FARMWORKER HOUSING AND WORKPLACE HEALTH AND SAFETY PROTECTIONS

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WHAT WE WILL COVER TODAY.

- Migrant Housing Camp Standards.
- Workplace Health and Safety issues affecting farmworkers.
  - Field Sanitation Standards
  - Pesticides
  - Heat Illness
- Enforcement.
MIGRANT FARMWORKER HOUSING STANDARDS: BASICS

Federal Baseline: Temporary Labor Camp (TLC) standards.
- All migrant housing must comply with federal law, either the OSHA standards or ETA standards. 29 C.F.R. §500.132(a)(1); 29 C.F.R. §500.132(a)(2).
- OSHA – after April 3, 1980, 29 C.F.R. § 1910.142(a)-(l)

State Standards: offer more protections than the federal standards.
- Indiana: Ind. Code §§ 16-41-26-1 to 16-41-26-14 and 410 Ind. Admin. Code §§ 6-9-1 through 6-9-6
- Kansas: none, rely on OSHA and ETA.
- Minnesota: Minn. Stat. § 144.12(11), no accompanying rules?
- Missouri: none, rely on OSHA and ETA.
- Nebraska: none, rely on OSHA and ETA.
- North Dakota: none, rely on OSHA and ETA.
- South Dakota: none, rely on OSHA and ETA.
- Wisconsin: Wis. Stat. §§ 103.90 – 103.97 and Wis. Admin. Code Ch. DWD 301
HOUSING STANDARDS: WHO IS COVERED.

OSHA interpretation Field Operations Manual, Chapter 12.

A. Introduction.

29 CFR 1910.142, the Temporary Labor Camp standard, is applicable to both agricultural and non-agricultural workplaces.

B. Definitions.

NOTE: §1910.142 does not contain a definition section. The following definitions reflect OSHA’s interpretation of the standard.

1. Temporary.

The term temporary in §1910.142 refers to employees who enter into an employment relationship for a discrete or defined time period. As a result, the term temporary refers to the length of employment, and not to the physical structures housing employees.

2. Temporary Labor Camp Housing.

Temporary labor camp housing is required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term or condition of employment. See Frank Diehl Farms v. Secretary of Labor, 696 F.2d 1325 (11th Cir. 1983).

- State plans/migrant camp regulations vary. For example, Michigan and Ohio need at least 5 occupants in the housing for state protections to kick in.
HOUSING STANDARDS DETAILS: MICHIGAN EXAMPLE.

Camp Responsibilities:
- Camp operator inspects once per week
- Units Numbered

Camp Area:
- Well-drained, free from standing water
- No offensive odors, flies, noise, traffic, any other health and safety hazard
- Free from debris, noxious plants such as poison ivy, uncontrolled grass, weeds, and brush
- Recreation space available
- Free from farm implements in the camp area

Water Supply:
- Adequate water supply
- Cold water outlet available within 50 feet of each shelter if water is not available in the shelter
- Adequate drainage facilities for overflow and spillage
- Common drinking cup is prohibited

Shelter:
- Structurally sound, in good repair, sanitary
- Flooring is of rigid material, prevents entrance of ground and surface water, reasonably level
- Double-wall construction; interior permanent-type ceiling
- For sleeping purposes, at least 50 sq ft of floor space per person, except that a double-deck bed setting must have at least 40 sq ft per person
- Combined cooking, eating, and sleeping purposes at least 100 sq ft per person
- Partitioned sleeping area if family has at least one child who is at least 6 yrs old
- Separate sleeping area for each sex or family
- Clothing storage
- 7 ft Ceiling

Fire & Pesticide Safety:
- 3 exits per sleeping room
- Fire extinguishers no more than 100 ft away
- Flammable materials not stored in/near the shelter
- Pesticides not stored in the shelter
- Working smoke detectors in each shelter

Ventilation/Lighting/Electricity:
- Adequate ventilation and natural lighting
- Window screens
- Adequate electrical service
- Adequate outside lights

Heating:
- (If used between Sept 1 - May 31)
  - No less than 65 degrees Fahrenheit
  - Portable, non-electric heater is prohibited

Cooking & Eating:
- In an individual shelter:
  - 4-burner stove (2 burners if less than 5-person capacity)
  - Sink
  - Hot & cold water in sink if shelter is new or substantially remodeled
- In a common facility:
  - 1 stove for each 3 individuals in a food preparation shift
  - 3-compartment sink connected to hot and cold water
  - Shelves, min. 1 sq ft per person
  - Tables and chairs
  - Food prep. area, min. 5 sq ft
  - Refrigerator (max 45 sq ft)

Bathing/Handwashing/Laundry:
- Hot water available under pressure
- Floor drain
- Facility within 200 ft of the shelter
- 1 showerhead per 10 people, not less than 3 ft apart, not less than 9 sq ft per unit, separated by a partition
- Dry, private dressing area
- 1 facility per sex or family

Handwashing:
- Private entrances for single-sex showers

Laundry Facilities:
- Required unless a shelter is provided with a sink with hot and cold running water
- Double laundry tubs with hot and cold water
- 1 unit per 50 people
- Water heater capable of adequate hot water during reasonable use
- Waste water properly disposed of

Toilet Facilities:
- 1 per 15 people
- Urinal: max of 1/3 of required toilets
- 1 per sex or family
- Within 200 ft of the shelter
- Outhouse no closer than 50 ft from a shelter or food-preparation facility
- Portable toilets pumped at least once per week

Seating/Garbage/Vermin
- Not on ground
- Adequate number of containers
- Collected at least once per week
- Insects, rodents, vermin
- Shelters and common facilities free of insects, rodents, vermin

Winter Occupancy (between 11/15 – 4/1):
- Each shelter has:
  - Kitchen sink with hot/cold water and wastewater disposal system
  - Bathing facility with hot/cold water
  - Flush toilet connected to wastewater disposal system
  - Double doors, double walls (concrete slab floors acceptable)
HOUSING STANDARDS: HOUSING SITE AND STRUCTURE
HOUSING STANDARDS: HOUSING SITE AND STRUCTURE BEDROOMS
HOUSING STANDARDS: TOILET FACILITIES

29 CFR § 1910.142(D)(1)-(10)
20 CFR § 654.411(A)-(i)
HOUSING STANDARDS: SEWAGE AND GARBAGE
HOUSING STANDARDS: H-2A REGULATIONS AND RENTAL/PUBLIC ACCOMMODATIONS.

- H-2A regulations require that the employer provide “housing at no cost to the worker, except for those U.S. workers who are reasonably able to return to their permanent residence at the end of the work day.” 20 CFR § 655.1304(d)(1).
- Housing can be either employer-provided housing that meets the TLC standards OR rental and/or public accommodations. 20 CFR § 655.1304(d)(1)(i)-(ii).
- Rental/Public Accommodations must meet local, state, or OSHA standards and any charges for rental housing must be paid directly by the employer to the owner/operator of the housing.
OSHA complaint if you are in a state that has no state agency that regulates migrant housing.

For H-2A Housing, an ETA complaint through your state SWA. 20 CFR § 654.400 (b): “recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted, and the ES staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer’s housing meets the full set of standards set forth at 29 CFR 1910.142” or ETA regulations.

State agency complaint.

- These state plans enforce TLC: Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia, and Washington.
- Eight states with OSHA approved plans that don’t enforce TLC standard: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, and Wyoming. ** except with respect to egg, poultry, red meat production, post-harvesting processing of agricultural and horticultural commodities, and non-agricultural TLCs.

If have AWPA coverage, AWPA violations under 29 U.S.C. 1823. If H-2A worker or corresponding employment, breach of contract claims.

- Demand Letter
- Lawsuit
WORKPLACE HEALTH AND SAFETY: OSHA VS. STATE PLANS.

- This state’s OSHA-approved State Plan covers private and state/local government workplaces.
- ** This state’s OSHA-approved State Plan covers state/local government workers only.
- This state (with no asterisk *) is a federal OSHA state.
“Except to the extent specified in paragraph (a) of this section, the standards contained in Subparts B through T and Subpart Z of part 1910 of this title do not apply to agricultural operations.” This includes regulations on:

- E - Exit Routes and Emergency Planning
- G - Occupational Health and Environmental Control (ventilation and noise)
- H - Hazardous Materials
- I - Personal Protective Equipment
- K - Medical and First Aid
- L - Fire Protection
- M - Compressed Gas and Compressed Air Equipment
- O - Machinery and Machine Guarding
- N - Materials Handling and Storage
- P - Hand and Portable Powered Tools and Other Hand-Held Equipment
- S - Electrical
- T - Commercial Diving Operations
FIELD SANITATION STANDARDS:
OSHA 29 CFR § 1928.110
OSHA field sanitation standard applies to “any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field.” 29 C.F.R. 1928.110(a).

“Hand-labor operations” defined as which includes work done by hand or with hand-tools during cultivation, weeding, planting, and harvesting of vegetables, nuts, fruits, seedlings, or other crops, and the packing of produce in the field into containers. It does not apply to logging operations, livestock, or permanent structures (for example, canneries or packing houses).

Packing house workers covered by 29 C.F.R. 1926.51 (potable water) and 1910.141 (sanitation).
SURVEY #2
FIELD SANITATION STANDARDS: POTABLE DRINKING WATER.
29 C.F.R.1928.110(C)(1)

- Must be suitably cool and in sufficient amounts, taking into account the temperature, humidity, and nature of the work.
- Must be accessible to workers and dispensed in single-use cups or by fountain. Dippers, common cups, and reusable cups are not permitted.
- “The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them.”
FIELD SANITATION STANDARDS: TOILETS AND HANDWASHING FACILITIES. 29 C.F.R.1928.110(C)(2)

- One toilet and one hand-washing facility are required for every twenty (20) workers.
- Toilets must be adequately ventilated and constructed to ensure privacy, with doors that can be closed and locked from inside.
- Hand washing facilities should include potable water, soap and single-use towels to dry hands.
- Toilets and hand washing facilities must be located in close proximity to each other and within ¼ mile of each worker. If this is not possible, they must be located at the point of closest vehicle access.
- Not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.
Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices.

(i) Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.

(ii) Toilet facilities shall be operational and maintained in clean and sanitary condition.

(iii) Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition; and

(iv) Disposal of wastes from facilities shall not cause unsanitary conditions.

The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them.

The employer also shall inform each employee of the importance of following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agrichemical residues:

(i) Use the water and facilities provided for drinking, handwashing and elimination;

(ii) Drink water frequently and especially on hot days;

(iii) Urinate as frequently as necessary;

(iv) Wash hands both before and after using the toilet; and

(v) Wash hands before eating and smoking.
FIELD SANITATION: ENFORCEMENT

- OSHA complaint. On February 3, 1997, the Wage and Hour Division assumed authority to enforce these field sanitation standards nationwide, except for Puerto Rico and the following OSHA State-Plan states:
  - Arizona, California, Hawaii, Maryland, Michigan, New Mexico, Nevada, North Carolina, Oregon, Tennessee, Virginia, Vermont and Washington.
- No private right of action under OSHA.
- If have AWPA coverage, AWPA violations under 29 U.S.C. §1822(c) or 29 U.S. Code § 1832 (c) (violation of terms of working arrangement.).
  - Demand Letter
  - Lawsuit
PESTICIDES: FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA) 7 USC § 136 ET SEQ.

- Requires all pesticides sold or distributed in the US to be registered with the Environmental Protection Agency (EPA)
- EPA uses a cost (risk)-benefit (economic) approach to decide whether to register a pesticide (“will not cause unreasonable adverse effects”)
- Each pesticide must bear an EPA-approved label
- It is illegal to use a pesticide in any way except that which is expressly provided on the label
Issued under FIFRA, WPS requires agricultural employers to:

- Ensure that farmworkers have received basic pesticide safety training in the last 5 years before entering pesticide treated areas
- Provide accessible decontamination supplies located together within ¼ mile of workers including:
  - Water for washing, eye-flushing, and drinking
  - Soap and single-use towels
  - A clean overall
- Tell workers (in a manner they can understand) the location of the area to be treated prior to pesticide application
- Not allow workers to enter a treated area during any REI (4-48 hours depending on toxicity of pesticide)
- Orally warn workers about treated areas and post warnings concerning treated areas if the label requires
SURVEY # 3
## Heat Illness: Unregulated Danger

<table>
<thead>
<tr>
<th>Heat Illness</th>
<th>Symptoms</th>
<th>Proper Treatment</th>
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<tbody>
<tr>
<td>Heat Rash</td>
<td>Red, blotchy skin rash</td>
<td>Treat with corn starch; rest in a cool place</td>
</tr>
<tr>
<td>Heat Syncope</td>
<td>Fainting</td>
<td>Move victim to a cool place; lie down and elevate feet</td>
</tr>
<tr>
<td>Heat Cramps</td>
<td>Pain in stomach and legs</td>
<td>Drink lots of water; massage affected muscles.</td>
</tr>
<tr>
<td>Heat Exhaustion</td>
<td>Cool, pale, clammy skin; dizziness; headache; cramps; nausea or vomiting; weakness; confusion or unconsciousness</td>
<td>If conscious, give plenty of cool fluids; call for assistance</td>
</tr>
<tr>
<td>Heat Stroke</td>
<td>Hot, dry skin; 105°F or higher body temperature; confusion; anger, chills; nausea; dizziness; unconsciousness; convulsions; and delirium</td>
<td>Call for assistance immediately; remove outer clothing; immerse or sponge body with cold water</td>
</tr>
</tbody>
</table>
On July 24, 2004, Asunción Valdivia died of heat stroke after a 10-hour workday picking grapes in the 105 degree sun.
ADDITIONAL RESOURCE: FARMWORKER JUSTICE’S INTERACTIVE MAP
THANK YOU!

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