

Fact Sheet #63A: Application of Federal Labor Laws to Pine Straw

This fact sheet provides general information concerning the laws administered and enforced by the Wage and Hour Division that apply to workers engaged in activities in connection with the raking, gathering, baling, and loading of pine straw. Pine straw is the fresh, undecomposed pine needles that have fallen from pine trees. It is produced commercially and collected for use as a mulch and groundcover. A pine straw employer covered by any one law is not necessarily covered by all laws listed below; similarly, an employer exempt from the requirements of any one law is not necessarily exempt from the requirements of all the laws.

Summary of Laws

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The MSPA also requires farm labor contractors (FLCs) and farm labor contractor employees (FLCEs) to register with the U.S. Department of Labor and to obtain special authorization before housing, transporting, or driving covered workers.

The Fair Labor Standards Act (FLSA) contains Federal minimum wage, overtime, recordkeeping, and child labor requirements for covered employers.

The Field Sanitation Provisions of the Occupational Safety and Health Act of 1970 (OSH Act) establish minimum standards for covered agricultural settings for toilets, potable drinking water, hand-washing facilities, and information regarding good hygiene practices.

Coverage and Exemptions

Pine straw workers are generally entitled to the protections of MSPA. The MSPA generally applies to workers engaged in agricultural employment that is of a seasonal or other temporary nature. One of MSPA's definitions of agricultural employment includes "the handling . . . of any agricultural or horticultural commodity in its unmanufactured state." 29 U.S.C. § 1802(3). The raking, gathering, baling, and loading of pine straw can qualify as agricultural employment under this definition. This is consistent with multiple court decisions addressing these and similar activities.

Contractors are exempt from MSPA, including the requirement to register, if they operate solely within a 25-mile intrastate radius of their permanent residence and for not more than 13 weeks per year. The MSPA housing requirements do not apply to bona fide innkeepers, and the transportation requirements do not apply to bona fide common carriers or car pools.

The FLSA generally applies to any employee who engages in interstate commerce or the production of goods for interstate commerce, or to the employees of an enterprise engaging in interstate commerce or the production of goods for interstate commerce with an annual dollar volume of \$500,000 or more per year. The FLSA has both primary and secondary definitions of agricultural employment. Pine straw activities do not come under the scope of primary agricultural employment. Pine straw collection for commercial purposes is usually performed in pine stands or plantations, from pine trees being grown for forestry and lumbering operations. Based on the plain language of the statute, forestry and lumbering operations are not within the scope of primary agriculture.

Therefore, pine straw workers generally will not meet the criteria for the exemptions in Section 13(b)(12) from overtime pay or Section 13(a)(6)(A) from minimum wage and overtime pay. However, if all pine straw activities are performed on a farm incident to and in conjunction with other farming operations of the farm they may qualify as secondary agriculture for purposes of these exemptions.

Section 13(b)(28) exempts from overtime pay “any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.” Pine straw workers are typically employed in the forestry or lumbering operations described in this exemption and are generally exempt when the employer employs eight or fewer pine straw workers.

Pine straw activities generally qualify for the protections of the OSH Act’s Field Sanitation Standards (FSS). The OSH Act’s FSS apply to workers employed by “agricultural employers” when eleven or more employees are “engaged in hand-labor operations in the field” on any given day in the preceding twelve months. 29 C.F.R. § 1928.110. Pine stand owners qualify as agricultural employers under the OSH Act’s FSS because they own or operate an agricultural establishment (a pine stand or pine plantation). A pine straw contractor may also qualify as an agricultural employer if it contracts with the pine stand owner in advance to purchase and harvest the pine straw and exercises substantial control over the production or recruits and supervises employees that work at the pine stand.

Since pine straw activities generally do not qualify as agricultural employment under the FLSA, employers may continue to utilize the H-2B temporary worker program as opposed to the H-2A temporary worker program.

The above exemptions are those most often applicable to the pine straw industry, but other exemptions may apply in certain circumstances. Contact the nearest Wage and Hour Division office for more information.

Child Labor

The FLSA agricultural child labor standards would generally only apply to pine straw activities if they qualified as secondary agriculture (see “Coverage and Exemptions” section above). Under these standards, pine straw workers under the age of 16 could perform all pine straw activities except operating and assisting in the operation of a forklift.

If the pine straw activities do not qualify as secondary agriculture, the FLSA child labor provisions for nonagricultural work would apply. Under these standards, pine straw workers under the age of 16 are prohibited from employment in pine straw activities, as that is not an occupation permitted by the federal child labor provisions. Pine straw workers who are 16 and 17 years old can perform most pine straw activities, except operating or assisting in the operation of power-driven hoisting devices, such as forklifts, backhoes, and skid steer loaders. See regulations at 29 C.F.R. Part 570 for more information.

Farm Labor Contractor Registration

Under MSPA, a farm labor contractor (FLC) is someone who, for money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports migrant and/or seasonal agricultural workers or, provides housing to migrant agricultural workers.

Before performing any farm labor contracting activity, a farm labor contractor must register with the U.S. Department of Labor (DOL) and obtain a certificate of registration. A farm labor contractor must be specifically authorized in advance to provide housing or transportation to migrant or seasonal agricultural

workers. Persons employed by farm labor contractors to perform farm labor contracting activities also must register with DOL. Application for registration can be made at local offices of the State Employment Service or by visiting http://www.dol.gov/whd/forms/fts_wh530.htm for additional information.

Agricultural associations, agricultural employers, and their employees are not considered farm labor contractors and do not have to register. However, before they engage the services of any farm labor contractor, they must take reasonable steps to ensure that the contractor has a DOL certificate of registration valid for the services to be performed. To inquire about the validity of a certificate, call the Wage and Hour Division's toll-free number **1-866-4USWAGE (1-866-487-9243)**, or for a list of registered farm labor contractors, visit <http://www.dol.gov/whd/regs/statutes/FLCList.htm>.

For more information on this requirement, see Fact Sheet 49: "The Migrant and Seasonal Agricultural Worker Protection Act."

Wages

MSPA requires that employers properly disclose to workers all terms and conditions of employment, including wages to be paid, and pay all wages owed when due, but no less frequently than semi-monthly. A worker's wage cannot be less than the highest of the applicable state or Federal minimum wage or the wage promised to a non-immigrant worker on an H-2B visa.

FLSA-covered non-exempt employees must receive no less than the Federal minimum wage for all hours worked in the workweek. Such employees must also receive overtime pay at the rate of time and one-half their regular rate of pay for all hours worked in excess of 40 in a workweek. The overtime and minimum wage requirements under the FLSA (as well as minimum wage requirements under other statutes) apply even if an employee is paid on a piece rate.

Deductions

Deductions, other than those required by law, are only permissible under MSPA if properly disclosed to the worker in advance. In addition, deductions for housing are only permissible under MSPA if the housing complies with the applicable substantive safety and health standards.

Deductions, whether direct or indirect, for facilities that are primarily for the benefit of the *employer* are only permissible under the FLSA to the extent that they do not reduce the hourly wage for the first 40 hours of any week below the statutorily required FLSA minimum wage, and do not reduce the time and one-half premium for all hours worked over 40 in an overtime workweek. Tools required to perform the employee's job (e.g., rain suits, chaps, leathers, other protective gear, chain-saws, and OSHA-required safety equipment) are primarily for the benefit of the employer.

Employers shall provide field sanitation facilities and water required under the OSH Act at no cost to the employees.

Recordkeeping

The MSPA contains recordkeeping requirements similar to the FLSA and in addition requires that employees be furnished pay statements each pay period. Farm labor contractors must provide each person to whom they furnish workers a copy of the payroll records covering the period for which they furnished the workers.

The FLSA requires the employer to record daily and weekly hours worked, rates of pay, additions to or deductions from wages, and total wages paid, although no particular format is required. A complete listing of the required items can be found at 29 C.F.R. Part 516.

Housing

Housing subject to MSPA must comply with all applicable substantive Federal and state safety and health requirements prior to and throughout occupancy by covered workers. Each agricultural employer, agricultural association, or FLC that provides housing must post at each housing site a written statement of the terms and conditions of occupancy as well as an occupancy permit. An FLC must have DOL authorization for each facility or property used to house migrant farm workers. See “Coverage and Exemptions” section above.

The FLSA contains no housing safety and health standards. The cost of providing housing may be creditable towards meeting the employer’s minimum wage payment obligation.

Field Sanitation

The OSH Act Field Sanitation Standards require employers to provide at no cost to the workers:

- potable drinking water, suitably cool and in sufficient amounts, dispensed in single-use cups or by fountains, located so as to be readily accessible to all employees;
- for every 20 employees, one toilet and handwashing facility located within a quarter-mile walk, or if not feasible, at the closest point of vehicular access; and
- notice to each employee of the location of the facilities and reasonable opportunities during the workday to use them.

Employers must also maintain facilities in accordance with public health sanitation practices.

Certain states, such as those with OSHA-approved state plans, have adopted standards more stringent than the Federal requirements. Where both Federal and state requirements apply to an agricultural establishment, the employer must comply with the stricter requirement. Contact the state labor agency or department of health to find out whether your state has such requirements. For more information on the Federal requirements, see Fact Sheet 51: “Field Sanitation Standards under the Occupational Safety and Health Act.”

Transportation

The MSPA requires any non-exempt person who uses, or causes to be used, a vehicle to transport migrant or seasonal agricultural workers to comply with applicable Federal and state vehicle safety and operator requirements. MSPA requires specific insurance levels for each vehicle used to transport workers. FLCs must obtain specific authorization from the U.S. Department of Labor for each vehicle they use or cause to be used to transport workers. See Fact Sheet 50: “Transportation under the Migrant and Seasonal Agricultural Worker Protection Act” for additional information.

Posters / Forms

The MSPA requires employers to post the MSPA poster (Form WH-1376). Each agricultural employer, agricultural association, or FLC that provides housing must also post a written statement of the terms and conditions of occupancy as well as an occupancy permit at each housing site. Wage and Hour has optional forms available that employers may use to achieve compliance with MSPA recordkeeping, posting, and disclosure requirements.

The FLSA requires the employer to post the FLSA poster (Form WH-1088).

State / Local Laws

Individual state or local laws may vary from Federal law. When Federal, state, and local laws apply to the same circumstances, employers must comply with the law that provides the greatest benefit to the worker. Check with the appropriate state agency as to what each State requires.

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For additional information, visit our Wage-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).

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