1(g)(i). The Farming and Ranching Exemption Regulation, A.R. 27/95 states that the farming and ranching operations that are excluded are those that are directly or indirectly involved in (a) the production of crops, including fruits and vegetables, through the cultivation of land; (b) the raising and maintenance of animals or birds; (c) the keeping of bees. Section 3 of that regulation creates an exception to these exclusions for (a) operations involved in the processing of food or other products; (b) the operation of greenhouses, mushroom farms, nurseries, or sod farms; (c) operations involved in landscaping; (d) operations involved in the raising or boarding of pets.
32. Occupational Health and Safety Act, R.S.O. c. O.1, section 3(2).
33. The Alberta Workers Compensation Act excludes a wide range of agricultural industries (see Schedule A to the Act). The Saskatchewan Workers Compensation Act, 1979 excludes "the industry of farming or ranching." The Manitoba Workers Compensation Act does not include agriculture among the listed industries for which coverage is mandatory (see Schedule to section 73 of the Act). The Prince Edward Island Workers Compensation Act excludes the "farming" industry from its coverage.
34. See for example: Manitoba Workers' Compensation Act, R.S.M. 1987, c. W200, S1(3); New Brunswick Workers' Compensation Act. R.S.N.B., c. 1-13, s. 8.
35. Employment Insurance Regulation, SOR 96/332, as amended, 9,(2)(b).
36. Average monthly pensionable earnings are equal to the total pensionable earnings divided by the total number of months in the contributory period, or by 120 months minus any months excluded by reason of disability, whichever is greater. The contributory period is the period commencing January 1, 1966, or when the worker reaches 18 years of age, whichever is later, and ending when he or she reaches age 65 (before the end of 1986) or begins receiving a retirement pension or reaches age 70 (after 1986). Periods of low or zero earnings, up to 15 percent of the worker's contributory period, may be excluded from the calculation of average monthly pensionable earnings, as may low earnings periods while caring for a child under the age of seven. Workers can opt to begin receiving retirement pension benefits at any time between the ages of 60 and 70. Those choosing to begin receiving benefits before age 65 receive reduced benefits, while those delaying benefits receive increased benefits.
37. To receive disability benefits, a worker must have contributed to the plan for at least two of the three years or five of the 10 years prior to making the claim. Contributions are made on the basis of annual income above $3500 per year. Thus if a person does not earn that amount in a year that year will not count toward eligibility. If a person became disabled after December 31, 1997, he or she must have contributed to the CPP in four of the last six years and have earned at least 10 percent of each Year's Maximum Pensionable Earnings (YMPE). The YMPE for 1999 was $37,400. The QPP also provides benefits to those who have made contributions to the plan during at least half of their contributory period (subject to a two-year minimum).
38. The pension is earned at a rate of 1/40th of the maximum pension for each year of residence in Canada after the age of 18, up to a maximum of 40 years.
39. See *Boulaajoul et ferme M.S. Nadon enr.*, [1994] C.A.L.P. 1540; *Saravia c. 101482 Canada Inc.*, [1987] R.J.Q. 2658.
40. The leading case is *Still v. Minister of National Revenue,* [1998] 1 F.C. 549 (C.A.).
41. *Apollo Real Estate*, [1994] O.E.S.A.D. No. 28, Decision No. ESC 94-74.
42. *Impact Demolition Services* Ltd., [1998] O.L.R.D. No. 481, File No. 2045-97-R.
43. *Specific obligations relating to hazardous substances in the workplace:*
    - In British Columbia, a general health and safety regulation contains detailed standards for the storage, use and handling of hazardous substances in the workplace. The regulation sets maximum worker exposure limits for many hazardous chemicals and requires that employers monitor workers' exposure and provide emergency washing facilities where a worker's skin or eyes may be exposed to materials which may burn or irritate. The regulation also requires that if a work process may result in harm to a worker from contamination of the worker's skin or clothing by a hazardous substance the employer must supply appropriate protective clothing, launder and dispose of protective clothing on a regular ba-

sis, provide adequate wash facilities, and allow time for washing before each work break. The employer must also create an inventory of all hazardous substances in the workplace and develop an emergency plan to respond to the hazards present in the workplace. The regulation also sets specific standards for the storage, loading, mixing and application of pesticides and requires, among other things, that warning signs concerning pesticides be posted at all points of worker entry, before pesticides are applied, and that these signs be durable and readily understood by workers. In addition, special regulations setting detailed health and safety standards for agricultural operations create standards applying and elaborating the above requirements in the particular setting of agricultural operations. The Regulations for Agricultural Operations, B.C. Reg. 146/93, also set particular agricultural operations safety standards for such things as drinking water, personal protective clothing and equipment, and the use of agricultural tractors, elevating work platforms, orchard ladders, auger conveying equipment, hay balers, and fencing equipment.

- Regulations in Saskatchewan require employers to ensure that air contaminants do not reach hazardous levels.
- Manitoba's regulations require that if a poisonous substance (including a pesticide) is used, stored or handled at a workplace, the employer must, among other things: prepare and maintain a complete inventory of such products in consultation with the worker health and safety committee or representative; comply with limits on the allowable exposure of workers to those chemicals; provide protective equipment to workers if no other method of exposure control is reasonably practicable; make and implement a plan designed to eliminate or prevent workplace health hazards due to such products. Workplace Health Hazard Regulation, MR 53/88.
- Quebec's statute places a general duty on employers to ensure that no contaminant or dangerous substance is emitted which adversely affects the health or safety of employees. Regulations set detailed air quality standards, specify maximum exposure limits for a wide range of hazardous chemicals, require employers to minimize worker exposure to certain chemicals recognized as carcinogenic or, when technology does not permit compliance with these requirements, to provide workers with protective equipment meeting national standards.
- The statute in New Brunswick requires employers to compile a list of hazardous substances or substances suspected of being hazardous present at the workplace. Employers are required to make this information available to the members of their health and safety committee. New Brunswick's regulations require employers to ensure that air contaminants do not reach hazardous levels; to record the protective and emergency measures used to prevent or treat exposure to those substances; and to set detailed requirements for the storage of hazardous substances in the workplace and require that they be clearly labeled as such.
- The statute in Nova Scotia requires employers to compile a list of hazardous substances or substances suspected of being hazardous present at the workplace.
- Regulations in Prince Edward Island set out detailed requirements for the storage of hazardous substances in the workplace and require that they be clearly labeled as such. These regulations do not apply to agricultural workers, however.
- Newfoundland's regulations contain similar requirements and also require that where a hazardous chemical substance is present in the workplace the employer shall ensure that all practicable measures are taken to prevent the exposure of workers to the extent that may be injurious to their health.

See British Columbia: Occupational Health and Safety Regulation, BC Regulation 296/97; Application of the Health and Safety Regulations to the Farming Industry, BC Regulation 340/97. Manitoba: Workplace Safety Regulation 108/88 R; Workplace Health Hazard Regulation, Manitoba Regulation 53/88. New Brunswick: Occupational Health and Safety Regulation, N.B. Regulation 91/191. Newfoundland: Occupational Health and Safety Regulation. Nova Scotia: Occupational Health and Safety Regulation, N.S. Regulation 44/99. Prince Edward Island: Occupational Health and Safety Regulation, EC 180/87. Quebec: Loi sur la santé et la sécurité du travail, LRQ S-2.1, r.15. Saskatchewan: Occupational Health and Safety Regulation, Regulation 6/97.

44. See Alberta: Environment Protection and Enhancement Act, R.S.A. c. E-13.3, section 156-160, and Pesticide (Ministerial) Regulation, AR 43/97; British Columbia: Pesticide Control Act, R.S.B.C. 1996, c.360, and Pesticide Control Regulation. B.C. Reg. 319/91; Manitoba: Pesticides and Fertilizers Control Act, R.S.M. 1987, c. P40, and Pesticides Regulation, 94/88R; Ontario: Pesticides Act, R.S.O. c. P11, and Pesticides Act, General Regulation, R.R.O. 1990, Reg. 914; New Brunswick: Pesticides Control Act, R.S.N.B. c. P-8; Newfoundland: Pesticides Control Act, 1983, R.S.N. 1990, c. D-11, and Pesticides Control Regulations, 1982, Nfld. Reg. 26/81; Nova Scotia: Environment Act, S.N.S. 1994-95, c.1, and Pesticide Regulations. N.S. Reg. 61/95; Prince Edward Island: Pesticides Control Act, R.S.P.E.I. 1988, c. P-4, and Pesticides Control Act Regulations; Quebec: Loi sur les pesticides, L.R.Q. c. P-9.3 and Reglement sur les Permis et les Certificats pour la vente et l'utilization des pesticides, r. 0.1; Saskatchewan: Pest Control Products (Saskatchewan) Act, S.S., 1978 c. P-8 and Pest Control Products Regulation, 1995, c. P-8, Reg 3.
45. In Prince Edward Island, Saskatchewan, British Columbia and Manitoba, the fines range between $100 and $2,000. In Ontario, the fine for a first violation can be up to $20,000 for an individual or $100,000 for a corporation, with fines for subsequent violations increasing to $50,000 per day and $200,000 per day, respectively. Violators in Ontario may also be ordered to prevent or repair injury or damage or impairment to persons, animals or the environment, and inspectors are empowered not only to enter and inspect, but to investigate and prosecute as well. In Alberta, under the Environmental Protection and Enhancement Act (EPEA), any person may apply for an investigation to take place. The Act empowers inspectors to shut down operations for violations and empowers the minister to issue injunctions against prohibited activity. Violators of the Act must bear the cost of inspection. In addition, fines may be imposed following conviction for violating the Act. Fines for individual violators range up to $50,000 and for corporate violators up to $500,000. Violators may also be sentenced to perform community service. Violators are also subject to reporting requirements on their use, storage or handling of pesticides for three years following a conviction. Parties that are wronged as a result of a violator's action in Alberta have a private right of action under the EPEA to sue the violator for an amount equal to their loss or damage.
46. See: Industrial Camps Health Regulation, British Columbia Regulation 427/83; Work Camps Regulation, Alberta Regula-

tion 251/85; Camps in Unorganized Territory Regulation, Revised Regulations of Ontario, 1990 Reg. 554; Regulation Respecting Sanitary Conditions in Industrial Camps and Others, Revised Regulations of Quebec 1981, c/ Q-2, r.3; General Regulation – Occupational Health and Safety Act, New Brunswick Regulation 91-191, Part II; Regulations Respecting Industrial and Construction Camps, Regulations of Nova Scotia 1942, pp. 382-386.

47. Employment Standards Regulation, B.C. Reg. 396/95, as amended, s. 18.
48. Exemptions, Special Rules and Establishment of Minimum Wage Regulation, O.Reg. 285/01, s. 25.
49. See the health and safety regulations cited above in note 43. The relevant sections for each province are: British Columbia, ss. 15-18; Saskatchewan, ss. 71-72, 76; Quebec, ss. 56-62 and 67-69; New Brunswick, ss. 4-6; Nova Scotia ss.18-20; Prince Edward Island, ss. 2.1-2.8, 3.1-3.3; Newfoundland, ss. 8, 13, 14, 16; Manitoba, s. 9 of the Sanitary and Hygienic Welfare Regulation.
50. This description of British Columbia's farm labor contractor provisions reproduces text from the British Columbia Employment Standards Branch's Fact Sheet: Farm Labour Contractors, www.labour.gov.bc.ca/esb/facshts/flcs.htm, August 23, 1999. See Employment Standards Act, R.S.B.C. 1996, c. 113, as amended, ss. 11, 13, 29 and 30; Employment Standards Regulation, B.C. Reg. 396/95, as amended, Part 2.
51. Caribbean workers are not employed in Alberta, Saskatchewan, Manitoba or Prince Edward Island. No CCMSAWP workers are sent to Prince Edward Island or Saskatchewan. Human Resources Development Canada, Commonwealth Caribbean and Mexican Seasonal Agricultural Worker Program - Background and Process: Caribbean and Mexican Movement (Ottawa: HRDC, July 1999).
52. Article X.4 of the Agreement provides that: if it is determined by the Government Agent, after consultation with Human Resources Development Canada, that the Employer has not satisfied his obligations under this agreement, the agreement will be rescinded by the Government Agent on behalf of the Worker, and if alternative agricultural employment cannot be arranged through Human Resources Development Canada for the Worker in that area of Canada, the employer shall be responsible for the full costs of the repatriation of the worker to Mexico City, Mexico; and if the [minimum term of employment] is not completed and employment is terminated under clause X-4, the Worker shall receive from the Employer a payment to ensure that the total wages paid to the Worker is not less than that which the Worker would have received if the minimum period of employment had been completed.
53. See *Association of Parents for Fairness in Education, Grand Falls District 50 Branch v. Societe des Acadiens du Nouveau Brunswick Inc.*, [1986] 1 S.C.R. 549, and *Roy v. Hackett* (1987), 62 O.R. (2d) 365 (Ont. C.A.).
54. *Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board)*, 97 C.L.L.C. 220-089 (N.S.C.A). Leave to appeal to the Supreme Court of Canada was refused on September 25, 1997. However, since the Supreme Court has not ruled definitively on this issue, earlier contrary rulings may arguably continue to apply in jurisdictions outside of Nova Scotia.
55. *Matsqui Indian Band v. Canadian Pacific Ltd.,* [1995] 1 S.C.R. 3.
56. *Consolidated Bathurst Packaging Ltd. v. International Woodworkers of America Local 2-69,* [1990] 1 S.C.R. 282.

MEXICO

1. BACKGROUND INFORMATION ON MIGRANT AGRICULTURAL WORKERS[1]

A. Internal Migrant Workers

The lack of permanence in a given workplace and the heterogeneity of migrant agricultural workers in Mexico make it difficult to ascertain precisely their number. The 7th Agricultural and Livestock Census calculated that, in 1991, there were approximately 2.3 million agricultural workers, of whom 86.6 percent were seasonal workers. However, other sources point to the existence of 3.5 million agricultural workers, while still others speak of up to five million agricultural workers.[2] As will be seen in the discussion below, many agricultural workers in Mexico are migrants from other areas of Mexico.

Data obtained from samples and surveys conducted by the Programa Nacional de Jornaleros Agrícolas (National Program for Agricultural Day Workers - PRONJAG), part of the Secretaría de Desarrollo Social (Secretariat of Social Development – SEDESOL), indicate that the migrant agricultural worker population is composed of 52 percent men and 48 percent women. It is also estimated that 30 percent of migrant agricultural workers are of indigenous origin, primarily Mixtecs, Zapotecs, Triquis, Tlapanecos, Nahuas and Purépechas; 28 percent speak an indigenous language.[3] Half of those who speak an indigenous language do not speak Spanish.[4]

The Mexican states with the highest numbers of agricultural workers are Sinaloa, Sonora, Baja California, Baja California Sur, Durango, Jalisco, Tamaulipas, Puebla, Morelos, Veracruz, Chihuahua, Michoacán, Nayarit and San Luis Potosí. Oaxaca and Guerrero are states that generally provide agricultural workers to the others .[5]

Over the years, migrant agricultural workers have established relatively fixed migration routes and workplaces. According to PRONJAG, 51.6 percent of day workers from certain communities have firmly established destinations where people from the same communities have worked for at least five years.[6]

The migratory movements of agricultural workers throughout the country generally follow four routes.[7] The Pacific route is followed by workers from the states of Oaxaca, Guerrero and Michoacán, who most often migrate to the states of Sinaloa, Sonora, Baja California and Baja California Sur. The Gulf route is followed by workers who migrate to the states of Tabasco, Veracruz and Tamaulipas from the states of Oaxaca, Hidalgo, Veracruz and Puebla. The receiving states in the Central route are San Luis Potosí, Guanajuato, Zacatecas and Chihuahua, Puebla and Morelos. This route makes use of both local and migrant labor, including workers from Oaxaca, Guerrero and Hidalgo. The Southeastern route covers the states of Chiapas, Yucatán and Tabasco. While most agricultural workers migrate from within Mexico, the state of Chiapas draws temporary international migrant agricultural workers from Guatemala pursuant to an agreement discussed more fully below.[8]

Sinaloa, Sonora, Baja California and Baja California Sur, all of which lie on the Pacific route in northern Mexico, receive the largest number of migrants.[9] This route attracts agricultural workers from central and southern Mexico, especially from Oaxaca and Guerrero.[10] This route is known for the presence of agribusinesses that are essentially oriented toward export production.[11]

Of the states that lie on the Pacific route, Sinaloa is the main destination for the migrant labor force. Sinaloa is the Mexican state with the largest area of good quality, irrigated lands, generally devoted to the cultivation of vegetables and grains. Sinaloa is Mexico's foremost vegetable producer, accounting for up to 55 percent of national production, and is also a noteworthy supplier of vegetables to the United States.[12] Since vegetable production requires an abundant labor force, a total of between 200,000 and 300,000 day workers are hired in Sinaloa between September and April.[13] These workers are engaged in sowing, planting, harvesting, weeding, irrigating, fumigating and packing crops like tomato, chili pepper, cucumber, eggplant and zucchini. This work is carried out in an area of approximately 70,000 hectares. In the Valley of Culiacán, where the state capital is located, between 100,000 and 180,000 agricultural workers work in vegetable production.[14] The rest of this state's agricultural workers are concentrated in Valle del Fuerte and Guasave, in the northern part of the state, and Elota, which lies in the southern region.

Approximately 100,000 seasonal agricultural workers are concentrated in Baja California. Most of the workers who engage in the production of alfalfa, cotton, asparagus and chives in the Mexicali Valley are local. Most of the agricultural workers in the San Quintín Valley, however, are migrants. It has been estimated that up to 50,000 agricultural workers migrate to work in the vegetable fields of the San Quintín Valley. Many of these workers form part of the migratory current that begins in Oaxaca, Guerrero and Sinaloa.[15]

The state of Sonora has between 100,000 and 150,000 seasonal agricultural workers who engage in the production of fruits (such as grapes, oranges, mangoes and watermelon), vegetables (such as tomatoes and chili peppers), cotton and certain grains.[16] Not all of these workers are migrants. For example, the labor force in the Valley of San Luis Río Colorado is essentially local.[17] Nevertheless, a large proportion of the 80,000 workers registered with the Instituto Mexicano del Seguro Social (Mexican Social Security Institute –IMSS) for the state of Sonora are migrants who leave and enter the state

with a considerable degree of mobility.[18] These migrants come from Oaxaca, Guerrero, Michoacán, Sinaloa, Veracruz, Chihuahua and Durango. Many of these migrant workers are employed in the production of grapes and vegetables, crops which require a high level of manual labor.

In Baja California Sur, approximately 20,000 agricultural workers are employed for periods of between six and eight months. They work in the production of tomato, chili pepper, cucumber, strawberry, watermelon and other similar crops.[19] While many of these workers are from Sinaloa, others come from Oaxaca and Guerrero.[20]

B. Temporary International Migrant Agricultural Workers

Central American workers have long crossed the border to work in Mexican agriculture. The majority of these temporary international migrants are Guatemalans who enter Mexico to work on crops in the state of Chiapas.[21] They leave their places of origin (mainly Quetzaltenango, Huehuetenango and El Carmen, the Guatemalan departments closest to the Mexican border) and travel in groups to work in the areas of the Soconusco and the Chiapanecan Altos or Highland zone.

Generally speaking, Guatemalan agricultural workers come from various ethnic groups, speak particular indigenous languages and Spanish, and are characterized by their extreme poverty and dependence on the land. They have a tradition of migrating to Mexico to seek sufficient resources to allow subsistence, since they are unable to find the income opportunities offered by Mexico in their place of origin. They generally travel with their families and are frequently hired through agricultural intermediaries or subcontractors and receive the daily minimum wage in force in the region.[22]

Guatemalan migrant workers are generally engaged in regional coffee, banana and sugar cane production.[23] Their stay in Mexico is usually temporary, and they return to their places of origin when the working season comes to a close. They generally remain in Chiapas for approximately six months.[24]

C. Common Hiring Arrangements

Agricultural employers often make use of contractors and intermediaries to ensure that an adequate labor force is available. These contractors frequently contract local agents who assume the task of recruiting workers. Local agents use different means to do this, including radio advertisements. Contractors generally operate within a single state and supply workers to a single producing region. Local agents often visit communities in various states known for their migrant workers, particularly in southern and central Mexico.

Although producers in Sinaloa customarily employ the services of farm labor contractors, this is not the case in Baja California and Baja California Sur. According to PRONJAG data, 83 percent of workers arriving at the fields of Sinaloa do so by means of the intermediary system. This figure stands at 82 percent in Jalisco, while in Baja California and Baja California Sur, this form of migration barely reaches 20 percent.[25]

Workers who decide to travel at their own expense and outside of the labor contracting system usually do so in the company of other family members and often with other families from the same community. These groups generally travel under the guidance of someone who has already made the trip, knows their final destination and working conditions there, as well as the operations of agricultural camps, and has sufficient contacts to ensure that they are hired. Migrant agricultural workers arrive at the cultivation camps in groups and, generally speaking, remain in these groups since they receive greater security and confidence from them.[26]

D. Legal Jurisdiction over the Protection of Migrant Agricultural Workers

The federal government has jurisdiction over immigration and foreign migration. Work permits for foreigners are governed by the Ley General de Población (General Population Law – LGP). The application and implementation of this law is also within the jurisdiction of the federal government. The Instituto Nacional de Migración (National Immigration Institute - INM), within the Secretariat of the Interior, administers the LGP. Federal authorities are responsible for investigating all alleged infringements of the law or arbitrary official acts toward foreigners.

Article 123 of the Constitution originally granted state legislatures the power to enact their own labor laws. This system created uncertainty, however, and in 1929 Articles 73-X and 123 of the Constitution were amended to grant the federal Congress exclusive power to enact labor laws. Article 123 of the federal Constitution and the Ley Federal de Trabajo (Federal Labor Law - LFT) are the primary sources of labor law in Mexico. Both are in force throughout the country. However, the responsibility for enforcing Mexico's labor law is shared between the federal government and the governments of the 31 states and the Federal District (D.F.). The authority of state governments is contained in Section XXXI of Article 123, which states that "labor law enforcement belongs to the authorities of the states in their respective jurisdictions." Agricultural enterprises fall within the enforcement jurisdiction of state authorities.[27]

E. Immigration Rules Applicable to International Migrant Workers

Under the LGP, the Secretariat of the Interior is the Mexican authority responsible for regulating the entry and stay of foreigners in the country.

There are two ways for foreigners to legally reside in Mexico: as nonimmigrants or as immigrants. A nonimmigrant is a foreigner who comes into the country temporarily under any of the following migrant categories: tourist, transmigrant, visitor, religious minister, religious associate, political asylum seeker, refugee, student, distinguished visitor, local visitor, provisional visitor or correspondent. An

immigrant is a foreigner who legally enters the country with the intention of residing in it. Both nonimmigrants and immigrants can stay in Mexico for a year and may obtain as many as four extensions of their immigration status.[28]

In recent decades, a significant proportion of the foreigners entering Mexico to work in agriculture did so without the formal authorization of the Secretariat of the Interior.[29] Generally, they entered the country illegally via the southern border, to work in the cultivation of fruit, coffee and sugar cane.[30]

In October 1997, as a result of the 5th Mexico-Guatemala Binational Meeting on Migratory Issues, held June 28, 1996, the Mexican government agreed to establish procedures for the documentation of Guatemalan nationals temporarily residing in Mexico to allow them to perform agricultural labor in the state of Chiapas. This agreement was entered into by the INM, an agency belonging to the Secretariat of the Interior, in Circular No. CRE-247-97, pursuant to Article 42, paragraph III of the LGP.[31] It applies exclusively to Guatemalans who perform agricultural labor on farms or *ejidos*[32] in the state of Chiapas. This agreement was intended to regularize the situation of Guatemalans who enter Mexico on a temporary basis to work in agricultural activities and to legalize their presence in the country. During 1998, 40,000 Guatemalans obtained a migratory permit; in 1999, 41,436 did so.[33]

In accordance with Circular CRE-247-97, Guatemalans who wish to remain in Mexico on a temporary basis as agricultural workers must submit their identity documents to the Mexican authorities of the INM, together with two photographs, and fill out migratory form FMVA. This procedure is free of charge. Workers' family members or companions must each fill out a separate form. In turn, the workers and those accompanying them must provide the following information: their place of residence, employer's name, and the farm or *ejido* where they will work. The applicant retains the original temporary work permit and must keep it until his or her departure from Mexico. Agricultural workers who enter the state of Chiapas with the FMVA may remain there for a maximum of 365 days, counting from the date of their first entrance into the country. They may enter and leave the country multiple times during this period.[34]

A Guatemalan agricultural worker who enters the state of Chiapas with a FMVA may work on the farm or *ejido* of the employer designated in the temporary work permit. Any change of employer must be authorized by the corresponding immigration office. The FMVA cannot be used if it conflicts with any other immigration permit currently in use in the rest of the territory of Mexico.

These temporary international migrant agricultural workers should be distinguished from the population of Guatemalan refugees who reside in Southern Mexico. Between 1981-1984, the Mexican Secretariat of the Interior allowed approximately 46,000 Guatemalan refugees fleeing internal conflict, violence and political instability to enter the state of Chiapas.[35] Approximately 14,000 of these refugees moved to the southern states of Campeche and Quintana Roo, but the rest remained in Chiapas, where they engaged mainly in agricultural labor.[36] Currently, there are approximately 20,400 Guatemalan refugees living in Mexico.[37] The right of residence has been granted to this refugee population, and many have settled in Mexico with their families as legal residents who may acquire dual nationality as Guatemalans and Mexicans. Their status as immigrants entitles them to more rights than those who enter the country on a temporary basis, including the rights to purchase land and reside permanently in Mexico.[38]

Rights of Workers with Temporary Work Permits

The temporary work permit granted to Guatemalan workers under Circular No. CRE-247-97 is valid only to enter temporarily and engage in agricultural work in Chiapas. Under CRE-247-97, workers have the right to stay in Mexico for up to one year. They are not entitled to immigrate or acquire immigrant status on the basis of the time they accumulate as visitors. During the term of their permit, holders may enter and leave Chiapas on their way to and from Guatemala. Workers may take the wages earned from their labor in Mexico back to Guatemala. These workers may move to other cities as long as they do not leave the state of Chiapas. They are not tied to a single agricultural employer and may change jobs, but they must remain in paid agricultural work.

2. PROTECTION OF MIGRANT AGRICULTURAL WORKERS

A. Constitutional Rights to Equal Protection of Laws

Article 1 of the Mexican Constitution gives rights to every person in Mexico to enjoy guarantees of the Constitution. Article 33 provides that foreigners are in general entitled to the individual rights guarantees contained in the Constitution, but that the Federal Executive has the power to compel any foreigner whose stay it may deem inexpedient to leave Mexico immediately without the necessity of prior legal action, and that foreigners do not have the right to interfere in the political affairs of the nation.

In 1935 the Mexican Supreme Court of Justice decided that differential treatment of foreign workers such as that provided for in Articles 7 and 154 (see section 2(B)(2) below) of the LFT did not violate the Mexican Constitution.[39]

B. Protection of Migrant Agricultural Workers under General Labor and Employment Law and Social Program Benefits

The key labor laws governing the labor relations of private-sector workers in Mexico are Article 123(A) of the federal Constitution and the LFT. The rights contained in Article 123 directly govern relations between employers, workers and unions. Thus, for example, a worker could enforce directly against an employer his or her constitutional right to organize a union. Since the LFT covers each of the matters set out

in Article 123 and deals with them in greater detail, it is in practice the key point of reference in labor relations. In general, the rights contained in the LFT apply to most workers, including workers without valid immigration work permits.[40] The key social security law is the Ley de Seguro Social (Social Security Law - LSS).

In accordance with Article 133 of the Mexican Constitution and Article 6 of the LFT, duly signed and ratified international labor conventions form part of the domestic labor law of Mexico, insofar as they are to workers' benefit. In the case of a possible conflict related to the relative hierarchy or precedence between federal legislation and such an international agreement under Article 133 of the Constitution, the Mexican Supreme Court of Justice has established new criteria regarding the hierarchy of international agreements in the jurisprudential thesis called "Tratados internacionales se ubican jerárquicamente por encima de las leyes federales y en un segundo plano respecto a la Constitución federal."[41]

Among the international treaties ratified by Mexico, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families[42] provides that nonnational migrant workers shall enjoy treatment not less favorable than nationals in respect of a number of work-related matters. These include remuneration and other terms and conditions of employment, access to social and health services (subject to general eligibility requirements) and protections against dismissal (Articles 25, 43, and 54). Mexico has also ratified numerous International Labour Organization (ILO) conventions, including: Convention No. 29 (Forced Labour Convention, 1930); Convention No. 87 (Freedom of Association and Right to Organize Convention, 1948); Convention No. 100 (Equal Remuneration Convention, 1951); Convention No. 105 (Abolition of Forced Labour Convention, 1957); and Convention No. 111 (Discrimination (Employment and Occupation) Convention, 1958).

1) Collective Labor Relations Laws

Article 123 of the Constitution and the LFT provide the rights to form trade unions, organize and participate in lawful strikes. These provisions cover migrant agricultural workers. For a comprehensive treatment of these rights and related enforcement procedures, see Commission for Labor Cooperation, *Labor Relations Law in North America* (2000).

2) Protections against Discrimination in the Workplace

Article 123(A)(VII) of the Constitution provides that equal wages shall be paid for equal work, regardless of sex or nationality. The LFT provides more specific guarantees of equal pay for equal work.[43] Article 84 of the LFT states that "salaries are made up of daily cash payments, gratuities earnings, accommodation, bonuses, commissions, in-kind benefits and any other sum paid to the worker in exchange for his or her work." Thus all economic and in-kind benefits paid to Mexican workers must also be paid to their foreign counterparts doing equal work. These protections apply to migrant agricultural workers.

Article 3 of the LFT provides a more general protection, prohibiting discrimination in employment on the basis of race, sex, age, religious or political beliefs, or social condition. The scope of this latter protection has not yet been defined by tribunals.

On the other hand, Article 154 of the LFT states that for purposes of hiring and promotion Mexican workers should be preferred over their foreign counterparts. Article 7 of the LFT requires Mexican employers to employ at least 90 percent Mexican workers in every enterprise or establishment. Article 372 of the LFT prohibits foreign workers from being on the board of directors of a trade union. These provisions authorize employers to exclude, prefer or distinguish between workers on the basis of nationality (which could affect equality of opportunity and treatment in employment) in accordance with the ruling by the Mexican Supreme Court holding that these provisions do not contravene the Mexican Constitution.

Penal Legislation

As of October 1, 1999, Article 281Bis of the penal code of the Federal District establishes several "crimes against the dignity of persons." This provision states that anyone who denies or impairs labor rights because of age, sex, pregnancy, marital status, race, language, religion, ideology, sexual orientation, skin color, nationality, social origin or position, work or profession, economic position, physical characteristics, disability or health condition may be subject to sanction. Possible sanctions include: one to three years of incarceration, a fine of 50 to 200 times the daily wage, or 25 to 100 days of community service.

3) Equal Pay for Men and Women

The Mexican Constitution contains a clause establishing equal pay for men and women. Specifically, Article 123(VII) of the Constitution states that equal pay must be given for equal work, without regard to sex. Additionally, the LFT establishes the general principle that it is unlawful to distinguish between workers because of their sex (Article 3).

4) Minimum Employment Standards

The LFT provides workers, including migrant agricultural workers, with the following rights, among others:

- A worker has a contract with his or her employer that is for an indefinite term, unless the parties agree at the time of hiring to a specific duration. A contract for a specific duration can be made only in situations stipulated in the LFT, such as where the work to be done is of a temporary nature or where the contract is to provide a temporary substitute for another employee (Articles 35 and 37, LFT).
- A worker has the right to terminate a work relationship with his or her employer at any time for just cause, without being legally liable for doing so (Article 46, LFT). Upon

quitting, a worker may claim severance pay equal to three months salary and 20 days per year of service if the employer resorted to deceit or mistreatment or failed to respect key provisions of the labor contract (Articles 50 and 51, LFT).

- A worker has the right to a maximum daytime shift of eight hours, and a nighttime shift of seven hours.
- Workers have the right to a 200 percent overtime premium when they are required to work more than nine hours overtime in the course of one week (Article 68, LFT).
- The LFT prohibits the hiring of workers under the age of 14 as well as the employment of children between 14 and 16 years of age for nighttime work or in unhealthy or dangerous activities (Articles 173 and 175).
- Workers have the right to special protections during pregnancy, a 12-week paid maternity leave and to return to the position they previously held (Article 170).
- The LFT provides for the right to the cash payment of a general minimum wage, exempt from all deductions and discounts, which should be sufficient to satisfy the requirements of a normal family (Articles 84, 85, 90 and 97).
- Workers are entitled to one rest day per week with full salary payment (Article 69, LFT) and a 25 percent bonus when work must be performed on a Sunday (Article 71, LFT).
- Workers are entitled to a 200 percent premium when they work on their rest day (Article 73, LFT).
- Workers are entitled to an annual vacation period with full salary and vacation bonus payments upon completion of one year of service with an employer (Articles 76 and 80, LFT).
- Workers are entitled to a year-end bonus, to be paid before December 20, amounting to at least 15 days salary (Article 87, LFT).
- Workers are entitled to seven days obligatory rest per year, with full salary payment, for national holidays (Article 74, LFT).
- Workers have access to housing through the National Housing Fund (Article 136, LFT).
- In case of dismissal, nontemporary workers are entitled to receive a seniority bonus, equivalent to 12 days salary for every year worked, regardless of whether or not their dismissal was justifiable. Nontemporary workers who have completed at least 15 years of service with an employer are entitled to a seniority bonus when they leave the job voluntarily (Article 162, LFT).
- Workers have the right to receive training and instruction in the workplace (Article 153(A)).

Generally, agricultural workers are hired under temporary work arrangements. After they have worked for an employer for three months they are presumed to be permanent employees (Article 280, LFT). Workers who provide discontinuous services, as well as seasonal workers, have the right to annual vacation leave proportional to the number of days worked during the year and to a vacation bonus of no less than 25 percent of the salaries owed them during their vacation leave, in conformity with Articles 77 and 80 of LFT. In practical terms, however, because of their temporary status, migrant agricultural workers will generally not acquire sufficient seniority to be eligible for the LFT's mandatory minimum annual vacation leave and vacation bonus or for its seniority allowance upon termination of employment. Temporary workers are entitled to profit sharing only if they have worked for an enterprise for more than 60 days (Article 127, LFT).

The expiration of a limited-term work relationship does not give rise to a right to any payment under the LFT or the Constitution. On the other hand, if a worker is hired for a specific project the employer must employ the worker until the project is completed, unless the worker is dismissed for cause. This means in many cases that the employer may be legally obliged to continue the employment of a temporary agricultural worker for the duration of the agricultural season for which he or she was hired. Under Article 48 of the LFT, if a worker is dismissed without just cause, he or she may claim three months salary or reinstatement from the employer.

5) Child Labor Laws

The minimum age for employment in Mexico is 14. Article 5 of the LFT prohibits work under any circumstances by children younger than 14. General child labor laws apply both in agriculture and in other industries.

Children between the ages of 14 and 16 must complete primary and secondary school before they work, unless they receive special permission. To receive special permission to work, a child between 14 and16 must submit an application and documents showing that the work is compatible with the child's studies. This application is made to the Junta de Conciliación y Arbitraje (Conciliation and Arbitration Board - CAB). Authorization by the child's parents, union, CAB, labor inspector or political authority is also required. Employers may not hire children between 14 and 16 unless the children obtain a medical certificate that proves their ability to work.

The workday of a child aged 14 to 16 may not exceed six hours, divided into three-hour periods with at least an hour break in between. Nor may children under 16 work overtime, on Sundays, or during obligatory rest periods.

Children under 15 may not work on boats. Children under 16 may not work in establishments where alcoholic beverages are sold for immediate consumption or where their morality and good behavior will be affected. Nor may children under 16 engage in work that requires travel (unless they receive special authorization from the labor inspector), is underground or underwater, is dangerous and unhealthy, or impedes or retards normal physical growth. Night work (after 10 p.m.) is prohibited for anyone under 16. Children under 18 may not engage in nighttime industrial work. A person must be at least 18 years old to work in a place where he or she may be exposed to ionization or radiation, and the same applies to stokers.

Enforcement

Local and federal labor inspectors are responsible for ensuring that child labor laws are being complied with. Labor Inspectors must periodically inspect workplaces and conduct unexpected inspections when required to do so by their superiors or when a report of violations has been made.

Private complaints that child labor laws have been violated should be filed with the CAB. The Public Defender of Labor Rights (PROFEDET) designates a representative for children under 16.

Employers who use the labor of children aged 14 to 16 in overtime labor, on Sundays or during obligatory rest periods must pay the children 200 percent more than a normal day's salary. Employers who violate child labor laws may pay a fine that is three to 155 times the general minimum daily wage. Employers who violate labor laws that apply to agricultural workers must pay the equivalent of 15 to 155 times the general minimum daily wage.

6) Occupational Health and Safety

Article 123 of the Constitution establishes a general duty of employers to protect the health and safety of employees. Various laws, including the LFT and the LSS, require employers to obey safety standards, maintain compliance and compliance verification systems, ensure proper equipment and hazardous substance controls, facilitate the operation of joint health and safety committees, provide worker training and information about risks, and protect pregnant and lactating women. Detailed health and safety requirements included in Official Mexican Standards apply to particular hazards and particular types of work. Health and safety provisions apply to all employers, including agricultural employers.

An inspection system is used to enforce health and safety laws. Workplaces are subject to initial inspections upon opening, periodic (normally yearly) inspections, and verification inspections to check compliance with previous abatement orders. Special inspections may be carried out in response to worker or union complaints or on the basis of other information concerning accidents, mishaps, imminent dangers, or apparent irregularities or falsehoods in employer information.[44]

7) Compensation for Occupational Accidents and Injuries

Article 123(A)(XIV) of the Constitution and Title IX of the LFT entitle workers to wage indemnity in the event of occupational injury or illness. The LFT places the obligation to pay these amounts on the employer. Under the LFT, workers with a temporary total disability are eligible to receive the daily occupational or regional minimum wage (whichever applies to them), plus all other remuneration (except overtime) such as commissions or in-kind benefits, subject to an upper limit of twice the applicable minimum wage. Benefits are payable from the first day of injury. Where a worker is permanently disabled he or she is entitled, in the case of total disability, to a payment equal to three years salary. In the case of partial disability, he or she is entitled to a payment equal to a percentage of the total disability amount, depending upon the extent of partial disability. In the event of occupational death, the worker's family is eligible for death benefits equal to two years salary plus two months pay for funeral expenses. Article 513 defines 161 occupational diseases and the occupations considered susceptible to those diseases. To receive benefits for occupational disease a worker must be diagnosed with one of the 161 conditions and must have worked in an occupation stipulated in Article 513 as associated with the condition.

The LSS requires employers to register with the IMSS and obtain workers' compensation coverage for their workers. An employer that registers its workers with the IMSS fulfills its obligations under the LFT.[45] The IMSS in turn assumes the responsibility for making workers' compensation payments to workers who suffer on-the-job injuries and illnesses. If a worker is injured as a result of the inexcusable fault of his or her employer, the IMSS is required to provide additional benefits to the worker, and the employer is required to reimburse IMSS for those benefits.

8) Social Security: Health Insurance, Public Retirement and Disability Pensions and Other Benefits

The Mexican Ley de Seguro Social (LSS) provides a range of social benefits to qualified participants, including retirement and old age pensions, short-term and long-term disability benefits, health care benefits, maternity benefits, and life insurance, among others. Dependent family members of covered workers are eligible for health care benefits. Benefits are funded by a combination of employer, worker, and government contributions. Benefits coverage is either compulsory or voluntary. In 1997 benefits coverage became compulsory for all workers who are in a *relación de trabajo* (labor relation),[46] whether permanent or temporary.

Under the compulsory regime of the LSS, employers are obligated to register workers with the IMSS; keep records of worker salaries, wages and days worked; determine and pay employer contributions to IMSS; and make proper withholdings from worker salaries to pay worker contributions to IMSS. Workers must be registered to be eligible for benefits. If an employer fails to make contributions or makes partial contributions to IMSS on behalf of a registered worker, IMSS will pay benefits to the covered worker and hold the employer responsible for reimbursement and possibly additional fines.

In 1997, the IMSS adopted a new regulation governing social security in rural areas, aimed at providing social security coverage to temporary agricultural workers (as well as to others previously not covered by the social security law, such as small proprietors and *ejido* owners).[47] Under the new regulation, agricultural employers are obligated to provide IMSS with data related to workers on their agricultural enterprises, agricultural workers are required to obtain social security numbers, and agricultural employers are obligated

to ensure that their employees have social security numbers. If agricultural employers use intermediaries to hire agricultural workers for them, the employer and the intermediary are jointly obligated to establish that they are complying with LSS regulations in regard to registering and making social security contributions on behalf of their workers.

The IMSS commenced the registration of agricultural workers in 1998. So far, the greatest progress has been made in the states of Sinaloa and Sonora. The IMSS estimates that the entire agricultural worker population will be registered by 2004.[48] The registration process faces a number of challenges. Migrant agricultural workers often lack official documentation to identify themselves. Employers frequently submit incomplete employee lists. Workers and employers are often located a long way from registration centers and are frequently unaware of their respective rights and obligations. Worker dialects such as Mixtec, Zapotec and Triqui often pose communication problems for IMSS officials.[49] According to data provided by the IMSS, in 1999 it registered 7,112 agricultural workers in Michoacán; 7,105 in Jalisco; 4,622 in Morelos; and 4,000 in Nayarit, relatively small fractions of the total number of such workers in these states.[50] The Social Security Law requires a minimum of 1,250 weeks of contributions before a worker becomes entitled to retirement benefits and 750 weeks of contributions for a worker to become eligible for retirement medical benefits. For workers with intermittent work patterns, as is the case for many migrant agricultural workers, reaching this threshold may take considerably longer than 25 years.

A person who was previously in a *relación de trabajo* and who accumulated at least 52 weeks of contributions to IMSS may voluntarily continue coverage for disability and life insurance as well as retirement and old age benefits under special terms. Under those terms he or she may pay contributions in advance on a monthly basis. If he or she fails to make contributions for six months the voluntary affiliation is deemed to have ended.[51]

Health Services for the Uninsured

The Secretaría de Salud (Secretariat of Health – SS) provides health services to the poor and to those who are not covered by employment-based IMSS programs. IMSS also runs a Solidaridad (Solidarity) program, which operates a system of rural clinics to serve the uninsured.

Social Assistance

In addition to social assistance programs targeted specifically to serve agricultural workers, described below in section 2(C)(6), the Mexican government has several poverty alleviating programs in place.

Social Security and Foreign Workers

All agricultural workers now have the right to be registered with IMSS, including Guatemalan temporary agricultural workers in the state of Chiapas. These workers have the right to register with IMSS both because they qualify as legal immigrants and because of a 1998 agreement entered into between agricultural employers in Chiapas and IMSS. Foreigners who are not authorized to work in Mexico do not have the right to be registered with IMSS or to receive social security benefits.

9) Enforcement Procedures

The LFT is administered by STPS, and the LSS is administered by the IMSS. The LFT establishes a single entity to resolve employee and union claims arising under the LFT and out of employer-employee conflicts arising under the LSS. As noted above, enforcement is divided between federal and state authorities.

Administrative Labor Tribunals

The Conciliation and Arbitration Boards (CABs) are judicial tribunals belonging to the executive branch of government. They are charged with interpreting and enforcing the LFT and with intervening in cases of employer-employee conflict arising from the application of the LSS. They are composed in tripartite fashion of representatives of the government, workers and employers.

The federal CAB has its headquarters in Mexico City, but it also operates 45 external special boards and 22 special boards in Mexico City. In every state capital and in the Distrito Federal (D.F.) tripartite local CABs carry out equivalent functions within local jurisdiction. In total, over 100 CABs operate to enforce federal labor laws within their respective jurisdictions.

Any worker has the right to file a complaint with the relevant CAB to enforce individual employment rights under the LFT, or under a collective contract if the worker is covered by one. If the worker is covered by a collective contract, the union with title to it may represent the worker.

The final decisions of the CABs are called *laudos*. *Laudos* are judicial orders and immediately enforceable as such. A CAB may directly invoke police powers to enforce a *laudo*. There is no need to file a *laudo* with a court prior to its enforcement. Noncompliance with a CAB order subjects the violating party to fines or seizure of assets to satisfy the judgment.

The CABs have general powers to award remedies to provide redress for violations of the LFT. A *laudo* may require, among other things, the reinstatement or payment of severance to a worker unjustifiably discharged, or may order the employer otherwise to comply with the law or with the collective agreement. The chairperson of the CAB is empowered to take necessary measures to ensure prompt and expeditious enforcement of *laudos* (Article 940, LFT).

CABs may fine employers who fail to fulfill contract terms regarding wages, the workday and days off. Such fines can amount to 15 to 315 times the current general daily minimum wage, and fines can accumulate for prolonged violations with a 25 percent additional penalty. Each day of an ongoing violation of the law can be treated as a separate offence, subject to an additional fine.

The Federal Criminal Code and the criminal codes of the

states create a special category related to labor, including salary fraud. If a CAB decides upon review of the evidence in a case that there may be grounds for prosecution, it will direct the relevant file to the public prosecutor, who then decides whether to pursue criminal sanctions.

In addition to seeking remedies from the CABs, agricultural workers may seek some remedies from federal and state human rights commissions. The complaints heard by the human rights commissions generally focus on allegations such as illegal detention, irregular deportation, abuse of authority, violence against agricultural workers, etc.[52]

C. Special Laws and Programs Affecting Migrant Agricultural Workers

1) Pesticides in the Workplace

Chemical substances and products such as pesticides, fertilizers and insecticides used in agricultural production are governed by a number of overlapping laws and fall under the jurisdiction of six regulatory agencies. These agencies establish norms regulating the production, packaging, use and transportation of chemicals.[53] Two of the most important laws impacting pesticides and workplace safety regarding pesticides are the Ley General de Salud (General Health Law - LGS) and the LFT.

Pesticides, Fertilizers and Insecticides under the General Health Law

Title 12, Chapter XII of the LGS regulates toxic substances such as pesticides, fertilizers and insecticides.[54] The Secretary of Health is obligated to establish, in coordination with other pertinent federal agencies, classifications and characteristics of the various substances governed by the chapter.[55] All dangerous substances must contain a label that clearly states the dangers of using the product, how to handle the product, what it is to be used for, and measures to be taken if the product results in contamination.[56]

Pesticides, Fertilizers and Insecticides under the OSH Regulation

The LFT establishes duties of employers and workers regarding the maintenance of a safe and healthy work environment. The employer's duty is enforced under the Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo (General Regulation Regarding Safety and Health in the Workplace - OSH Regulation).

The third title of the OSH Regulation governs the use of contaminative chemical substances, including pesticides, fertilizers and insecticides. Under this title (Articles 82-84), employers are obligated to establish occupational health and safety measures to prevent contamination of the work environment and establish programs to reduce worker exposure to chemical substances. If a worker is exposed to dangerous chemicals, the employer must ensure that the worker receives medical texts prescribed under applicable norms.

Title 6 of the OSH Regulation governs oversight, inspections and administrative sanctions. Inspections are carried out by the STPS Inspección Federal del Trabajo (Federal Workplace Inspectorate). Violations of regulations governing chemical substances such as pesticides, fertilizers and insecticides are among those that garner the highest penalties under the OSH Regulation, between 15 and 315 times the daily minimum wage.[57] If the employer fails to remedy the workplace safety violation within the period determined by STPS, the penalty shall be doubled.[58] The STPS may close or partially close a work site which does not comply with the OSH Regulation.[59]

Official Mexican Pesticide Norms

In addition to general laws and regulations affecting the regulation of pesticides and other chemicals in the workplace, the Mexican government has issued several Normas Oficiales Mexicanas (Official Mexican Norms - NOMs) which contain technical standards on specific matters.[60]

On August 25, 1998, representatives from the Secretaría de Agricultura, Ganadería y Desarrollo Rural (Secretariat of Agriculture, Livestock and Rural Development - SAGDR), Secretaría del Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP - Secretariat of the Environment, Natural Resources and Fish), PRONJAG, STPS, and several worker and employer organizations met and approved NOM-003-STPS-1998, "Actividades agrícolas - uso de insumos fitosanitarios o plaguicidas e insumos de nutrición vegetal - condiciones de seguridad e higiene" (Agricultural Activities: Use of Phytosanitary Substances or Pesticides and Fertilizers – Conditions of Safety and Health - 1998 Pesticide Norm). This Pesticide Norm is part of a series of previously issued norms which regulate the aerial application of agricultural pesticides; the packaging of pesticides; the use of pesticides in agriculture, forestry, livestock raising, and industrial or urban gardening; health and saftey symbols and notices; and a system for the identification of health and safety risks from chemical substances in the workplace.[61] After undergoing a series of revisions in accordance with federal law, the norm was published as NOM-003-STPS-1999 on December 28, 1999, and went into effect 90 days later.

Under the 1998 Pesticide Norm, employers may apply pesticides and other agricultural chemicals only if they are registered with the Comisión Intersecretarial para el Control de Proceso y uso de Plaguicidas, Fertilizantes y Sustancias Tóxicas (CICOPLAFEST - Intersecretarial Commission for the Control of Processing and Use of Pesticides, Fertilizers, and Toxic Substances).[62] Employers must be prepared to show proper documentation to labor inspectors upon request.[63] In addition to setting these threshold requirements, the 1999 Pesticide Norm obligates employers to take educational and other measures to reduce the likelihood of pesticide poisoning in the workplace. Employers must educate workers about all the health risks associated with the use of pesticides, fertilizers and other agricultural chemicals, how to follow the instructions on agricultural chemical packaging, and how to interpret safety symbols. Workers who directly handle agricultural chemicals must be trained by the employer in how

to avoid chemical exposure to the skin, eyes, nostrils and lungs, how to use protective equipment, how to interpret safety information, and how to give emergency attention in the case of exposure.[65] Workers who receive training must be provided with proof of their participation in training sessions.[66]

The positive preventive obligations on employers include: ensuring that pregnant and lactating women as well as minors under the age of 18 avoid occupational exposure to pesticides;[67] providing and maintaining proper personal safety equipment;[68] providing soap and clean water to those exposed to pesticides;[69] maintaining a list of antidotes and medications against the poisonous effects of agricultural chemicals;[70] providing medical attention to workers who suffer accidental exposure to agricultural chemicals;[71] and maintaining a register of workers who have been exposed.[72]

The 1999 Pesticide Norm establishes the duties of workers who work with agricultural chemicals to: attend courses offered by their employers; comply with health and safety conditions for using agricultural chemicals; learn and follow safety instructions for each substance; comply with instructions for use and maintenance of personal safety equipment; submit to medical exams when asked to by their employers; refrain from eating, drinking and smoking when in contact with agricultural chemicals; and wash their hands with soap and water after being in contact with agricultural chemicals, especially before eating or going to the bathroom.[73] The 1999 Pesticide Norm prescribes steps to be taken in the event that workers suffer pesticide poisoning and includes a model medical questionnaire for workers who have suffered pesticide poisoning.

Additionally, the following current Official Mexican Norms (NOMs) are applicable to agricultural workers: (i) NOM-007-STPS-2000 (Actividades agrícolas-instalaciones, maquinaria, equipo y herramientas-condiciones de seguridad [Agricultural Activities: Infrastructure, Machinery, Equipment and Tools]), published on March 9, 2001; (ii) NOM-010-STPS-1999 (Condiciones de seguridad e higiene en los centros de trabajo donde se manejen, transporten, procesen o almacenen sustancias químicas capaces de generar contaminación en el medio ambiente laboral [Conditions of Safety and Health in Workplaces where Chemical Substances Capable of Polluting the Environment are Manipulated, Transported, Processed or Stored]), published on March 13, 2000; this norm abrogated 67 previous norms.

2) Workplace Housing

Section XII of Article 123 of the Constitution states that every agricultural, industrial, mining or other business concern is obliged to provide its workers with comfortable and hygienic housing. Article 283 of the LFT states that agricultural employers have an obligation to supply, free of charge, adequate and clean lodgings, in proportion to the number of dependent family members, and adjoining land for raising domestic animals.

3) Obligations of Agricultural Employers Using Labor Intermediaries

An enterprise that makes use of workers supplied by a labor contracting agent[74] such as a farm labor contractor is jointly and severally liable for all obligations to those workers under the LFT. Workers supplied by farm labor contractors are entitled to the same employment conditions and to the same rights as other workers carrying out similar work for the enterprise. Thus employers who make use of intermediaries are directly responsible for the labor commitments assumed by the latter, since the law presumes that the agents act on their behalf and with their authorization.

4) Transportation

If a worker is employed more than 100 kilometers from his or her normal place of residence, the costs of transporting the worker and the worker's family to and from the place of work, and of meals, must be borne by the employer (Articles 28 and 30, LFT). Intermediaries generally cover the cost of transporting migrant workers from their places of origin to the work areas.

5) Other Rights and Benefits under the LFT Particular to Agricultural Workers

Articles 279-284 provide certain rights and benefits particular to agricultural workers, including the following.

- Workers have the right to receive salary payments at the workplace and at intervals no greater than one week.
- Employers must provide workers and their family members with medical assistance and transportation to places where hospital attention may be received.
- Workers have a right to paid sick leave and medical assistance if they contract a tropical or endemic disease encountered in the region.

6) Special Programs

PRONJAG

The National Program for Agricultural Day Workers of the Secretariat of Social Development (PRONJAG) commenced in 1989 in Sinaloa and functions at the national level. The program promotes tripartite investment by the federal and state governments and by employers to improve living conditions of agricultural workers throughout the country. It implements social and community development projects and programs with the active participation of workers and their families.

Desarrollo Integral de la Familia (Institute for Integral Family Development)

In September 1997, the Desarrollo Integral de la Familia (DIF) of the state of Sinaloa commenced a program aimed at reducing the incidence of child labor in agricultural activities. This consists of giving a food grant to day workers'

families for every child aged between six and 12, as well as taking children out of labor activities and sending them to school. The program depends on funds provided by the state government and farmers, with additional and lesser resources contributed by the federal government. Beneficiaries receive nonperishable foodstuffs that form part of the basic diet of the Mexican family. Delivery is conditional on children's compliance with educational programs. Although this program has succeeded in removing many children from labor activities, its coverage remains limited.

7) International Conventions

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted by the United Nations (UN) on December 18, 1990, approved by the Mexican Congress on December 14, 1998, and the ratification document deposited with the UN on March 8, 1999. The Convention contains an extensive set of civil, political, social and economic rights for international migrant workers. With respect to labor and employment matters, it contains a series of guarantees of equal treatment for migrant workers[75] (see section 2(B)(2) above) and a guarantee of their right to form unions and other associations, among other things.

On September 5, 1990, Mexico ratified Convention 169 of the International Labor Organiation regarding the protection of indigenous and tribal groups. The Convention prohibits discrimination against indigenous workers. It also imposes a number of positive obligations on governments. Convention 169's provisions include obligations to eliminate discrimination against indigenous workers in all aspects of labor and employment relations, to ensure that indigenous migrant agricultural workers enjoy the same rights in respect of employment as other agricultural workers, and to protect indigenous workers from occupational hazards related to pesticide use and from coercive hiring arrangements such as debt peonage.

8) Legal Representation Assistance

Workers, including migrant agricultural workers, are entitled to free legal assistance in labor matters from the Federal Office of the Labor Public Defender of the STPS (in matters of federal jurisdiction) and from similar functionaries of the state departments of labor (in matters of state jurisdiction).

D. Due Process

Article 14 of the Constitution provides a general guarantee of due process of law in the legal system. The LFT contains extensive provisions in Articles 685 to 991 that apply due process guarantees in proceedings before the CABs.

Procedural Protections

Key elements of due process guarantees in CAB labor proceedings require that the proceedings be: (1) open to the public (with certain exceptions, such as not offending morals); (2) free, that is, there are no filing fees or other procedural costs; (3) immediate, in the sense that the members of the tribunal must be in personal contact with the parties; and (4) predominantly oral, short and simple. There is, however, no general right of access to an interpreter during legal proceedings for workers with limited comprehension of Spanish.

Parties to CAB proceedings have the right to receive notice of hearings and to attend them in person. The hearing must generally take place upon 10 days notice and within 15 days of the filing of the relevant complaint to the CAB. No specific form is required for tendering pleas or making statements. Parties have the right to be represented by an attorney during CAB proceedings.[76]

At the outset of proceedings, CABs seek to settle through conciliation the cases that come before them. If a settlement is not reached, the case moves to the hearing stage, where the CABs receive relevant evidence offered by employers and workers and hear their arguments. Hearings must continue from day to day until all the evidence has been reviewed. Parties may present evidence in support of their claims. At the request of a party, the CAB will compel the appearance of witnesses whom the parties may examine and cross-examine, provided that the evidence to be obtained through questioning such witnesses is relevant to the case. Parties have the right to respond to each other's pleadings, evidence and arguments.

The CAB evaluates the evidence and issues a decision called a *laudo*. The *laudo* must be issued in writing and contain a concise statement of the issue and the positions of the parties, an account of the evidence and the evaluation of the evidence by the CAB, the legal reasoning of its decision, underlying jurisprudence and legal doctrine, and the points resolved.

Mexican labor law assumes that employers have inherent advantage over workers in the employment relationship and in the intricacies of legal proceedings. Therefore the labor law is expressly *tutelar,* that is, protective of workers' rights. For example, the burden of proof in CAB cases almost always rests with the employer, which must produce evidence to support its position in the case. If a worker's complaint does not cover all of the legal grounds for relief that could be raised on the basis of facts alleged by the worker, the CAB must correct the complaint by adding those grounds (Article 685, LFT). CABs are also required to note any evident irregularities or matters in a worker's complaint which could lead to contradictory legal claims and provide the worker with three days to correct such matters (Article 873, LFT).

Impartiality and Independence of Decision Makers

Articles 643 to 645 of the LFT stipulate the grounds upon which a CAB chairperson may be dismissed and restricts those grounds to such matters as dereliction of duty, accepting gifts from a party, voting an evidently illegal or unjust decision, or failing to provide for timely enforcement of decisions.

Article 707 of the LFT sets out the grounds upon which CAB members may be legally disqualified from conciliating or hearing a particular case. These grounds include: a direct personal interest in the case; a relationship of economic dependence on one of the parties; a family, debtor/creditor, heir or legatee, or business partnership relationship with a party. A CAB member may not conciliate or hear a case in which he or she has acted as an attorney for a party or upon which he or she has issued an opinion. There is some disagreement among Mexican jurists over whether a CAB member who is assigned to adjudicate a case and who is a member of a union, union confederation or employers' organization that is a party to that case can be disqualified from adjudicating the case on those grounds.

CABs are required to make their awards in good faith, on the basis of well-informed truth and an appraisal of the facts made in good conscience (Article 841, LFT).

Amparo

The action for *amparo* (translated literally, "shelter" or "protection") is an institution which originated in Mexico and now forms part of the legal system of many Latin American countries. *Amparo* permits any person to obtain judicial review of a law or act or decision by a public authority which allegedly violates his or her constitutionally guaranteed individual rights. Articles 2 to 28 of the Mexican Constitution provide a set of civil and political rights including freedom of speech, press and assembly, rights in civil and criminal proceedings, property rights and social rights. These form the primary basis for *amparo* actions.

Articles 14 and 16 of the Constitution are of particular importance. These Articles ensure that legal decisions and actions affecting the rights of persons (including legal or artificial persons such as corporate employers or unions) are taken in accordance with both procedural due process and the law. In particular, Article 14 requires that the essential elements of procedural due process be observed in any proceedings in order to preserve the rights of every person involved. Due process requires that the parties be properly notified, represented and heard by a tribunal and that the proceedings of the tribunal be fair, unbiased and unaffected by coercion, intimidation or fraud. Article 14 also requires that in civil suits (including labor law matters) final judgments be made according to the letter of the juridical interpretation of the law or, in its absence, be based on the general principles of law. Article16 requires that acts or decisions of public authorities that directly affect individual persons or their property be specifically authorized and permitted by law.

The federal courts have exclusive jurisdiction over actions for *amparo.* An action for *amparo* must be filed with the court within 15 days of the act or decision being challenged.

Under the Ley de Amparo (*Amparo* Law - LA) courts are required in labor law matters to correct deficiencies in an *amparo* complaint to the benefit of the worker. The LA also provides that in labor law matters an employer must post a bond prior to a CAB's suspending the application of a decision or action with respect to which the employer seeks *amparo* review. A CAB president can give the worker the full amount of the bond posted by his or her counterpart, when the worker has been awarded a favorable sentence in the *amparo* and the employer is not willing to pay the amounts he was ordered to pay by the sentence passed by the board.

If the court's final decision grants *amparo* and determines that the authority's action (*resolución*), the law itself or the regulation complained of is unconstitutional, the petitioner's rights are protected by federal law and the challenged action, law or regulation is invalidated as a violation of the petitioner's individual rights.

Where a CAB decision is overturned, the court will identify the legal errors committed, indicate the legal interpretations that should govern, and direct that the CAB reopen or resume its proceedings so that a decision may be reached in accordance with those interpretations.

Notes

1. In Mexico, agricultural workers are often referred to as *jornaleros agrícolas*. A *jornalero(a)* is defined as a worker who sells his or her labor to an agricultural employer in exchange for a salary. A *jornalero(a)* works for a salary in planting, harvesting and cultivating crops that require manual labor, such as vegetables, fruits, and sugar cane. Programa nacional de jornaleros Agrícolas (PRONJAG), *Diagnóstico estadístico de jornaleros migrantes en campos Agrícolas de Sinaloa,* pp. 93-96, Glossary, p. 131.
2. Sánchez Muñohierro, Lourdes, participant in the panel "Practicas innovadoras en el sector Agrícola" in the trinational and tripartite conference, "Mejora del nivel de vida del menor: Los niños y jóvenes trabajadores en América del Norte," February 24-25, 1997, San Diego, California. López Gómez, Emilio, "Memorias del foro sobre jornaleros agricolas migrantes," La Paz, Baja California Sur, May 1997, p. 157. Conference, "Producción Agrícola y Jornaleros Migrantes en México y EUA."
3. Arroyo Sepúlva, Ramiro, Programa Nacional de Jornaleros Agrícolas (PRONJAG), Coordinación de Investigación. From the conference entitled "Los jornaleros agrícolas migrantes: Una visión nacional," published in the minutes from the forum "Foro Sobre Jornaleros Agrícolas Migrantes," La Paz, Baja California Sur, May 1997, pp. 27-44.
4. Lic. Lourdes Sánchez Muholierro, "La Familia jornalera: Seno del niño en situación especialmente dificil," UNICEF, *El trabajo infantil en México*, p. 29.
5. See SEDESOL, Programa Nacional de Jornaleros Agrícolas, "Anexo gráfico estadístico (Periodo 1990-1998)." In these states, and with the exception of Chihuahua and Tamaulipas, the Federal Government has established the Programa Nacional de Jornaleros Agríolas (PRONJAG), under the auspices of SEDESOL, to attend to the needs of the day worker population, since these states are characterized by the largest number and greatest mobility of migrant agricultural day workers.
6. Arroyo Sepúlva, Ramiro, Programa Nacional de Jornaleros Agrícolas (PRONJAG). From the conference entitled "Los Jornaleros Agrícolas Migrantes: Una Visión Nacional," published in the minutes from the forum "Foro Sobre Jornaleros Agrícolas Migrantes," La Paz, Baja California Sur, May 1997, p. 34.
7. See SEDESOL, Programa Nacional de Jornaleros Agrícolas, "Anexo gráfico estadístico (Periodo 1990-1998)."
8. Note 3, above, Arroyo Sepúlveda, pp. 27-44. See also Arroyo

Sepúlveda, "Programa Nacional de Jornaleros: Una visión nacional."

9. According to data from Mexico's Instituto Nacional de Estadística, Geografía e Informática (National Institute for Statistics, Geography and Informatics – INEGI), in 1985 Sinaloa had a registered day worker population of 144,254; Sonora had 67,489; Baja California, 40,370 and Baja California Sur, 11,357. In these states, agricultural workers are generally migrants, a fact that makes registration more difficult.
10. *Id.*
11. See Steven E. Sanderson, *The Transformation of Mexican Agriculture*, Princeton University Press, Princeton, New Jersey, 1986, pp. 43-44.
12. During the 1996-1997 fall-winter season, Sinaloa produced a total of 1,421,934 tons of vegetables valued at 3.6 billion pesos. This production required the efforts of approximately 250,000 day workers. Data obtained from the Secretaría de Agricultura, Ganadería y Desarrollo Rural (Secretariat of Agriculture, Livestock and Rural Development - SAGDR), *Statistical Yearbook*, Sinaloa, 1997.
13. SAGDR, Sinaloa, October 1997. Departamento de Estudios Económicos de Asociaciones Agrícolas, state of Sinaloa, Juanuary 1999. Instituto Mexicano del Seguro Social (IMSS), Sinaloa, August 1999.
14. Data from the SAGDR, Sinaloa, October 1997. Confirmed by the IMSS, Sinaloa office, August 1999.
15. Data provided by the chief delegation of the IMSS, Mexicali, Baja California, by Lic. Aureliano Cruz Monreal, August 1999. Serna Castillo, Ramiro, "Jornaleros Agrícolas en Baja California Sur," in "Foro Sobre Jornaleros Agrícolas." Data from the SAGDR, Baja California, from a personal Interview, August 1999.
16. Data from the IMSS, Sonora, from a personal interview with Alma Nidia Sotomayor from the SAGDR, Baja California, August 1999.
17. *Id.*
18. According to data provided by IMSS, Sonora and Sinaloa are the states with the highest numbers of seasonal agricultural workers. These data were supplied by the IMSS delegation in Sonora, in an interview with Ms. Alma Nidia Sotomayor, responsible for the registration system for Sinaloa state field workers, August 1999.
19. *Id.*
20. Ramiro Serna Castillo, state coordinator in Baja California Sur of the PRONJAG, "Jornaleros Agrícolas en Baja California, Una Experiencia en Proceso," from the minutes of the forum entitled "Foro Nacional de Jornaleros Agrícolas Migrantes," La Paz, Baja California Sur, May 1997.
21. Report by Francisco Reyes Retana, the Instituto Nacional de Migración, Secretary of State, Chiapas, September 2, 1999.
22. Interview with the Regional Migration Delegate of the State of Chiapas, Mr. Francisco Reyes Retana.
23. Lic. Reynaldo Morales Mercado, Local Delegate of the SAGDR, August 1999.
24. Geronimo Salinas, Local Delegate of the National Immigration Institute in the State of Chiapas, 1999.
25. Arroyo Sepúlveda, Ramiro, "Migrant Day Workers: A National Vision," National Forum on Migrant Agricultural Day Workers May 1997, La Paz, Baja California Sur, p. 34.
26. Guerra, María Teresa, *Los trabajadores de la horticultura Sinaloense*, Editorial UAS, 1997, pp. 58-59.
27. Article 123, Section XXXI of the Mexican Constitution states: Labor law enforcement belongs to the authorities of the states in their respective jurisdictions, but the following matters remain within the exclusive competence of the federal authorities:

    a) Branches of Industry and Services:

1. Textile	2. Electrical
3. Cinematography	4. Rubber
5. Sugar	6. Mining
7. Foundries and steel mills…	8. Energy
9. Petrochemical	10. Cement
11. Limestone	12. Automotive...
13. Chemical...	14. Pulp and paper
15. Vegetable oils	16. Packaged food processing...
17. Brewing ...	18. Railroads
19. Lumber...	20. Glass...
21. Tobacco...	22. Banks and credit unions

    b) Enterprises:
    1. Those administered directly or in decentralized form by the federal government.
    2. Those operating by virtue of a federal contract or concession, and connected industries.
    3. Those operating in federal zones or under federal jurisdiction, in territorial waters or in those included in the exclusive economic zone of the nation.

    Also within exclusive competence of the federal authorities are enforcement of labor laws in matters related to disputes that affect two or more federal entities, collective contracts that have been declared mandatory in more than one federal entity, employer obligations in education matters under the terms of the law, and with respect to employers' obligations in matters of training and skills development, as well as safety and health in the workplace, for which the federal authorities shall have the assistance of state authorities when it concerns branches or activities within state jurisdiction, according to the terms of the relevant regulatory law.
28. Articles 41, 42, 44 and 45 of the Ley General de Población (General Population Law – LGP).
29. Gerónimo Salinas, Local Delegate of the National Immigration Institute in the State of Chiapas, 1999.
30. *Id.*
31. Article 42 of the Ley General de Población refers to foreigners who enter the country as nonimmigrants and establishes two conditions for their legal residence: 1) they must have permission from the Secretariat of the Interior; and 2) their stay in the country must be temporary. Paragraph III of this article refers to nonimmigrants who enter the country as visitors and states that all foreigners who enter Mexico "for the purpose of performing legal and honest lucrative or nonlucrative activities, may obtain authorization to remain in the country for up to one year."
32. An *ejido* is a communal farm established under Article 27 of the Mexican Constitution of 1917. The communal owners of the farm, called *ejidatarios*, receive the land as a group and have rights to the land as long as they actively work and live on it. In 1992, the Mexican Constitution was amended to allow *ejidatarios* to sell or rent their land, or to use it as collateral for loans, which they were not allowed to do before. Philip L. Martin, *Trade and Migration: NAFTA and Agriculture*, Institute for International Economics, Washington, DC, 1993, p. 101.
33. Data taken from an interview with Mr. Gerónimo Salinas, Local Delegate of the Department of Migration of the Secretariat of the Interior in the state of Chiapas.
34. See the requirements of the Secretariat of the Interior in Cir-

cular No. CRE-280-97 of the Instituto Nacional de Migración (National Institute of Migration), signed by Mr. Fernando Solís Cámara.

35. México, Secretaría de Gobernación, "Perspectiva Historica del Refugio Guatemalteco en México," http:/www.gobernacion.gob.mx/Props_def/diseno4/frames4.html. According to the Ley General de Población (General Population Law – LGP), refugees are people who seek to protect their lives, safety or freedom from the generalized violence or massive infringement of human rights in their countries (Article 42, Ley General de Población).
36. *Id.*
37. On August 30, 1999, there were 5,635 in Campeche, 12,347 in Chiapas, and 2,423 in Quintana Roo. *Id.*
38. *Id.*
39. See *Habeas Corpus in Labor Issues,* no. 2840\35, Rentería Jesús, January 24, 1935, a unanimous, five-vote decision, *Semanario Judicial de la Federación*, fifth period, volume XLIII, p. 339.

    The labor laws that limit the number of foreign workers in each company to a given percentage in relation to the proportion of Mexican workers do not constitute a breach of Article 1 of the Constitution, which establishes that every individual is entitled to the guarantees granted by the Constitution ... neither do these laws contravene the guarantees set down in Article 4, since they do not prevent foreigners from engaging in the business or work that most suits them ... Is a country obliged to grant foreigners the same prerogatives as its citizens or, on the contrary, may and should it enact all possible provisions to protect the latter? It is a fact that this kind of provision exists in all countries ... the policy upheld by States is essentially protectionist, and is a means of avoiding competition ... and if this protection is admitted, why then should similar protection not be admitted for workers ... the International Labor Office itself recognizes that States are obliged to concede the same protection measures to foreigners and nationals only when the principle of reciprocity exists.
40. The key legal relationship around which Mexican labor and social security laws are generally organized is the *relacion de trabajo*. This is the relationship between a worker (*trabajador*) and an employer (*patron*). A *relacion de trabajo* is constituted when a worker performs subordinate work for another person in exchange for remuneration. No formalized contract of employment is necessary to constitute the relationship. A "worker" is thus an individual person who performs subordinate work for another person in exchange for remuneration. Subordinate work is work carried out by an individual obligated to obey the directions, instructions or orders of the person for whom it is done. Some agreements to provide services will not be considered a *relacion de trabajo*, since they do not involve subordinate work. For example, the relationship between a professional (such as a physician, architect or lawyer) and a client is often excluded from this category. Migrant agricultural workers are almost invariably "workers" in this legal sense.
41. Novena Epoca Instancia: Pleno Fuente: *Semanario Judicial de la Federación* y su *Gaceta* Tomo: X, Noviembre de 1999 Tesis: P. LXXVII/99 Página: 46 Materia: Constitucional Tesis aislada. "No obstante, esta Suprema Corte de Justicia considera que los tratados internacionales se encuentran en un segundo plano inmediatamente debajo de la Ley Fundemental y por encima del derecho federal y el local." ("Nevertheless, this Supreme Court of Justice considers that international agreements are on a second level immediately below Fundamental Law and above federal and local laws")
42. Adopted by the General Assembly of the United Nations on December 18, 1990.
43. LFT Article 5, Section XI prohibits any contract of employment, oral or written, that provides a salary lower than that paid to another worker in the same enterprise for work of equal efficiency, in the same class of work or equal work day, on the basis of age, sex, or nationality. Article 56 requires that employment rights and benefits be afforded to all workers on the basis of equal pay for equal work, without distinction as to race, nationality, sex, age, religious or political beliefs. Article 86 repeats the equal pay for equal work principle, expressly providing that "For equal work, performed at equivalent work posts, in an equivalent work day, and in equivalent conditions of efficiency, correspondingly equal pay must be provided."
44. For more information, see National Administrative Offices of Canada, the United States and Mexico, *Occupational Safety and Health Laws in the United States, Mexico and Canada*, 1999.
45. LSS Article 53.
46. See note 39, above.
47. Reglamento de la Seguridad Social para el Campo, Articles 2, 5,19. Temporary agricultural workers come under the obligatory social security regime, while *ejido* owners and small proprietors may voluntarily register themselves with IMSS.
48. Interview by Maria Teresa Guerra Ochoa with Ms. Alma Nidia Sotomayor, Head of the Registration System for agricultural workers in the State of Sinaloa August, 1999.
49. *Id.*
50. These data were obtained by means of telephone interviews with the state delegations of the IMSS in the states of Nayarit, Morelos, Michoacán and Jalisco. Figures cover up to August 1999 and were provided by the Heads of the Seasonal Agricultural Workers Insurance System in each state.
51. Insured workers who are no longer part of the compulsory regime preserve the rights they acquired to disability and life insurance for a period equal to one-fourth of the time covered by their weekly contributions. This period must be at least 12 months. The rights of a worker who reenrolls in the IMSS are determined by how long contributions to the worker's account were interrupted. If the worker's contributions were interrupted for less than three years, all the contributions are recognized at the time of enrollment. If the interruption is between three and six years, all of the previous contributions are recognized after the worker makes 26 weeks of contributions. If the interruption is more than six years, the worker must make a year's worth of contributions following reenrollment before the previous contributions are recognized. Contributions made to a worker's accounts for retirement and cessation of employment due to old or advanced age are registered under the worker's affiliation registration number, so contributions made by different employers during the worker's lifetime accumulate under that registration number.
52. National Human Rights Commission, *Reports on the Infringement of Immigrants' Human Rights, Southern Border,* 1996, pp. 101-109.
53. (1) the Health Secretariat (Secretaría de Salud (SS)); (2) the Secretariat of Agriculture, Livestock and Rural Development (Secretaría de Agricultura, Ganadería y Desarrollo Rural (SAGDR)); (3) the Secretariat of the Environment, Natural Resources and Fisheries (Secretaría del Medio Ambiente, Recursos Naturales y Pesca (SEMARNAP)); (4) the Secretariat of Commerce and Industrial Development (Secretaría de Comercio y

Fomento Industrial (SECOFI)); and to a lesser extent (5) the Secretariat of Communications and Transport (Secretaría de Comunicaciones y Transportes (SCT)) and (6) the Labor Secretariat (Secretaría de Trabajo y Previsión Social (STPS)). Commission for Environmental Cooperation, Summary of Environmental Laws, Mexico, 11. Chemical Substances and Products, http://www.cec.org/pubs_info_resources/law_treat_agree/summary_enviro_law/publication/mx11.cfm?varlan=english&year=2002

54. LGS, Article 278.
55. LGS, Article 279(I).
56. LGS, Article 281.
57. Articles 165-167 of the OSH Regulation establish the range of monetary penalties that can be imposed for different violations. The penalties are determined in multiples of the daily minimum wage. The range for penalties under Article 165 is between 15 and 105 times the daily minimum wage. Penalties under Article 166 range from 15 to 210 times the daily minimum wage. Penalties under Article 167 range from 15 to 315 times the daily minimum wage.
58. OSH Regulation, Article 168.
59. LFT, Article 512-D.
60. *See* Government of Mexico*: Comparison of Job Related Safety and Sanitation Programs in Mexico, Canada, and the U.S., Updated Information for Mexico 7 (1999)*.
61. 1998 Pesticide Norm, ¶ 3, which lists: NOM-052-FITO-1995, Phytosanitary Requirements and Specifications for Presenting Notice of Functioning for Physical and Moral Persons Dedicated to Aerial Application of Agricultural Pesticides; NOM-044-SSA1-1993, Packaging Requirements for Pesticide Containers; NOM-045-SSA1-1993, Pesticides, Products for Use in Agriculture, Forestry, Livestock, and Urban and Industrial Gardening; NOM-027-STPS-1994, Symbols and Notices in Health and Safety; NOM 114-STPS-1994, System for Identifying and Communicating Health and Safety Risks from Chemical Substances in the Work Place.
62. 1998 Pesticide Norm, ¶ 5.15.
63. 1998 Pesticide Norm, ¶ 5.1.
64. 1998 Pesticide Norm, ¶¶ 5.4, 5.5 and 5.6(a).
65. 1998 Pesticide Norm, ¶¶ 5.6(b)-5.6(e).
66. 1998 Pesticide Norm, ¶ 5.7.
67. 1998 Pesticide Norm, ¶ 5.2.
68. 1998 Pesticide Norm, ¶ 5.10.
69. 1998 Pesticide Norm, ¶ 5.8.
70. 1998 Pesticide Norm, ¶ 5.13.
71. 1998 Pesticide Norm, ¶ 5.12.
72. 1998 Pesticide Norm, ¶ 5.11.
73. 1998 Pesticide Norm, ¶¶ 6.1-6.7.
74. A labor contracting agent is defined as a person or corporation that contracts or intervenes in contracting for the services of a person or persons for the performance of work for an employer, without carrying out such work with the resources of its/his/her own enterprise (Articles 12, 13 and 14).
75. Article 3 of ILO Convention 169 provides that indigenous and tribal peoples shall enjoy the full measure of rights and fundamental freedoms without hindrance or discrimination. Article 24 provides that social security schemes shall be extended progressively to cover indigenous peoples and applied without discrimination.
76. A worker may choose to be represented at the conciliation stage of CAB proceedings, notwithstanding Article 876 of the LFT. See the *jurisprudencia* established in Contradicción de Tesis 16/83, *Semanario Judicial de la Federación*, octava época, tomo IV, primera parte, julio-diciembre de 1989, p. 330, analyzing the relationship between Articles 876 and 692 of the LFT.

UNITED STATES

1. BACKGROUND INFORMATION ON MIGRANT AGRICULTURAL WORKERS

A. Nationalities and Ethnic Origins of Migrant Agricultural Workers

The official U.S. National Agricultural Worker Survey (NAWS) estimates that there are approximately 2.5 million agricultural workers in the United States. Twenty-eight percent of these workers engage in beef, poultry, fish and other livestock production. Seventy-two percent engage in crop production, including horticultural products, cash grains, fruits, nuts and vegetables.[1] In fiscal 1999-2000, the NAWS found that 50 percent of those who engaged in crop production were migrants – workers who traveled more than 75 miles to obtain a job in U.S. agriculture.[2] Among migrants, 37 percent were international newcomers: workers who had recently traveled to the United States to work in crop agriculture for the first time. Some of these workers will settle in the United States while others will return to their country of origin.[3]

In fiscal 1999-2000, 55 percent of all hired crop farm workers (migrant and settled) were unauthorized and 85 percent were foreign-born. Among the foreign-born workers, 97 percent were born in Mexico. Approximately one-third (31 percent) of the foreign-born were legal permanent residents while two-thirds (65 percent) lacked authorization to work in the U.S.[4] The workers in each of these categories have a different relationship with immigration and labor authorities, with differing levels of protection based on their immigration status. Among the U.S.-born workers, 46 percent were Hispanic, 35 percent were non-Hispanic white, and 18 percent were non-Hispanic African-American.[5]

The primary language of many agricultural workers is Spanish. Due to an increasing number of migrants from Southern Mexico and Central America, some agricultural workers speak one of several indigenous languages, including Mixtec and Kanjobal, and may or may not speak Spanish or English.

B. Locations of Migrant Agricultural Work

Migrant agricultural workers can be found throughout the U.S. While some agricultural products can be machine-harvested (most grains, including corn, wheat and sorghum), much agriculture is labor-intensive and often requires use of the human hand and eye, including production of vegetables, tree fruits, nuts, berries, horticultural and greenhouse commodities and tobacco. The agricultural industry and related industries, like dairies and meatpacking plants, rely heavily on immigrant workers, both authorized and unauthorized.

Among all crop workers classified as migrants in fiscal 1999-2000, 39 percent were working in California, 21 percent in the Midwest, and 14 percent in the East.[6] California is one of the "Big Three" agricultural producing states in the U.S. The other two are Texas and Florida. Some of the main crops in California are citrus fruits, grapes, tomatoes, lettuce, melons and onions, among others. California is also a big meat producer (beef cattle, hogs and pigs).[7] Smaller shares of migrants were working in the Southeast (12 percent), the Northwest (eight percent) and the Southwest (seven percent). Poultry, eggs, tobacco and cotton are some of the main agricultural products of the Southeast. The Northwest is famous for its noncitrus fruit industry, especially apples and cherries. Southwestern states like Arizona, New Mexico and Texas are big producers of lettuce, tomatoes and dairy. The Northeast attracts migrants to work in dairies and the greenhouse/nursery industry. Significant production of cattle, hogs and pigs is found in the "Corn Belt" – the Midwest and the Great Plains.

U.S. agricultural employers rely heavily on migrant workers for getting crops harvested; in fiscal 1999-2000, migrants performed 61 percent of the harvest tasks. Migrants participate, however, in the full range of agricultural activities. In fiscal 1999-2000, migrants harvested crops (35 percent), and engaged in preharvest (23 percent), semi-skilled (15 percent), postharvest (six percent), and other activities (21 percent).[8] Over the same period, settled workers also harvested crops (22 percent), and engaged in preharvest (19 percent), postharvest (eight percent), semi-skilled (26 percent), and other activities (25 percent).

C. Common Hiring Arrangements

1) Formal Government Programs

A small percentage of the agricultural workforce is recruited by employers through the H-2A program, a formal government program. In 1952, the Immigration and Nationality Act (INA) established the H-2A temporary foreign worker program. The predecessor to the H-2A program, the *Bracero* program, began during World War II to meet the demands of Florida sugar cane growers and, later, East Coast apple growers. Unlike the *Bracero* Program (see box), the H-2A program continues in operation. In 1986, the program was split into the agricultural H-2A program and the nonagricultural H-2B program (H-2B pertains to some agriculture-related jobs, such as forestry).

In 1998, the Division of Foreign Labor Certifications of the Department of Labor (DOL) certified approximately 35,000 H-2A applications.[9] Of those, 5,700 H-2A jobs were certified in the northeastern states of Maine, New Hampshire,

Rhode Island, Vermont and New York, primarily in the apple industry. Some 15,300 H-2A jobs were certified in the tobacco industry in Virginia, Kentucky, North Carolina and Tennessee, and 2,300 H-2A jobs were certified in the vegetable industry in Georgia. In the West, 1,700 H-2A jobs were certified in the sheep herding and shearing industry in Utah, Wyoming, Idaho, California, Nevada and Oregon. Most H-2A program worker participants are male, and government sources estimate that a majority of the workers are under the age of 33.[10]

The H-2A program is implemented jointly by the DOL and the Immigration and Naturalization Service (INS). The application process for an agricultural employer who seeks temporary foreign agricultural workers is two-tiered.

Certification by the Department of Labor

First, the agricultural employer must obtain labor certification by demonstrating to the local DOL office that (1) there will be a labor shortage for the upcoming season; and (2) the job offer to the H-2A visa recipient will not "adversely affect" the wages and working conditions of similarly employed United States agricultural workers.

Issuance of Visa by Immigration and Naturalization Service

Second, the agricultural employer may secure H-2A visas from the INS upon receipt of the labor certification. An H-2A worker may work only for the employer[11] that secured his or her visa and must return home when the employment ends (unless the worker moves to a job with another authorized employer). U.S. law does not restrict the H-2A worker from sending remittances home.

Finally, an employer of an H2-A visa holder must provide employment to any qualified, eligible U.S. worker who applies to that employer until 50 percent of the period of the work contract under which the foreign worker who is in the job was hired has elapsed.

2) Private Arrangements

The majority of agricultural employers recruit agricultural workers directly or indirectly through informal arrangements. These employers often retain "farm labor contractors" (FLCs), sometimes called "crewleaders," to recruit, hire, transport and supervise migrant workers. The FLC operates as an intermediary between the agricultural workers and the agricultural employers. An FLC is defined under U.S. law as a person (other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association) who receives a fee for performing farm labor contracting activities.

D. Legal Jurisdiction over the Protection of Migrant Agricultural Workers

The federal government exerts jurisdiction over labor relations, minimum employment standards, occupational safety and health, general social security issues, and implementation of the Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA). States exert jurisdiction on issues such as workers' compensation, unemployment benefits, income security, and areas in which particular states may extend coverage and protection beyond that afforded by federal laws. Jurisdiction governing immigration status is solely a matter of federal jurisdiction.[12]

Note on History of the *Bracero* Program

Throughout its history, the U.S. agricultural industry has tapped several waves of immigrant workers from countries such as China, Japan, the Philippines, the British West Indies, Jamaica, Haiti, Mexico, and other Latin American nations. The agricultural industry tapped a pool of tens of thousands of Americans who lost their farms during the "dust bowl" years of the Great Depression in the 1930s. From 1942 to 1964, the United States entered into formal agreements with Mexico to recruit several million contract workers from Mexico to do agricultural work under the *Bracero* Program.

E. Immigration Rules Applicable to External Migrants

A foreign agricultural worker's right to seek or continue employment depends on his or her immigration status. If the agricultural worker is a naturalized U.S. citizen or is considered to be a permanent legal resident, he or she may seek employment anywhere in the United States. If the agricultural worker enters the United States under the H-2A program, then he or she may work only for the employer who obtained the visa for him or her. If an H-2A worker is in the United States and wants to change employers, the prospective new employer must file a new petition.[13] The agricultural worker may not start working until the new petition has been approved.

Likewise, a foreign agricultural worker's right to move in search of employment depends on his or her immigration status. The agricultural worker who enters the United States under the H-2A program may not move in search of employment. If the agricultural worker's employer wishes to move to another location, the employer must reapply for certification with the Department of Labor in the new locality.

Right to Immigrate

Under the INA, changing immigration status from temporary to permanent is included under "adjustment of status" (change of visa status) provisions. Rights to adjust status depend on the migrant's status under immigration law. A detailed discussion of all the nuances and complexities of U.S. immigration law is beyond the scope of this report, but the following general rules apply.

Legal Permanent Residents

Legal permanent residents are authorized to stay in the United States indefinitely, as long as they do not become subject to deportation for illegal activities outlined under U.S. immigration law.

Unauthorized Workers

External migrants who are not formally admitted or paroled into the United States and who engage in unauthorized employment are specifically excluded from adjusting their immigration status. Any alien who was ever employed in the United States without INS authorization or who has violated the terms of temporary, non work-related admission to the United States may not adjust his or her status.[14]

Exception: The SAW Program "Amnesty"

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA), which amended the INA. The IRCA contained a "special agricultural worker" (SAW) amnesty program, which resulted in the legalization of immigration status for about 1.1 million formerly unauthorized agricultural workers. Agricultural workers who became legal permanent residents of the United States under the IRCA are eligible to apply for citizenship.

Sanctions against Employers Who Hire Unauthorized Foreign Workers

In addition to legalizing approximately 1.1 million formerly unauthorized agricultural workers, the IRCA made the employment of unauthorized external migrants illegal and established sanctions against employers who hire and recruit unauthorized external migrants.[15] The IRCA specifically states that an employer who contracts or subcontracts with an intermediary (such as an FLC) who hires an unauthorized external migrant is presumed to have hired the unauthorized worker and is subject to sanctions. FLCs must comply with the employment verification system established by the IRCA, whereby workers must provide documentation showing that they may work in the United States. [16]

Since the IRCA was enacted, every person who works in the United States must complete section 1 of the I-9 form, providing an address, date of birth and a valid social security number. The person must also attest that he or she is either a U.S. citizen, a legal permanent resident or authorized to work in the U.S. under a temporary visa. In section 2 of the I-9 form, the employer must attest that he or she reviewed and verified the documents that establish the employee's identity and employment eligibility. Acceptable documents include a U.S. passport, an unexpired "green card" or a U.S. driver's license plus a U.S. social security card.

States May Not Impose Penalties for Hiring Unauthorized Workers

Eleven U.S. states have statutes that make it illegal to employ people who are not authorized to work in the United States.[17] These statutes contain criminal penalties and other sanctions against employers who hire unauthorized workers. In 1986, Congress amended the INA so that only the U.S. government may impose and enforce penalties for employing people unauthorized to work in the United States. Section 1324a(h)(2) of the IRCA preempts any state or local law that imposes civil or criminal penalties for employing, recruiting or referring for a fee people unauthorized to work in the United States. The Secretariat's research found no post-1986 reported cases where employers were prosecuted under these state statutes, but it is likely that the statutes would be declared invalid by a court if the states attempted to enforce them.

Temporary Agricultural Workers under the H-2A Program

Temporary agricultural workers under the H-2A program are authorized to stay in the United States for a specified period, normally less than one year. They have a 10-day grace period after their labor visas end to leave the country. When workers who participate in the H-2A program violate the terms of the visa or overstay their visa, they become unauthorized workers and may be deported.

2. PROTECTION OF MIGRANT AGRICULTURAL WORKERS

Because such a high proportion of agricultural workers in the United States are from outside the country, analysis of their situation is conducted along two axes: (1) their rights as agricultural workers; and (2) their rights as external migrants. Most of this section will discuss the relationship agricultural workers have to important labor legislation and the relationship foreign workers have to that legislation as either authorized or unauthorized workers. An authorized worker is one who has obtained the right to work in the United States through formal immigration procedures. An unauthorized worker is one who has entered the United States without complying with formal immigration requirements or who has outstayed the term of a legal visa.

A. Constitutional Rights to Equal Protection of Laws

The Fourteenth Amendment to the Constitution, which was adopted after the Civil War (1861-1865), provides that no state government shall deny to *any person* equal protection of the laws.[18] This doctrine applies to the federal government through the due process clause of the Fifth Amendment.[19] Under the equal protection doctrine, it is unconstitutional for states to enact legislation that discriminates against a discrete and insular minority of individuals.[20] The Fourteenth Amendment contains an explicit grant of power to Congress to enforce its provisions. Congress enacted the Civil Rights Act of 1866 and the Ku Klux Klan Act of 1871, which provide a private right of action to any person whose constitutional rights are violated by the actions of a governmental entity.[21]

The U.S. Supreme Court applies varying levels of scrutiny when deciding whether a state law violates the equal pro-

tection clause and is therefore unconstitutional. Discriminatory laws or facially neutral laws with a discriminatory impact are upheld only when there is a sufficiently important objective for discrimination, such as denying driver's licenses to minors under the age of 16. Laws that discriminate based on race or national origin are subject to strict scrutiny and are inherently suspect. Under strict scrutiny, the state must establish that it has a compelling interest that justifies and makes necessary the law in question.[22] Laws that discriminate based on gender are subject to intermediate scrutiny. Anyone challenging a state law must demonstrate that it operates to the peculiar advantage or disadvantage of a definable class. For instance, the Supreme Court has held that poor people as a group are not a suspect classification and discrimination against the poor is subject to the lesser scrutiny of rational basis.[23]

Generally, strict scrutiny is applied to evaluate state laws that discriminate against noncitizens because the Fourteenth Amendment applies not only to citizens but to all persons within the United States.[24] Intermediate scrutiny is applied to evaluating laws and state actions that discriminate against undocumented aliens.[25] The Court is deferent to federal laws that discriminate against noncitizens because such laws may implicate relations with foreign powers.[26]

Under the Fifth and Fourteenth Amendments of the U.S. Constitution, all persons, including undocumented aliens, have equal rights of access to the courts and to sue in order to enforce contracts and redress civil wrongs.[27]

Right to Travel

Further, the United States Supreme Court has ruled that all persons, including unauthorized aliens, have the constitutional right to travel across state lines.[28] All citizens and persons within the United States are free to travel throughout the United States uninhibited by statutes, rules or regulations which unreasonably burden or restrict their movement.[29] Because of the constitutional right to travel, states may not pass laws that discriminate against out-of-staters or people who cross state lines.

B. Protection of Migrant Agricultural Workers under General Labor and Employment Law and Social Program Benefits

1) Labor Relations Laws

Agricultural workers are not covered by the National Labor Relations Act (NLRA), which protects the rights of most other private sector workers to organize a union, bargain collectively, and strike. In industries covered by the law, the NLRA applies to both authorized and unauthorized external migrant workers. Reporting an unauthorized external migrant worker to the INS in retaliation for engaging in activities protected by the NLRA may constitute an unfair labor practice.[30]

State Labor Relations Law

Some states have enacted laws that govern agricultural labor relations. For instance, the State of California enacted the Agricultural Labor Relations Act (CALRA) in 1975.[31] The CALRA covers all agricultural workers exempted from the NLRA. In California, agricultural workers have the right to self-organize; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for mutual aid and protection. With some limitations, agricultural workers in California have the right to strike but are prohibited from engaging in secondary boycotts.[32]

The State of Maine enacted the Agricultural Employees Labor Relations Act[33] (MAELRA), which covers any employer that operates an egg processing facility with at least 500,000 birds and more than 100 agricultural workers. Under the MAELRA, agricultural workers have the right to self-organize; to form, join or assist labor organizations; to bargain collectively through representatives; and to engage in other mutual aid or protection. The MAELRA prohibits agricultural workers from, among other things, causing, attempting to cause, or participating in strikes against agricultural employers. Covered employers are prohibited from engaging in certain conduct including but not limited to locking out and blacklisting agricultural workers.

2) Protections against Discrimination in the Workplace

In General

The central statute prohibiting employment discrimination in the United States is Title VII of the Civil Rights Act of 1964, enacted by Congress as part of the civil rights legislative program during the administrations of Presidents Kennedy and Johnson. Title VII prohibits employment discrimination on the basis of "race, color, religion, sex, or national origin."[34] Title VII created the Equal Employment Opportunity Commission (EEOC), which accepts employment discrimination complaints. A person may not sue an employer in court for Title VII discrimination without first filing a complaint with the EEOC.

Sexual Harassment and Other Harassment

U.S. employment discrimination law prohibits sexual harassment in the workplace. An employer or supervisor may not demand sexual favors in exchange for a job offer, conditions at work, continuation of work, or a job promotion. Nor may an employer allow a "hostile work environment" to exist in the workplace. A hostile work environment is one where employees of a different race, color, religion, sex or national origin are made to feel uncomfortable by supervisors or other employees because of their difference. For instance, a supervisor who often makes negative remarks about women or allows employees to hang hangman's nooses to intimidate African Americans is creating a hostile work environment.

Employer Coverage by Federal and State Employment Discrimination Laws

Title VII was amended by the Equal Employment Opportunity Act of 1972 (EEOA), which increased the enforcement power of the EEOC so that it may sue employers that violate Title VII. The EEOA also expanded coverage of Title VII beyond private sector employment to include public employees at the state and federal level. Title VII covers only employers with 15 or more employees.

Most states, including the District of Columbia and the territories of Puerto Rico and the Virgin Islands, have enacted fair employment practices acts (FEPA) that prohibit employment discrimination. FEPAs create a state human relations or human rights commission where workers, including migrant agricultural workers, may file employment discrimination complaints. Ten states cover employers with the same minimum number of employees (15) as Title VII.[35] Thirty-six states, the District of Columbia, and the territories of Puerto Rico and the Virgin Islands cover employers with fewer than 15 employees. Of those 39 jurisdictions, 11 cover employers with at least one employee,[36] two cover employers with at least two employees,[37] one covers employers with at least three employees,[38] eight cover employers with at least four employees,[39] two cover employers with at least five employees,[40] four cover employers with at least six employees,[41] three cover employers with at least eight employees,[42] one covers employers with at least nine employees,[43] and one covers employers with at least 12 employees.[44] The fair employment practices laws of six of those jurisdictions do not specify a minimum number of employees for coverage.[44]

Migrant agricultural workers are covered by Title VII. A migrant agricultural worker's access to protection under Title VII and the EEOC depends on the agricultural worker's citizenship and immigration status. In some cases, access depends upon what type of discrimination the migrant agricultural worker suffers.

Noncitizens and Title VII

Citizens and legal permanent residents are fully protected under Title VII and have full access to EEOC complaint and enforcement mechanisms. Workers participating in the H-2A program do not have coverage under Title VII and the EEOC, although regulations relating to the H-2A program prohibit discrimination and blacklisting. Employment discrimination based on noncitizenship is not covered by Title VII.[46] In order for a noncitizen worker to be protected under Title VII, the worker would have to prove that discrimination based on citizenship was a pretext for discrimination based on national origin.

Unauthorized Workers and Title VII

Whether unauthorized workers are protected under Title VII is disputed. The EEOC takes the position that unauthorized workers are protected by Title VII and that unauthorized workers may file a Title VII charge because § 703 of Title VII uses the term "any individual" as opposed to "any citizen."[47] Title VII protection has been extended to unauthorized workers on the basis that Title VII does not explicitly exclude unauthorized workers.[48] One court case interpreting the law denied Title VII protection to unauthorized workers, reasoning that the IRCA makes it unlawful to hire unauthorized workers, unauthorized workers are unqualified for any job, and unauthorized workers do not have a remedy because to provide them with a remedy violates the IRCA.[49]

Despite the dispute in interpreting the law, the EEOC accepts complaints from unauthorized workers and has sued employers based on discrimination complaints filed by unauthorized workers. For example, in 2000, the EEOC obtained a money settlement from a California agricultural employer on behalf of women farm workers who were asked to provide sexual favors in exchange for a job offer.

Discrimination against Immigrants and IRCA

The Immigration and Nationality Act (INA), as amended by the 1986 Immigration Reform and Control Act (IRCA) and a series of amendments in 1990, prohibits discrimination based on national origin or citizenship status (except for unauthorized nonnationals). The IRCA prohibits discrimination in firing or refusing to hire, recruitment, or referral for a fee. Employers of four or more employees are covered by the antidiscrimination provisions of the IRCA.[50] The IRCA is not as comprehensive as Title VII, however, because it does not extend to terms and conditions of employment.

3) Equal Pay for Men and Women

The federal Equal Pay Act of 1963 prohibits discrimination in pay based on sex. The Equal Pay Act is an amendment to the Fair Labor Standards Act (FLSA), which is the federal law that regulates minimum standards in employment. Under the Equal Pay Act, employers must pay women and men the same salary for work of equal skill, effort and responsibility performed under similar working conditions. The Equal Pay Act applies to agricultural employers as well, subject to a few exceptions.

Equal Pay and Agricultural Workers

The Equal Pay Act applies to agricultural workers unless they fall under one of the narrow exceptions for agricultural workers under the FLSA. If an agricultural employer or worker falls under one of the exceptions under the FLSA, most states have equal pay laws that agricultural workers may use to find a remedy.

4) Minimum Employment Standards

The Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) provides minimum employment standards protection for most workers and was amended in 1966 to provide protection for agricultural workers. Under the FLSA, agricultural workers are entitled to the minimum wage, and employers must keep accurate payroll records. Agricultural workers are entitled to minimum wage even if they are paid on a piecework basis instead of by the

hour.[51] Agricultural workers are not entitled to overtime pay, however. Additionally, employers who used fewer than 500 worker-days of agricultural labor during a calendar quarter in the previous year (approximately seven full-time employees) are exempted from complying with the minimum wage and overtime provisions of the FLSA. With regard to child labor, federal and state laws that restrict child labor generally contain special exceptions for agricultural employers. In some circumstances, the FLSA allows children as young as 10 to work in agriculture, subject to certain restrictions depending on age and type of work. For agricultural jobs that are considered by the Department of Labor to be especially dangerous, a worker must be at least 16 years old.

While migrant agricultural workers are excluded from some minimum employment standards by virtue of their employment in the agricultural industry, no migrant agricultural worker is excluded from coverage under the FLSA by virtue of immigration status. In 1988, the Federal Court of Appeals for the 11th Circuit ruled that unauthorized workers are entitled to bring actions under the FLSA.[52] In a decision analyzing whether the IRCA[53] limited the rights of unauthorized workers under the FLSA, the court reasoned that the FLSA definition of "employee" does not exclude unauthorized workers.[54] Coverage of unauthorized workers coincides both with the FLSA's stated purpose of eliminating substandard working conditions and with the IRCA's stated purpose of eliminating employers' economic incentive to hire unauthorized workers.[55]

Remedies under the FLSA

Agricultural workers may sue their employer under the FLSA in federal or state court for the employer's failure to pay the minimum wage and other related violations. They may recover lost wages. Additionally, the court may award an additional amount up to the level of the lost wages as liquidated damages if the employer's actions were not reasonable or if the employer fails to show that he or she acted in good faith. Agricultural workers who prevail under the FLSA may be entitled to reasonable attorney's fees. The FLSA does not allow for class actions to be filed under its provisions.[56] Several workers may join as plaintiffs in a single lawsuit, however.

Government Enforcement of the FLSA

The U.S. Department of Labor (DOL) has the principal role in enforcing the minimum wage requirements and child labor provisions of the FLSA. This enforcement is carried out by the Wage and Hour Division (WHD), a unit of the DOL's Employment Standards Administration (ESA). The DOL may file a law suit against an employer to collect unpaid wages and to compel future compliance with the law. Once the DOL files suit, workers affected by the suit may not file private actions if they have not already done so. The DOL may seek an injunction to prevent the movement of "hot goods" (i.e., goods tainted by wage violations) in interstate commerce. The DOL may also impose civil money penalties on an employer for willful or repeated minimum wage violations; the maximum penalty is $1,000 per violation.

Retaliation under the FLSA

The FLSA prohibits discharge, discrimination and retaliation against a worker who files a complaint or causes proceedings to be instituted against an employer for violation of the FLSA's provisions.[57] The FLSA allows workers a private right of action against employers who violate the statute's antiretaliation provision.[58] Agricultural workers are covered under the antiretaliation provision of the FLSA. External migrant workers, including unauthorized workers, enjoy the protection of the FLSA's antiretaliation provisions. Employers are prohibited from reporting unauthorized workers to the INS in retaliation for exercising their rights under the FLSA.[59]

5) Child Labor Laws

The FLSA is the federal law that regulates child labor. Most states also regulate child labor.[60] In most cases, the stronger protection prevails when there is a conflict between federal and state child labor laws. As with other parts of the FLSA, federal child labor laws apply regardless of the immigration status of the employee or the employee's parents.

In General

The minimum age for most nonagricultural employment is 16. Children aged 14 to 16 may work in certain occupations in retail, food service and gasoline service establishments as long as the work does not interfere with school and health. The FLSA limits the number of hours children aged 14 to 16 may work. They may work only outside school hours, no more than three hours on a school day, no more than eight hours on a nonschool day, no more than 18 hours during a week when school is in session, no more than 40 hours during a week when school is not in session, and only between 7 a.m. and 7 p.m., except between June 1 and Labor Day when they may work until 9 p.m. Employers who employ minors may avoid unintentional violations of child labor provisions by obtaining certificates of age for their young workers. These certificates may be issued by either the WHD or by state governments. Children (even under age 14) may be employed to deliver newspapers, perform chores around homes and do casual baby-sitting. Children under age 18 are prohibited from employment in occupations and industries identified in the DOL's Hazardous Occupations Orders (e.g., operating power saws; working in excavations).

Child Labor in Agriculture

Federal child labor laws in agriculture are different from those that apply to other employment. In addition, state child labor laws in agriculture often differ from other industries.[61] Under the federal law, children must be 16 years old to work in agriculture during school hours. They must be 14 years old to work in agriculture outside school hours. There are no federal limits on the number of hours children may work in agriculture. Children aged 12 and 13 may work in agriculture with the written consent of their parents or on the same farm where their parents are employed. Children under 12

may work for their parents on a farm owned or operated by their parents, or with their parents' consent on a farm that is exempt from the minimum wage requirement (i.e., a farm using fewer than approximately seven full-time employees).

FLCs and other farm employers may be found in violation of child labor laws if they do not maintain accurate age records of child workers under the age of 16.

Hazardous Work in Agriculture

Children under 16 are prohibited from performing agricultural work the DOL has declared to be hazardous. Hazardous work in agriculture includes: operating large tractors and certain other heavy farm machinery; being in a pen with a bull, boar, stud horse, sow with suckling pigs, or cow with newborn calf; processing timber with a diameter of more than six inches; working on ladders and scaffolding over 20 feet high; driving vehicles that contain passengers; working in enclosed places with heavy fumes (e.g., an upright silo or manure pit); handling pesticides and other poisonous chemicals; using blasting agents; and working with ammonia.

Enforcement

The WHD of the DOL enforces child labor provisions of the FLSA. There is no private right of action under federal child labor laws. WHD investigators are responsible for inspecting and investigating to uncover child labor law violations in agricultural and nonagricultural workplaces. Complaints about violations of federal child labor laws should be made to the nearest WHD office. The law does not specify who may make complaints.

The remedies available to the DOL include civil money penalties and injunctive relief. Civil money penalties may be as high as $10,000 for each violation for each unlawfully employed child. The penalties are paid to the U.S. Treasury, not to the child or the child's family. The DOL may also sue for injunctive relief, to prevent an employer from illegally employing children in the future and to prevent the movement of "hot goods" (i.e., goods tainted by illegal child labor) in interstate commerce.

6) Occupational Health and Safety

The preeminent federal law governing occupational safety and health is the Occupational Safety and Health Act (OSH Act), enacted by Congress in 1970.[62] The OSH Act imposes a duty on employers to furnish each of their employees employment and a place of employment free from recognized hazards that cause or are likely to cause death or serious physical harm and mandates minimum national standards for safety and health, which are enforced by the federal Occupational Safety and Health Administration unless this function has been assumed by a state through an approved plan.[63] Currently 26 states and territories operate approved OSH plans.[64] All employees, including migrant workers, have the right to seek safety and health on the job without fear of retaliation. Employers cannot retaliate or discriminate against workers for exercising such rights as complaining to an employer, union, or the Occupational Safety and Health Administration (OSHA)about job safety and health hazards, filing safety or health grievances, or participating in an OSHA inspection.

Agricultural employers are included in the definition of "employer" under the OSH Act, but members of the immediate family of the farm employer are not regarded as employees entitled to coverage under the Act.[65] Through annual appropriations riders, the U.S. Congress has prohibited enforcement of the Act with respect to agricultural employers that have fewer than 11 employees and do not maintain a temporary labor camp.[66] It has been estimated that approximately 46 percent of hired farmworkers are employed on farms hiring fewer than 11 workers.[67] It has also been estimated that 91 percent of U.S. farms with hired labor expenditures have fewer than 10 workers.[68] States that administer their own occupational safety and health program under an OSHA-approved state plan are similarly restricted unless they use 100 percent state funds to enforce standards on small farms. A number of states, including Washington, Oregon and California, have chosen to use separate state funds to at least respond to safety and health complaints on small farms. A review of the occupational safety and health statutes of the 26 jurisdictions with approved plans did not reveal legal exclusion of agricultural workers from coverage, but further study would be required to determine whether they are excluded by regulation from application or enforcement of the law.

There are special laws affecting migrant agricultural workers in regard to field sanitation standards, occupational exposure to chemicals, and housing. These will be discussed more fully below.[69]

7) Compensation for Occupational Accidents and Injuries

General

Workers' compensation falls under the jurisdiction of each state. In 36 jurisdictions (including the District of Columbia, Puerto Rico and the Virgin Islands), it is compulsory for employers to provide workers' compensation insurance for agricultural workers.[70] In these jurisdictions, employers must obtain workers' compensation insurance with private carriers or with duly authorized self-insurance funds. Workers' compensation insurance for agricultural workers is elective in five states.[71] Laws in the remaining 12 states exclude agricultural workers from workers' compensation coverage.[72] Compulsory coverage is often subject to exceptions peculiar to agricultural workers. For instance, in Alaska, agricultural workers employed on a part-time basis are excluded. In Florida, farms that employ fewer than five regular employees and fewer than 12 other employees for fewer than 45 days in the same calendar year are exempt. In Georgia, only employees of the Department of Corrections who are engaged in farm and livestock operations are covered. The state of Maine excludes seasonal and casual agricultural workers.[73]

Workers' Compensation and the Unauthorized Worker

Unauthorized workers are entitled to workers' compensation benefits in a majority of U.S. states.[74] As in cases discussed above interpreting the FLSA and the NLRA, state supreme court justices have reasoned that the fundamental purposes underlying workers' compensation statutes are to promote safe work environments and provide compensation for workers who are hurt on the job.[75] One exception is the state of Virginia. In 1999, the Supreme Court of Virginia ruled that unauthorized workers were not entitled to workers' compensation benefits because they did not qualify as "employees" under the law. In 2000, the Virginia legislature amended its workers' compensation act so that unauthorized workers may receive limited benefits for on-the-job injuries. Undocumented workers in Virginia may not receive certain benefits other workers do, however. They may not receive vocational rehabilitation or weekly benefits for partial or total disability.

Nonresident Alien Beneficiaries under Workers' Compensation Laws

Many state laws contain specific provisions that limit workers' compensation benefits for nonresident alien beneficiaries or provide benefits which are different from those provided to workers who are nationals. In Georgia, death benefits to beneficiaries who are not residents of Canada or the United States are limited to $1,000, when the cap is normally $100,000. The Supreme Court of Georgia held that this cap was not a violation of the Equal Protection Clause.[76] Alabama law bars recovery of death benefits to the nonresident alien beneficiaries of a worker.[77] Florida limits the nonresident alien beneficiary's recovery of death benefits to a cap of $50,000.[78]

The H-2A Program

Under the H-2A temporary foreign worker program, employers must provide workers' compensation coverage or equivalent insurance that is comparable to what agricultural workers are entitled to in each jurisdiction.

8) Health Insurance

U.S. law does not guarantee workers the right to health insurance coverage. In all private industries, including agriculture, provision of health insurance coverage is left to the discretion of the employer. Public health insurance is available to the elderly (the Medicare program) and the poor (the Medicaid program). H-2A workers are excluded from Medicare and Medicaid coverage. Some legal permanent residents are excluded from Medicare and Medicaid coverage as well, depending on their immigration status and the state they live in. All unauthorized workers are excluded from Medicare and Medicaid coverage.

9) Unemployment Insurance

Congress extended coverage to most agricultural workers under the Federal Unemployment Tax Act (FUTA) in 1976. Under the FUTA, the DOL delegates to state labor agencies the power to operate unemployment programs, within certain guidelines. Differences between states' unemployment laws, as well as practical problems associated with migration, may prevent migrant agricultural workers from receiving unemployment benefits. Employers of H-2A workers are not subject to the FUTA tax, and states generally exclude these workers from unemployment compensation coverage under their laws. However, employers of H-2A agricultural workers are required to guarantee work for at least three-fourths of the stated contract period or pay for any shortfall in the absence of an emergency.

10) Social Security Benefits

The federal Social Security program provides the main public source of retirement and disability income in the United States. It is funded by payroll taxes imposed equally upon employers and employees. Most agricultural employers, including FLCs, and workers are covered by the federal Social Security Act.

Public Retirement Pensions

Eligible workers may retire with full Social Security benefits at age 65. Such workers may also choose to begin receiving reduced early retirement benefits as early as age 62. The amount of benefits a worker may receive is based upon that worker's earnings averaged over most of his or her working career. Higher lifetime earnings result in higher benefits.

In order to receive retirement benefits a worker must have earned a Social Security "credit" in each of a sufficient number of calendar quarters. A worker earns a credit when he or she pays social security taxes on a stipulated quarterly minimum amount of employment or self-employment earnings. For 1999 the minimum quarterly earnings needed to earn a credit was $740. Most workers must have at least 40 credits to receive retirement benefits. Agricultural workers, who tend to work on an intermittent basis, may have difficulty reaching the quarterly minimum earnings threshold. They may also have difficulty proving that they have reached that threshold if the employer does not make proper withholdings from their wages or does not make proper payments to the Social Security Administration.

Public Disability Pensions

The Social Security Act provides monthly cash payments, job retraining services, and medical insurance to those who are so severely disabled that they cannot engage in gainful work.[79] The amount of cash payments depends upon the worker's prior earnings and social security tax contributions, as well as the number of dependents the worker has. Cash payments do not begin until the sixth month of disability. The coverage of the Social Security disability benefits program is generally the same as that of the Social Security retirement benefits program.

Supplemental Security Income

Agricultural workers who do not qualify for a public retirement pension or disability benefit may qualify for Supplemental Security Income (SSI). The SSI program provides modest monthly payments to most elderly or severely disabled individuals with very limited incomes and financial resources. In order to receive SSI payments, a person must be over 65 years old or blind or "disabled" within the meaning of the Social Security Act.

Foreign Workers and Federal Social Security Programs

Temporary agricultural workers in the H-2A program and unauthorized workers are excluded from federal Social Security programs. In 1996, Congress passed legislation limiting the eligibility of both authorized and unauthorized external migrant workers to receive federal Social Security benefits. Authorized external migrants who entered the country after 1996 do not qualify for SSI or other direct benefit programs like food stamps. Those who received those benefits before 1996 and were properly entitled to receive them under the old law will continue to receive them. "Qualified aliens" (i.e., permanent resident aliens, refugees, asylum seekers, aliens paroled in the United States for at least one year, and aliens whose deportation has been withheld) are eligible for "federal public benefits," which include medical assistance, disability pension benefits, unemployment, housing and post-secondary education benefits.

11) Social Assistance

Temporary Assistance to Needy Families

Temporary Assistance to Needy Families (TANF) is a federal program that provides financing to states to establish a program that provides cash aid to certain needy families with or expecting children and provides parents with job preparation, work and support services such as child care services for workers seeking employment. These programs provide modest financial support to families meeting eligibility requirements. A majority of states also provide child care assistance for 12 months to help workers move off TANF assistance.

Food Stamps

The federally funded Food Stamps program provides certain low-income persons with vouchers that can be used to purchase food. Aid to able-bodied adults without dependent children is time limited.[80] State and local welfare agencies administer the program under standards established by the federal government.

Social Assistance and Foreign Workers

Unauthorized external migrant workers and some authorized migrant workers are not entitled to most federal social assistance programs. Exceptions, however, include emergency medical services, emergency disaster relief and, in some circumstances, immunization, testing and treatment for communicable diseases. Some states may establish special programs to provide social assistance to those excluded under federal law.

C. Special Laws and Programs Affecting Migrant Agricultural Workers

The principal federal statute that regulates agricultural employment is the federal Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA). The MSAWPA regulates three primary aspects of the agricultural employment relationship: farm labor contractors, housing and transportation. Other laws that regulate specific aspects of agricultural employment include: laws in a few states that supplement the MSAWPA; the Field Sanitation Standards (FSS) issued under the OSH Act; the Worker Protection Standard (WPS) issued under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and the H-2A Foreign Agricultural Worker Program.

1) Farm Labor Contractors

(i) The Migrant and Seasonal Agricultural Worker Protection Act

The MSAWPA was enacted by the U.S. Congress in 1983. The MSAWPA's antecedent was the Farm Labor Contractor's Registration Act (FLCRA), enacted by Congress in 1963. The MSAWPA provides special protection to both *migrant* agricultural workers and *seasonal* agricultural workers. A "migrant agricultural worker" is defined under the MSAWPA as a person employed in agricultural work of a seasonal or other temporary nature who is required to be absent overnight from his or her permanent place of residence. This definition specifically excludes H-2A foreign workers. A "seasonal agricultural worker" is defined as a person employed in agricultural work of a seasonal or temporary nature who is *not* required to be absent overnight from his or her permanent place of residence. There are minor differences in treatment of these two groups but, broadly, both groups are subject to the same protections under the MSAWPA. For purposes of this comparative report, however, both "migrant" and "seasonal" agricultural workers are treated as a single group under the report's general definition of "migrant agricultural workers."

Registration of Farm Labor Contractors

A primary objective of the MSAWPA is to regulate FLCs.[81] FLCs are required to obtain a registration certificate from the DOL. They are required to carry FLC registration at all times while engaging in farm labor contracting. The FLC registration certificate may or may not authorize the holder to engage in transporting or housing agricultural workers. Registered FLCs who house or transport agricultural workers without proper authorization from the DOL may be subject to sanctions from the DOL and can be sued by agricultural workers. FLCs who violate the terms of the registration certificate may have their certificate revoked or may

be denied renewal of their certificate in the future. No person may engage in farm labor contracting activity without a valid FLC certificate.

Information Requirements

All FLCs and agricultural employers who recruit migrant agricultural workers must comply with information and record keeping requirements under the MSAWPA.[82] Upon recruitment, migrant agricultural workers should be informed of: (1) the place of employment; (2) the wages to be paid; (3) the crops and the kinds of activities in which the worker may be employed; (4) the transportation, housing, and other benefits to be provided, if any; (5) the existence of a strike or work stoppage; and (6) the existence of any arrangements the FLC may have with an establishment to receive a commission from sales made to the migrant agricultural workers. Further, the FLC or agricultural employer must post a notice provided by the DOL which sets forth the rights and protections provided workers under the MSAWPA. Such rights include that of being provided upon request a written statement of the terms of recruitment listed above. FLCs and agricultural employers are specifically prohibited from knowingly providing false or misleading information to migrant agricultural workers regarding the terms, conditions or existence of employment.

Record Keeping Requirements

In addition to providing migrant agricultural workers with specific information pertaining to the work they will be performing, the FLC must keep detailed records regarding the employment of each migrant agricultural worker, including: (1) the basis on which wages are paid (whether hourly or piece rate); (2) the number of piecework units earned, if paid on a piecework basis; (3) the number of hours worked; (4) the gross pay; (5) the specific sums withheld from wages and the purpose of each withholding; and (6) the net pay.[83]

Language Requirements

The MSAWPA requires that employers provide information to migrant agricultural workers in written form, and that it be provided in English, Spanish, or any other language common to migrant agricultural workers who do not speak or are not literate in English. Additionally, the DOL is required to make forms available in English, Spanish and other languages commonly spoken among migrant agricultural workers.[84]

FLCs and Unauthorized Workers

The immigration laws (INA and IRCA) prohibit the hiring of unauthorized external migrant workers.

Remedies Available under the MSAWPA

Those agricultural workers who are covered by the MSAWPA may directly sue their employers in federal or state court. These workers may seek *actual damages* for unpaid wages, injuries caused by unlawful transportation practices, or other violations. Alternatively, they may seek *statutory damages*, which in most cases can be up to a maximum of $500 per plaintiff per violation. The law was recently amended to provide for a maximum of $10,000 per plaintiff in statutory damages in the case of certain egregious violations. However, the law also provides that agricultural workers who are covered by workers' compensation insurance may not sue for actual damages for bodily injury or death.

Additionally, agricultural workers may seek injunctive relief to prevent future MSAWPA violations. Agricultural workers may also file a class action under the MSAWPA. Agricultural workers may not recover attorney's fees under the MSAWPA.

Government Enforcement of the MSAWPA

The Wage and Hour Division (WHD) of the DOL enforces the MSAWPA. The DOL has the power and discretion to investigate and act upon a complaint that alleges any violation of the MSAWPA, including discrimination based on the exercise of rights granted under the statute. The DOL may file a law suit against an employer who violates the provisions of the MSAWPA, and it may seek civil injunctive relief restraining future violations and requiring payment of back wages. Under the MSAWPA, the DOL has the authority to seek criminal sanctions and to impose civil money penalties on violators. As under the FLSA, once the DOL sues, the affected employee loses the individual right to initiate a private cause of action.

An employer who commits a violation of the MSAWPA may be assessed a civil money penalty of not more than $1,000 for each violation. An employer who knowingly and willfully violates the MSAWPA or its regulations may be fined not more than $1,000 or sentenced to prison for not more than one year, or both. Subsequent violations carry a fine of not more than $10,000 or a prison sentence of not more than three years, or both. An FLC who violates the MSAWPA is subject to having his or her FLC certificate revoked or having future applications for certificates denied.

Retaliation for filing claims under the MSAWPA

Section 505 of the MSAWPA prohibits any person from discriminating against a migrant agricultural worker who files a complaint or institutes proceedings, testifies in proceedings, or exercises any right or protection afforded by the MSAWPA.[85] Discrimination is defined by the MSAWPA as intimidation, threats, restraint, coercion, blacklisting, discharge and other forms of discrimination. The worker's complaint or exercise of rights must be made "with just cause." If a migrant agricultural worker believes that any person has discriminated against him or her in violation of section 505, he or she must file a complaint with the DOL within 180 days of the violation. The DOL has the discretion to investigate the complaint as the DOL deems appropriate. If the DOL determines that section 505 was violated, the DOL shall bring an action in federal court against the violator. The MSAWPA does not provide migrant agricultural workers a private right of action for retaliation or discrimination that results from the exercise of rights under the MSAWPA.

(ii) Relevant State Statutes

Some states, including California and Florida, have statutes which provide further regulation of FLCs.

California
California supplements the MSAWPA with a chapter in the Licensing part of the Employment Regulation and Supervision Division of its Labor Code.[86] The State of California requires that all FLCs provide a statement of character and a proposal for how the applicant plans to conduct operations as an FLC. Further, applicants for the FLC license in California must deposit a $10,000 surety bond with the California Labor Commissioner, provide the names of all profit sharers, and declare a designee to receive service of summonses in the event that actions are filed against the FLC. Applicants must pass an oral or written exam concerning knowledge of laws and regulations regarding wages, hours, working conditions, housing, transportation, collective bargaining, and safe work practices related to pesticide use. The topics to be covered with regard to pesticide use include: field reentry regulations; worker pesticide safety training; employer responsibility for safe working conditions; and symptoms and appropriate treatment of pesticide poisoning. If an FLC in California recruits agricultural workers and transports them to a site where there is no work, the FLC must pay the agricultural workers at the rate they were promised. FLCs in California are prohibited from transporting women and minors under the age of 18 to houses of prostitution and ill repute. Aggrieved agricultural workers have a private right of action to sue violators under the California statute.

Florida
Florida supplements the MSAWPA with a Farm Labor Registration Law.[87] Like California, Florida requires that FLCs pass an examination before they may operate. The Florida law excludes drivers of carpools, often referred to as "*riteros*," from the definition of the FLC. In this context, a carpool is defined as an arrangement reached by and between agricultural workers for transportation to and from work for which the driver is not paid by someone other than the members of the carpool. Florida law also posits several duties in addition to those listed in the MSAWPA, including the duty to pay promptly all moneys due when those moneys have been entrusted to them for that purpose, the duty to comply with all valid contracts, and the duty to file a set of fingerprints with the Florida Department of Labor. Any person who violates the Florida Farm Labor Registration Law may be fined, jailed or subject to other civil penalties. The Florida Department of Labor has the power to investigate the activities of FLCs and file complaints about FLC activities in the circuit court of the county in which the FLC is doing business. Unlike the California law, the Florida law does not explicitly provide a private right of action for violations of its provisions.

2) Worker Housing

Under the MSAWPA and the OSH Act
Generally, U.S. law does not require agricultural employers to provide housing to migrant agricultural workers. Nevertheless, agricultural employers and other third parties often provide housing to migrant agricultural workers. If an agricultural employer does provide employment-related housing, that housing must comply with the safety and health standards of the OSH Act.[88] The MSAWPA requires that any person who owns or controls housing used by migrant agricultural workers must assure that the housing meets safety and health standards; operators of public accommodations such as motels are exempt from the MSAWPA requirement. OSH Act and MSAWPA standards for migrant housing are substantially the same. Housing used by migrant agricultural workers must also comply with all applicable state and local safety and health laws. Further, the MSAWPA requires agricultural employers who provide housing to post the terms and conditions of occupancy of such housing. OSHA's enforcement authority for most agricultural temporary labor camps was transferred to WHD in January 1997, along with field sanitation enforcement, but 14 states with OSHA-approved state plans have chosen to continue to enforce their own standards in these areas.[89]

Under the H-2A Temporary Worker Program
Employers who hire agricultural workers under the H-2A program are required to furnish housing to the workers, either in temporary labor camps or in other housing. The camps or housing must meet applicable federal and state standards.

3) Transportation

FLCs and other agricultural employers who provide transportation for migrant agricultural workers are subject to MSAWPA provisions that require that vehicles be safe and adequately insured and that drivers of vehicles be properly licensed.[90]

In 1996, Congress amended the MSAWPA to allow employers to avoid being sued by workers for dangerous transportation practices if they secure workers' compensation insurance and provide workers with information about their coverage.

4) Field Sanitation Standards

In 1987, OSHA issued the Field Sanitation Standard (FSS), a regulation which governs sanitation in hand-labor operations in the field.[91] The FSS applies to agricultural establishments where 11 or more hand-laborers are working in the field. Under the FSS, agricultural employers must ensure that agricultural workers have ready access to sufficient amounts of cool, sanitary and potable drinking water while working in the field. The use of common drinking cups or dippers is prohibited. Agricultural workers must also have access to sanitary toilet and hand washing facilities – one toilet and one

hand washing facility for every 20 workers. These facilities must be in close proximity to each other. The employer must notify the agricultural workers where the drinking water and toilet facilities are, inform them about good hygiene practices to minimize health hazards, and allow each employee reasonable opportunities during the work day to use water and sanitation facilities. OSHA's enforcement authority for field sanitation standards was transferred to WHD in January 1997, along with agricultural temporary labor camps, but 14 states with OSHA-approved state plans have chosen to continue to enforce their own standards in these areas.

5) Pesticides in the Workplace

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) governs the registration, labeling and use of pesticides. Under the FIFRA, the Environmental Protection Agency (EPA) issued the Worker Protection Standard (WPS), which protects agricultural workers from exposure to pesticides and agricultural chemicals. The WPS functions primarily through the training of individual pesticide handlers and agricultural workers about exposure to pesticides, including protection from and ways to mitigate exposure to pesticides.

Under the WPS, agricultural employers must comply with the following guidelines.

- Display the following information in a central location:
  - EPA safety poster;
  - Medical facility information; and
  - Basic facts about each recent pesticide application.
- Provide pesticide training to workers who have not had training at least once in the last five years, using certain EPA-approved materials regarding pesticides, within five days after starting work.
- Workers should be restricted from accessing fields during pesticide applications with posted warning signs and oral warnings.
- Workers should be restricted from accessing fields after pesticide applications during Restricted Entry Intervals (REI).[92]
- Establish decontamination sites in the event of pesticide exposure: water for washing and eye-flushing, soap and towels, and clean clothing.
- Communicate essential pesticide information from commercial pesticide applicators to owners or operators of the individual agricultural establishment.[93]
- Provide necessary information and transportation to a medical facility in the event of an emergency caused by pesticide exposure.

Government Enforcement

The EPA has sole responsibility for enforcement of the FIFRA and the WPS. In some states EPA has delegated its enforcement authority for WPS to the state government. OSHA may not issue or enforce regulations governing agricultural workers' exposure to pesticides.[94] In 1990, EPA and OSHA entered into a Memorandum of Understanding (MOU) to coordinate enforcement and improve each agency's efforts to protect workers, the public and the environment.[95] Under the MOU, EPA and OSHA agreed to develop annual work plans to identify and define shared priorities, as well as to cooperate in conducting periodic training programs for each other's personnel.[96] Additionally, OSHA will inform appropriate EPA officials about worker allegations of adverse reactions to chemical substances and observed violations of EPA-administered laws.[97]

Private Right of Action

Agricultural workers do not have a private right of action under the WPS. Most courts have ruled that workers exposed to pesticides in violation of WPS standards are precluded from filing a tort action against the manufacturer of the pesticide under state common law, reasoning that the FIFRA preempts such claims.[98]

Penalties

The penalties for noncompliance with the WPS include fines up to $1,000 per offense for private applicators and up to $5,000 per offense for commercial pesticide handling establishments. Knowing violation of the WPS may result in criminal penalties of up to $1,000 per offense or 30 days in jail for private applicators. In the case of commercial applicators, criminal penalties may be up to $25,000 or up to one year in jail. In some states, state laws that supplement EPA provide for additional penalties.

The WPS prohibits firing or retaliating against agricultural workers who seek to enforce its provisions.

6) Employment Rights under the H-2A Program

The H-2A program is a U.S. government visa program for temporary foreign agricultural workers (see Part I, Section C(1), above).

Minimum Standards

The H-2A program establishes the following minimum labor standards: (1) a minimum rate of pay; (2) notice to the employee of the contractual terms and conditions of employment; (3) reimbursement for travel expenses; and (4) guaranteed opportunity to work at least three-fourths of the contract period.

Agricultural employers who use the H-2A program must pay the highest of the following: the Adverse Effect Wage Rate (AEWR),[99] the applicable prevailing wage rate as established by the State Workforce Administration (SWA), or the federal or state minimum wage.

Agricultural workers participating in the H-2A program have the right to receive a copy of the terms and conditions of employment from the employer. The terms and conditions must include: (1) the beginning and ending dates of employment; (2) the conditions of employment, including information about transportation expenses, housing and meals to be paid for by the employer; (3) hours of work; (4) frequency and rate of pay; (5) the nature of the employment (e.g., the crops to be worked); (6) the tools and equipment required

(which will be provided at no cost by the employer); and (7) notice that workers' compensation insurance will be provided at no cost to the worker.

Employers are required to reimburse H-2A workers for inbound transportation costs incurred when they have completed 50 percent of the contract period (provided they do not reside within normal commuting distances). Employers are also required to provide outbound transportation and subsistence benefits for workers who complete the contract period. If the worker fails to complete the work contract and the employer makes required notice to the SWA, the employer is under no obligation to provide either transportation or subsistence costs from the place of employment.

Employer Record Keeping Requirements

The employer must maintain accurate and adequate records with respect to the worker's earnings, including field tally records, supporting summary payroll records and other records showing the nature and amount of the work performed, the number of hours of work offered each day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee), the hours actually worked each day by the worker (the number of hours of work offered the worker each day), the time the worker began and ended each work day, the rate of pay (both piece rate and/or hourly rate if applicable), the worker's earnings per pay period, the worker's home address, and the amount and reason for any and all deductions made from the worker's wages. These records must be maintained for not less than three years after the completion of the work contract.

The employer must provide the workers on or before each payday with an hours and earnings statement which includes total earnings for the pay period, worker's hourly rate and/or piece rate, the number of hours actually worked and the number of hours of work offered the worker, an itemization of all deductions made from the worker's wages and, if piece rates are used, the number of units produced daily.

Waiver of any of the rights provided to workers participating in the H-2A program is specifically prohibited by DOL regulation. If an employer or agricultural worker waives the foregoing rights or obligations, the waiver is contrary to public policy and is unenforceable.

Enforcement

The Wage and Hour Division (WHD) of the federal DOL is charged with administering and enforcing the H-2A program. H-2A workers and other persons may file complaints alleging violations of the H-2A regulations and their employment contracts. The WHD investigates reports of work contract violations, including violations of transportation and housing requirements, wage requirements, and discrimination against H-2A workers who report violations. The complaint may be made to any agency within the DOL, including state employment services offices, which are obligated to forward the complaint to the WHD. The WHD has the authority to conduct investigations in a manner that keeps the identity of the complainant confidential. It also has the authority to collect back wages, to assess civil money penalties, and to seek an injunction against any H-2A employer who violates the program's requirements (including failure to cooperate in an investigation). Employers who are found by the DOL to be in violation of the terms of the H-2A program may have future applications for H-2A workers denied. The statute and regulations do not provide H-2A workers a private right of action to sue employers who violate the provisions of the program.

Retaliation under the H-2A Program

H-2A regulations specifically prohibit discrimination against a worker who has (1) filed a complaint or made a report about work contract violations; (2) testified in a proceeding relating to such a complaint or report; (3) sought protection for rights granted under the H-2A program; or (4) consulted with an attorney or legal assistance program about such issues. Forms of prohibited discrimination include threats, restraint, coercion, blacklisting, discharge, or other discriminatory actions. The WHD has the authority to investigate claims of discrimination and to levy fines, seek injunctive relief, or seek other remedies when it determines that unlawful discrimination has occurred. Like violations of other H-2A provisions, a violation of the antidiscrimination prohibition can result in future denials of an employer's applications for H-2A workers.

7) Legal Services Programs for Agricultural Workers

In General

Most agricultural workers are financially eligible for free legal services, called Legal Aid, in the United States. In 1974, Congress passed the first Legal Services Corporation Act (LSCA). The LSCA was designed to provide equal access to the justice system for people who cannot afford legal counsel in civil matters.[100] The LSCA established the Legal Services Corporation (LSC), an independent corporation with the power to provide financial assistance to qualified legal aid programs by making grants or entering into contracts.[101] Rural legal assistance programs are often devoted solely to providing representation to agricultural workers and conducting outreach to educate agricultural workers about their legal rights. Legal assistance programs do not provide legal representation in criminal or immigration cases and are prohibited from representing clients in fee-generating cases (such as workers' compensation cases), although they may represent clients in cases that do not generate fees (such as unemployment appeals).

Legal Assistance and Foreign Workers

Recipients of LSC funds may provide legal assistance only to U.S. citizens and eligible aliens.[102] Included among those eligible for legal assistance are H-2A agricultural workers, who are eligible to receive legal aid assistance for actions related to wages, housing, transportation, and employment rights

specified in the worker's contract.[103] Also included are aliens who qualify as special agricultural workers (SAWs) under the IRCA.[104] Legal aid offices that receive LSC funds are prohibited from representing undocumented workers, must verify the eligibility of applicants for legal assistance using documents as evidence of citizenship or legal residence, and can be fined or have funding terminated for providing services to ineligible applicants.[105]

D. Due Process

In General

The procedural rights of agricultural workers differ depending upon the applicable law. Under all court procedures and most administrative procedures, the general rule is: where there is a hearing process, parties generally have the right to subpoena witnesses and documents, examine and cross-examine witnesses, utilize rules of evidence, obtain procedures open to the public, and secure at least a limited form of judicial review. The most significant exception to the general rule is the INS, which is exempted from complying with procedural due process requirements for some foreigners, including some foreign agricultural workers.

Immigration Authorities

Authorized external migrant workers may be deported if they violate their visa terms or commit acts determined under the INA to be grounds for deportation. External migrant workers who are unauthorized may be deported for entering the U.S. or engaging in work without authorization.

External migrant workers have the following rights at a deportation hearing: reasonable opportunity to be present; notice of the nature of charges and the time and place of hearing; and reasonable opportunity to examine evidence. The external migrant has the privilege, but not the right, to be represented at such a hearing. While certain phases of the proceeding are translated as a matter of course, the external migrant worker does not have the right to translation of the entire deportation or exclusion proceeding.[106] U.S. case law states that the U.S. Constitution requires than an alien receive a full and fair hearing, but error is overturned only if it causes the alien to suffer some prejudice.[107]

Appeals and Judicial Review

Most agricultural workers have the right to appeal an adverse decision by an administrative tribunal or a court to a higher court authority. This right is not affected by the worker's status either as an agricultural worker or as an unauthorized external migrant if the worker is unauthorized. Such workers have the same right to appeal as all other participants in litigation. Regulations under the H-2A program, however, restrict the right of an H-2A temporary agricultural worker to appeal the decision of the DOL not to take action on a complaint based on violations of the H-2A program by the employer.

Notes

1. U.S. Department of Labor, Office of the Assistant Secretary of Policy, Office of Program Economics, *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*, Research Report No. 5, p. 1. There are an estimated 2.5 million agricultural workers in the United States. Experts believe that this number may be an underestimate due to the difficulty of obtaining census information about migrant agricultural workers. Many agricultural workers have no fixed address; are highly migratory; have limited English-speaking ability; have low educational levels; work intermittently; have casual employer-employee links; and live in rural, remote areas. Department of Labor, Employment and Training Administration Notice, "Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Allocation Formula" [01/16/97]; Volume 62, Number 11, pp. 2387-2394, at p. 2388. The United States Department of Labor (DOL) recently reported that 1.6 million agricultural workers perform "seasonal agricultural services," including a variety of tasks related to the production and harvest of fruit, vegetables, nuts, horticultural, grain and fiber and excluding livestock and dairy production. *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*, Research Report No. 5, p. 2. While not able to report exact median incomes, the National Agricultural Workers Survey found in fiscal 1997-98 that one-half of all individual farmworkers earned less than $7,500 per year and one-half of all farmworker families earned less than $10,000 per year. Consequently, three out of five farmworker families had incomes below the poverty level. *Findings from the National Agricultural Workers Survey (NAWS): A Demographic and Employment Profile of United States Farmworkers.* U.S. Department of Labor, Office of the Assistant Secretary for Policy, Office of Program Economics, Research Report No. 8. March 2000. http://www.dol.gov/asp/programs/agworker/report_8.pdf
2. Unless otherwise specified, the information reported in this section comes from previously unpublished data obtained between October 1, 1998, and September 30, 2000, from 7077 personal interviews with crop farmworkers via the National Agricultural Workers Survey (NAWS).
3. There are many types of migrants, including those who move back-and-forth between a foreign country and the United States, often referred to as "shuttle migrants"; those who live in the United States but who travel more than 75 miles to work (domestic shuttle migrants); and those who have a home base either in the United States or abroad and have at least two U.S. farm jobs that are more than 75 miles apart, often referred to as "follow-the-crop migrants." In 1999-2000, 70 percent of migrants were international (37 percent newcomer; 5 percent follow-the-crop; 28 percent shuttle), and 30 percent were domestic (6 percent newcomer; 12 percent shuttle; 12 percent follow-the-crop).
4. Three percent of the foreign-born were naturalized citizens of the United States, and one percent were authorized to work as either a foreign student, refugee, asylee, or someone whose adjustment of status was pending under family sponsorship.
5. Department of Labor, Office of the Assistant Secretary of Policy, Office of Program Economics, *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market*, National Agricultural Workers Survey, April, 1997 www.dol.gov/dol/asp/public/programs/agworker/report/main.htm.
6. The NAWS is an employment-based random survey of hired

crop workers and it is designed so that workers are sampled during peak labor use.
7. United States Department of Agriculture, National Agricultural Statistics Service, 1997 Census of Agriculture, available at http://www.nass.usda.gov/census/.
8. Semi-skilled tasks include pruning, irrigating, operating machinery and applying pesticides.
9. James H. Norris, et al., Unofficial H-2A Report, Fiscal Year 1998, prepared by the Division of Foreign Labor Certifications, United States Department of Labor, revised June 1999, p. 2. The Division certified approximately 23,000 applications in 1997.
10. There is no limit on the number of H-2A visas that can be issued, in contrast to other programs like the H-2B and H-1B
11. An employer can be a person, firm, corporation or association. 20CFR 655.100(b).
12. U.S. Const., Art. I, § 8 ("The Congress shall have Power To … establish an uniform Rule of Naturalization…").
13. INS Form I-129.
14. 8 C.F.R. §§ 245.1(a)(10).
15. 8 U.S.C. § 1324a(a) (1999).
16. 8 U.S.C. § 1324a(b) (1999).
17. Connecticut, Florida, Kansas, Louisiana, Maine, Massachusetts, Montana, New Hampshire, Tennessee, Vermont, Virginia.
18. For a more in-depth discussion of equal protection and other U.S. constitutional issues, see Erwin Chemerinsky, *Constitutional Law Principles and Policies*, Aspen Law and Business (1997).
19. *Bolling v. Sharpe*, 347 U.S. 497 (1954).
20. *Graham v. Richardson*, 403 U.S. 365 (1971).
21. 18 U.S.C. § 1983 (1871). ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, suit in equity or other proper proceeding for redress.") See also 42 U.S.C. § 242 (Deprivation of rights under color of law); 42 U.S.C. § 1982 (Property rights of citizens); 42 U.S.C. § 1985 (Conspiracy to interfere with civil rights).
22. Black's Law Dictionary, Seventh Edition, West Publishing Co., 1999.
23. *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973).
24. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Graham v. Richardson*, 403 U.S. 365 (1971). Often the issue of whether a state law unconstitutionally discriminates against noncitizens is never reached, however, because of the Pre-emption Doctrine, which states that the federal government wholly occupies the field of immigration matters. *DeCanas v. Bica*, 424 U.S. 351 (1976). The exception to the general rule consists of state laws that regulate self-government and the democratic process, for instance laws that excluded noncitizens from voting, holding political office, serving on juries or being a police officer.
25. *Plyler v. Doe*, 457 U.S. 202 (1982).
26. *Matthews v. Diaz*, 426 U.S. 67 (1976).
27. See also 42 U.S.C. § 1981. ("All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other.")
28. *Shapiro v. Thompson,* 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *United States v. Guest*, 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 239 (1966).
29. *Shapiro*, 394 U.S. at 629, *Macias v. Department of Labor and Industries of the State of Washington*, 100 Wash.2d 263, 269, 668 P.2d 1278, 1284 (1983).
30. Although some external migrant workers are exempted from the NLRA by virtue of their status as agricultural workers, they are not excluded by virtue of their status as external migrants. The NLRA applies to both authorized and unauthorized external migrant workers because extending coverage to unauthorized external migrant workers is consistent with the NLRA's purpose of encouraging and protecting the collective bargaining process. Reporting an unauthorized external migrant worker to the INS in retaliation for engaging in activities protected by the NLRA may constitute an unfair labor practice. *Sure-Tan, Inc. et al. v. NLRA*, 467 U.S. 883 (1984); *NLRB v. APRA Fuel Oil Buyers Group, Inc.*, 134 F.3d 50 (2d Cir. 1997).
31. Cal. Lab. Code §§ 1140-1166 (Deering 1996).
32. Cal. Lab. Code § 1154(d)(1)-(4) (Deering 1996).
33. Me. Rev. Stat. Ann. tit. 26, § 1321-1334 (West Supp. 1998).
34. The other titles of the Civil Rights Act prohibit discrimination in areas other than employment, including voting rights (Title I), public facilities and accommodations (Titles II and III), and federally assisted programs (Title VI).
35. Arizona, Florida, Illinois, Louisiana, Maryland, Nebraska, Nevada, Oklahoma, South Carolina and Texas.
36. Alaska, District of Columbia, Hawaii, Michigan, Minnesota, Montana, North Dakota, Oregon, Utah, Vermont and Wisconsin.
37. The Virgin Islands and Wyoming.
38. Connecticut.
39. Delaware, Iowa, Kansas, New Mexico, New York, Ohio, Pennsylvania, and Rhode Island.
40. California and Idaho.
41. Indiana, Massachusetts, Missouri and New Hampshire.
42. Kentucky, Tennessee and Washington.
43. Arkansas.
44. West Virginia.
45. Colorado, Maine, New Jersey, Puerto Rico, South Dakota and Virginia.
46. *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973).
47. EEOC Compliance Manual, § 622.7(a).
48. *EEOC v. Tortilleria La Mejor*, 758 F.Supp. 585 (E.D. Cal. 1991).
49. *Egbuna v. Time-Life Libraries, Inc.*, 153 F.3d 184 (4th Circuit 1998); *cf.* Dissenting Opinion, *Egbuna*; House Education and Labor Report on IRCA, H.R. Rep. No. 99-682, pt. 2, at 8-9, reprinted in 1986 U.S.C.C.A.N. 5757, 5758.
50. 12 U.S.C. § 1324B(a)(2)(a) ("Unfair immigration-related employment practices").
51. 29 C.F.R. 776.5.
52. *Patel v. Quality Inn South*, 846 F.2d 700 (11th Cir. 1988), *cert. denied*, 489 U.S. 1011 (1989).
53. The IRCA imposes sanctions on employers who knowingly hire unauthorized workers. See discussion of the IRCA, above.
54. *Patel*, 846 F.2d 700 at 704.
55. *Id.*
56. A class action is a device in U.S. procedural law that allows one or more named plaintiffs to sue on behalf of an entire group of unnamed plaintiffs.
57. 29 U.S.C. § 215(a)(3).

58. 29 U.S.C. § 215(b).
59. *Contreras v. Corinthian Vigor Insurance Brokerage, Inc.*, 25 F. Supp.2d 1053 (N.D.Cal.1998).
60. See USDOL, Employment Standards Administration, Wage and Hour Division, "Selected State Child Labor Standards Affecting Minors under 18 in Non-Farm Employment as of January 1, 2001," http://www.dol.gov/dol/esa/public/programs/whd/state/nonfarm.htm.
61. See USDOL, Employment Standards Administration, Wage and Hour Division, "State Child Labor Laws Applicable to Agricultural Employment - January 1, 2001," http://www.dol.gov/dol/esa/public/programs/whd/state/agriemp2.htm
62. 29 U.S.C. § 650 *et seq.*
63. 29 USC § 667 (state jurisdiction and plans).
64. States and territories that operate approved plans include: Alaska; Arizona; California; Hawaii; Indiana; Iowa; Kentucky; Maryland; Michigan; Minnesota; Nevada; New Mexico; North Carolina; Oregon; South Carolina; Tennessee; Utah; Vermont; Virginia; Washington; Wyoming; Virgin Islands; and Puerto Rico. Connecticut, New Jersey and New York have state OSH plans that cover public sector employees only.
65. 29 U.S.C. § 654(a)(1); 29 C.F.R. 1975.4(b)(2).
66. 42 Federal Register 5356. This enforcement rule was issued in response to congressional budget acts that specifically exempt agricultural employers that employ 10 or fewer employees from enforcement of the OSH Act. See Department of Labor-Department of Health, Education and Welfare Appropriation Act for Fiscal Year 1977 (P.L. 94-439, 90 Stat. 1418); Labor-HEW Appropriations Act for Fiscal Year 1979 (P.L. 95-480, 92 Stat. 1567).
67. Calculated by the Economic Research Service, USDA, using data from several issues of *Farm Labor*, National Agricultural Statistics Service, USDA. The Farm Labor Survey is an establishment survey in which data are collected for a one-week period during each quarter of the year.
68. Calculated by the Economic Research Service, USDA, using data from the 1997 *Census of Agriculture*, National Agricultural Statistics Service, USDA. Data on farms with fewer than 11 workers were not available. Data on the number of hired workers working fewer than 150 days and 150 days or more are collected only periodically in the *Census of Agriculture*. In addition, the *Census* does not collect information on the demographic and job characteristics of hired and contract workers.
69. See sections 2(C)(2), (4)-(6), below.
70. Alaska, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Dakota, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin.
71. Delaware, Missouri, New Jersey, Texas, and Wyoming.
72. Alabama, Arkansas, Kansas, Kentucky, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Rhode Island, South Carolina, and Tennessee.
73. A similar provision was found unconstitutional in the state of Washington on the grounds that it impinged on migrant agricultural workers' constitutional right to travel. *Macias v. Department of Labor and Industries of the State of Washington*, 100 Wash.2d 263, 668 P.2d 1278 (1983).
74. *Dowling v. Slotnik*, 244 Conn. 781 at 797, 712 A.2d 396 at 412 (1998) (lists a series of states in which unauthorized workers were determined to be entitled to workers' compensation benefits, including Florida, Louisiana, New Jersey, New York, and Oklahoma). But see *Granados v. Windson Development Corp.*, 257 Va. 103, 509 S.E.2d 290 (1999). (Supreme Court of Virginia held that undocumented workers are not entitled to workers' compensation benefits, reasoning that because they are prohibited from working in the U.S. by the IRCA, they do not qualify as "employees" under the Virginia Workers' Compensation Act.)
75. *Dowling v. Slotnik*, 244 Conn. 781 at 796, 712 A.2d 396 at 411; *Fernandez Lopez v. Jose Cervino, Inc.*, 288 N.J.Super. 14, 671 A.2d 1051 (N.J.Super.A.D. 1996). Further, case law deciding whether unauthorized workers are entitled to workers' compensation benefits points to important theoretical differences between unemployment insurance and workers' compensation insurance. As seen below, unauthorized workers are not entitled to unemployment insurance. The theory in unemployment jurisdiction is that they are "unable to work" because employers are not allowed to hire them under the IRCA, so they do not meet the first level of proof that they are entitled to unemployment benefits. Since the purpose of workers' compensation is to compensate workers for time lost from work because of an injury and for the disabling effect of the injury on future earning capacity, whether in the United States or elsewhere, unauthorized workers are entitled to compensation. *Mendoza v. Monmouth Recycling Corporation*, 288 N.J.Super. 240 at 243-244, 672 A.2d 221 at 224-225 (N.J.Super.A.D. 1996).
76. *Barge-Wagener Construction Co. v. Morales*, 263 Ga. 190, 429 S.E.2d 671 (Ga. 1993). Unauthorized workers are entitled to workers' compensation benefits in Georgia, however. *Dynasty Sample Co. v. Beltran*, 224 Ga.App. 90, 479 S.E.2d 773 (Ga.App. 1996).
77. Ala. Code § 25-5-82 (1993).
78. Fla. Stat. Ch. 440.16(c)(7) (1993).
79. "Disability" is defined by the Social Security Act as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." A worker is considered disabled only if his or her impairments are so severe that he or she cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful work which exists in significant numbers in the region where he or she lives or exists in several regions of the country.
80. An able-bodied adult between the ages of 18 and 50 who does not have any dependent children can receive food stamps for no more than three months in a 36-month period unless after that three month period he or she is working at least half-time or is engaged in an employment training program. This requirement may be waived in high unemployment regions.
81. 29 U.S.C. §§ 1811-1815. The MSAWPA extends coverage to the employers who retain FLCs, something which the FLCRA did not do.
82. 29 U.S.C. §§ 1821, 1831.
83. *Id.*
84. 29 U.S.C. §§ 1821(g), 1831(f).
85. 29 U.S.C. § 1855.
86. Cal. Lab. Code §§ 1682-1699 (Deering 1996).
87. Fla. Stat. Ann. §§ 450.30-450.38 (West 1991).
88. One court has rejected the "related to employment" test in favor of a stricter "condition of employment" test. *Frank Diehl*

Farms v. Secretary of Labor, 696F.2D 1325 (11th Circuit 1981).
89. OSHA retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry or red meat production or the postharvest processing of agricultural or horticultural commodities.
90. 29 U.S.C. § 1841.
91. 29 C.F.R. §§ 1928.110(a)-(d).
92. The REI depends on a pesticide's toxicity rating.
93. Commercial pesticide applicators have additional obligations under the FIFRA.
94. *Organized Migrants in Community Action, Inc. v. Brennan*, 520 F.2d 1161 (D.C. Cir. 1975).
95. Memorandum of Understanding between the U.S. Department of Labor Occupational Safety and Health Administration and the U.S. Environmental Protection Agency Office of Enforcement, February 13, 1991, www.osha-slc.gov/MOU_data/MOU19910213.html.
96. OSHA-EPA MOU, ¶¶ A(2), C(6).
97. OSHA-EPA MOU, ¶¶ C(3)(a)-(e) ("Referrals").
98. See, for example, *Welchert v. American Cyanamid*, 59 F.3d 69 (8th Cir., 1995).
99. The Adverse Effect Wage Rate (AEWR) are survey findings made by the U.S. Department of Agriculture (USDA), which establishes an annual weighted average hourly wage rate for the field and livestock workers (combined) for the nineteen USDA regions for which quarterly wage surveys are conducted. The AEWR are established for every state, except Alaska, and are published annually by DOL in the Federal Register in the form of a notice signed by the Administrator, Office of Workforce Security.
100. Legal Services Corporation Act as Amended 1977, 42 U.S.C. § 2996, *et seq.*, §§ 1001(1)-(3).
101. 42 U.S.C. § 2996, § 1006(a)(1)(A).
102. 45 C.F.R. § 1626.1. Eligible aliens who may receive legal aid include: legal permanent residents; aliens with refugee or political asylee status; aliens lawfully present as a result of withholding of deportation; aliens who have filed an application for adjustment of status as the result of marriage to a U.S. citizen or being the parent or unmarried child of such a citizen. 45 C.F.R. §§ 16.26.5(a)-(f).
103. 45 C.F.R. §§ 1626.11(a)-(b).
104. 45 C.F.R. § 1626.10(d). An exception to this rule is that legal aid offices may provide legal assistance directly related to the prevention of or obtaining relief from battery or cruelty, including providing undocumented aliens assistance to escape from an abusive situation, ameliorate the current effects of the abuse, or protect against future abuse. 45 C.F.R. §§ 1626.2(f)-(g); 1626.4(a)-(b).
105. 45 C.F.R. §§ 1626.6-1626.7; 42 U.S.C. § 2996 §§ 1006(a)(1)(b)(1)(A)-(B).
106. *El Rescate Legal Services, Inc. v. Executive Office of Immigration Review*, 959 F.2d 742 (9th Cir. 1992).
107. *Nicholas v. INS,* 590 F.2d 802 at 809 (9th Cir. 1979).

ABBREVIATIONS

CAB	Conciliation and Arbitration Board	Mexico
CALRA	California Agricultural Labor Relations Act	U.S.
CCMSAWP	Commonwealth Caribbean and Mexican Seasonal Agricultural Workers Program	Canada
CICOPLAFEST	Comisión Intersecretarial para el Control de Proceso y uso de Plaguicidas, Fertilizantes y Sustancias Tóxicas	Mexico
CPP	Canada Pension Plan	Canada
DIF	Desarrollo Integral de la Familia	Mexico
DOL	Department of Labor	U.S.
EEOC	Equal Employment Opportunity Commission	U.S.
ESA	Employment Standards Administration	U.S.
EPA	Environmental Protection Agency	U.S.
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act	U.S.
FLC	Farm Labor Contractor	U.S.
FLCRA	Farm Labor Contractor's Registration Act	U.S.
FLSA	Fair Labor Standards Act	U.S.
FSS	Field Sanitation Standards	U.S.
FUTA	Federal Unemployment Tax Act	U.S.
IMSS	Instituto Mexicano del Seguro Social	Mexico
INA	Immigration and Nationality Act	U.S.
INEGI	Instituto Nacional de Estadística, Geografía e Informática	Mexico
INM	Instituto Nacional de Migración	Mexico
INS	Immigration and Naturalization Service	U.S.
IRCA	Immigration Reform and Control Act	U.S.
LFT	Ley Federal de Trabajo	Mexico
LGP	Ley General de Población	Mexico
LGS	Ley General de Salud	Mexico
LSC	Legal Services Corporation	U.S.
LSCA	Legal Services Corporation Act	U.S.
LSS	Ley del Seguro Social	Mexico
MAELRA	Maine Agricultural Employees Relations Act	U.S.
MSAWPA	Migrant and Seasonal Agricultural Workers Protection Act	U.S.
MSDS	Material Safety Data Sheet	Canada
NLRA	National Labor Relations Act	U.S.
NOM	Normas Oficiales Mexicanas	Mexico
OSHA	Occupational Safety and Health Administration	U.S.
OSH Act	Occupational Safety and Health Act	U.S.
OSH Regulation (RFSHMAT)	Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo	Mexico
PRONJAG	Programa Nacional de Jornaleros Agrícolas	Mexico
QPP	Quebec Pension Plan	Canada
SAGDR	Secretaría de Agricultura, Ganadería y Desarrollo Rural	Mexico
SAW	Special Agricultural Worker	U.S.
SCT	Secretaría de Comunicaciones y Transportes	Mexico
SECOFI	Secretaría de Comercio y Fomento Industrial	Mexico
SEDESOL	Secretaría de Desarrollo Social	Mexico
SEMARNAP	Secretaría del Medio Ambiente, Recursos Naturales y Pesca	Mexico
SS	Secretaría de Salud	Mexico
SSI	Supplemental Security Income	U.S.
STPS	Secretaría del Trabajo y Previsión Social	Mexico
TANF	Temporary Assistance to Needy Families	U.S.
WHD	Wage and Hour Division	U.S.
WHMIS	Workplace Hazardous Materials Information System	Canada
WPS	Worker Protection Standard	U.S.

BIBLIOGRAPHY

CANADA

British Columbia. Agricultural Workforce Policy Board. *British Columbia Agricultural Workforce Profile*. Victoria: The Board, April 28, 1999. 35 pp.

Canada. Employment and Immigration Canada. *Horticulture Industry, Organizing for the Future: Human Resources Issues and Opportunities: National Report* prepared by Ernst & Young, 1995.

Canada. Foreign Agricultural Resource Management Services. *Quest for a Reliable Workforce in the Horticulture Industry: Reliable Workers, Regardless of Source*. Mississauga: The Service, 1995. 2 vols.

Canada. Human Resources Development Canada. Commonwealth Caribbean and Mexican Seasonal Agricultural Worker Program. *Background and Process: Caribbean and Mexican Movement*. Ottawa: HRDC, July 1999.

England, Geoffrey, Christie, Innis, and Christie, Merran. *Employment Law in Canada* (3rd ed.). Toronto: Butterworths, 1998. 2 vols.

Memorandum of Understanding between the Government of Canada and the Government of the United Mexican States concerning the Mexican Seasonal Agricultural Workers Program, 1974.

Cases Cited

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143.

Apollo Real Estate, [1994] O.E.S.A.D. No. 28, Decision No. ESC 94-74.

Association of Parents for Fairness in Education, Grand Falls District 50 Branch v. Société des Acadiens du Nouveau Brunswick Inc., [1986] 1 S.C.R. 549.

Boulaajoul et ferme M.S. Nadon enr., [1994] C.A.L.P. 1540.

Clarken v. Ontario Health Insurance Plan (General Manager) (1998), 109 O.A.C. 363 (Ont. Ct. (Gen. Div.)).

Consolidated Bathurst Packaging Ltd. v. International Woodworkers of America Local 2-69, [1990] 1 S.C.R. 282.

Cuddy Chicks Ltd. v. Ontario (Labour Relations Board), [1991] 2 S.C.R. 5.

Douglas Kwantlen Faculty Associaton v. Douglas College, [1990] 3 S.C.R. 570.

Dunmore v. Ontario (Attorney General) (1997), 37 O.R. (3d) 287.

Future Inns Canada Inc. v. Nova Scotia (Labour Relations Board), [1997] C.L.L.C. 220-089 (N.S.C.A.).

Impact Demolition Services Ltd., [1998] O.L.R.D. No. 481, File No. 2045-97-R.

Kahlon v. Canada (Minister of Employment and Immigration) (1989), 97 N.R. 349 (F.C.A.).

Matsqui Indian Band v. Canadian Pacific Ltd., [1995] 1 S.C.R. 3.

Roy v. Hackett (1987), 62 O.R. (2d) 365 (Ont. C.A.).

Saravia c. 101482 Canada Inc., [1987] R.J.Q. 2658.

Still v. Minister of National Revenue, [1998] 1 F.C. 549 (C.A.).

Tetreault-Gadoury v. Canada (Employment and Immigration Commission), [1991] 2. S.C.R. 22

MEXICO

Confederación de Asociaciones Agrícolas de Sinaloa (CAADES). Departamento de Estudios Económicos. *Estado de Sinaloa*. Enero 1999.

Guerra, María Teresa. *Los trabajadores de la horticultura Sinaloense*. Culiacán: Editorial Universidad Autónoma de Sinaloa, 1998. 188 pp.

Jornaleros agrícolas migrantes: una visión nacional: memorias del Foro sobre Jornaleros Agrícolas Migrantes, La Paz, Baja California, 28-30 Mayo de 1997. La Paz: Universidad Autónoma de Baja California Sur, Programa de Investigación Regional en Ciencias Sociales, 1998.

Martin, Philip L. *Trade and Migration: NAFTA and Agriculture*. Washington, DC: Institute for International Economics, 1993. 158 pp. (Policy Analyses in International Economics 38).

Mexico. Comisión Nacional de Derechos Humanos. *Informe sobre violaciones a los derechos humanos de los inmigrantes: Frontera Sur.* Mexico: La Comisión, 1995. 185 pp.

Mexico. Secretaría de Agricultura, Ganadería y Desarollo Rural. *Anuario estadístico: Sinaloa*. Mexico: La Secretaría, 1997.

Mexico. Secretaría de Desarrollo Social. Programa nacional de jornaleros agrícolas. Mexico: La Secretaría, 1999. 20 p.

Mexico. Secretaría de Gobernación. *Perspectiva histórica del refugio guatemalteco en México*. http://www.gobernacion.gob.mx/Props_def/diseno4/frames4.html.

Mexico. Secretaría de Gobernación. Instituto Nacional de Migración. *Circular núm. CRE-280-97.*

Occupational Safety and Health Laws in the United States, Mexico and Canada: An Overview. A cooperative activity of the United States, Mexico and Canada; U.S. Department of Labor, Secretaría del Trabajo y Previsión Social, Human Resources Development Canada. Washington, DC: The Department, 1999. 85 pp.

Sanderson, Steven E. *The Transformation of Mexican Agriculture: International Structure and the Politics of Rural Change.* Princeton: Princeton University Press, 1986. 324 pp.

Trabajo infantil en México. Colaboración de UNICEF, Universidad Veracruzana y Oficina Internacional del Trabajo. Compilación de Araceli Brizzio de la Hoz. México: UNICEF, 1996. 144 pp.

Cases cited

Amparo en materia laboral, núm. 2840\35, *Rentería Jesús*, enero 24, 1935, una decisión unánime de cinco votos, Semanario Judicial de la Federación, 5a época, t. XLIII, p. 339.

Contradicción de tesis 16/83. Semanario Judicial de la Federación, 8a época, t. IV, 1a parte, julio-diciembre de 1989.

UNITED STATES

Black's Law Dictionary. 7th ed. St. Paul: West Publishing Co., 1999. 1738 pp.

Chemerinsky, Erwin. *Constitutional Law Principles and Policies.* New York: Aspen Law and Business, 1997. 1093 pp.

EEOC Compliance Manual/United States. Equal Employment Opportunity Commission. Washington: Bureau of National Affairs. 3 vols.

Memorandum of Understanding between the U.S. Department of Labor Occupational Safety and Health Administration and the U.S. Environmental Protection Agency Office of Enforcement. February 13, 1991. http://www.osha-slc.gov/MOU_data/MOU19910213.html.

Norris, James H. et al. *Unofficial H-2A Report: Fiscal Year 1998.* Prepared by the Division of Foreign Labor Certifications, United States Department of Labor. Washington: The Department, June 1999.

State of the Art Reviews. Occupational Medicine: Health Hazards of Farming. Philadelphia: Hanley & Belfus, 1991.

United States. Department of Labor. Employment and Training Administration. *Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Proposed Allocation Formula.* [01/16/97] Employment training administration notice, v. 62, no. 11. http://www.doleta.gov/regs/fedregs/notices/97_1101.htm.

United States. Department of Labor. Office of the Assistant Secretary of Policy. Office of Program Economics. *Migrant Farmworkers: Pursuing Security in an Unstable Labor Market.* Based on data from the National Agricultural Workers Survey. Washington: The Department, May 1994. (Research report no. 5).

United States. Department of Labor. Office of the Assistant Secretary of Policy. Office of Program Economics. *A Profile of U.S. Farm Workers: Major Findings, based on the National Agricultural Workers Survey.* Prepared for the Commission on Immigration Reform by Richard Mines, Susan Gabbard and Anne Steirman. Washington: The Department, April 1997. http://www.dol.gov/dol/asp/public/programs/agworker/report/main.htm.

Cases cited

Barge-Wagener Construction Co. v. Morales, 263 Ga.190, 429 S.E.2d 671 (Ga. 1993).

Bolling v. Sharpe, 347 U.S. 497 (1954).

Contreras v. Corinthian Vigor Insurance Brokerage, Inc. 25 F.Supp.2d 1053 (N.D.Cal. 1998).

DeCanas v. Bica, 424 U.S. 351 (1976).

Dowling v. Slotnik, 244 Conn. 781, 712 A.2d 396 (1998).

Dynasty Sample Co. v. Beltran, 224 Ga.App. 90, 479 S.E.2d 773 (Ga.App. 1996).

EEOC v. Tortilleria La Mejor, 758 F.Supp. 585 (E.D. Cal. 1991).

Egbuna v. Time-Life Libraries, Inc., 153 F.3d 184 (4th Cir. 1998).

El Rescate Legal Services, Inc. v. Executive Office of Immigration Review, 959 F.2d 742 (9th Cir. 1992).

Espinoza v. Farah Manufacturing Co., 414 U.S. 86 (1973).

Fernandez Lopez v. Jose Cervino, Inc., 288 N.J.Super. 14, 671 A.2d 1051 (N.J.Super.A.D. 1996).

Graham v. Richardson, 403 U.S. 365 (1971).

Granados v. Windson Development Corp., 257 Va. 103, 509 S.E. 2d 290 (1999).

Macias v. Department of Labor and Industries of the State of Washington, 100 Wash.2d 263, 668 P.2d 1278 (1983).

Matthews v. Diaz, 426 U.S. 67 (1976).

Mendoza v. Monmouth Recycling Corporation, 288 N.J.Super. 240, 672 A.2d 221, (N.J.Super.A.D. 1996).

Nicholas v. INS, 590 F.2d 802 (9th Cir. 1979).

NLRB v. APRA Fuel Oil Buyers Group, Inc., 134 F.3d 50 (2d Cir. 1997).

Organized Migrants in Community Action, Inc. v. Brennan, 520 F.2d 1161 (D.C. Cir. 1975).

Patel v. Quality Inn South, 846 F.2d 700 (11th Cir. 1988), *cert. denied*, 489 U.S. 1011 (1989).

Plyler v. Doe, 457 U.S. 202 (1982).

San Antonio School District v. Rodriguez, 411 U.S. 1 (1973).

Shapiro v. Thompson, 394 U.S. 618 (1969).

Sure-Tan, Inc. et al. v. NLRA, 467 U.S. 883 (1984).

United States v. Guest, 383 U.S. 745 (1966).

Welchert v. American Cyanamid, 59 F.3d 69 (8th Cir., 1995).

Yick Wo v. Hopkins, 118 U.S. 356 (1886).