

Fact Sheet #77C: Prohibiting Retaliation Under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

This fact sheet provides general information concerning MSPA's prohibition of discrimination against a migrant or seasonal agricultural worker who has filed a complaint or participated in any proceeding under or related to MSPA.

The Wage and Hour Division of the Department of Labor administers and enforces MSPA, the federal law that protects migrant and seasonal agricultural workers. **MSPA establishes employment standards related to wages, housing, transportation, disclosures, and recordkeeping. It also requires farm labor contractors to register with the U.S. Department of Labor.** The Wage and Hour Division investigates MSPA violations through its complaint-based and directed investigation programs.

Coverage

Under MSPA, **agricultural employers, agricultural associations, and farm labor contractors** who engage in at least one **named activity** as it relates to a **migrant or seasonal agricultural worker** are required to provide basic protections to those workers unless otherwise exempt.

Named activities are:

The furnishing, employing, soliciting, recruiting, hiring, and transporting one or more migrant or seasonal agricultural workers.

- An **agricultural employer** is any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery, or who produces or conditions seed.
- An **agricultural association** is any non-profit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable state law.
- A **farm labor contractor** is any person (other than an agricultural employer, agricultural association, or an employee of either an agricultural employer or association) who is paid or promised money or other valuable consideration in exchange for engaging in at least one of the named activities.

Additionally, each person who owns or controls a facility or real property that is used for housing migrant agricultural workers must comply with federal and state safety and health standards, unless specific exclusion criteria for providing housing on a commercial basis are met.

- A **migrant agricultural worker** is employed in agricultural employment of a seasonal or other temporary nature, and is required to be absent overnight from his permanent place of residence.
- A **seasonal agricultural worker** is an individual who is employed in agricultural employment of a seasonal or other temporary nature, and is *not* required to be absent overnight from his permanent place of residence when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations or when employed in canning, packing, ginning, seed conditioning or related

research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

- **Agricultural employment** is defined by MSPA as employment in any service or activity included within section 3(f) of the Fair Labor Standards Act; or section 3121(g) of the Internal Revenue Code; or the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. **The definition of agricultural employment has been expanded by the courts to also include many forestry activities performed by migrant or seasonal workers.**

Prohibitions

Section 505(a) of MSPA states that it is a violation for *any person* to **“intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this Act, or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.”**

Enforcement

If a migrant or seasonal agricultural worker believes, with just cause, that he has been discriminated against, the worker may file a complaint with the Secretary of Labor within **180 days of the alleged discriminatory action.**

If upon investigation, the Secretary of Labor determines that section 505(a) has been violated, the Secretary may bring a civil action, which may seek to restrain violation of section 505(a) and order the reinstatement of the worker, with back pay or damages.

Where to Obtain Additional Information

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

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.

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