

Migrant and Seasonal Farmworker Services | January 23, 2018

TO: Division of Workforce Development and Adult Learning
(DWDAL) staff and Local Workforce Development Area directors

FROM: Division of Workforce Development and Adult Learning
Maryland Department of Labor, Licensing and Regulation

SUBJECT: Migrant and Seasonal Farmworker Services

PURPOSE: To provide comprehensive policy guidance on processes related to
Maryland's Migrant and Seasonal Farmworkers services

ACTION: Local Workforce Development Area directors, American Job Center (AJC)
labor exchange administrators, and central office managers will ensure all
employees are aware of and receive copies of this policy. DWDAL policies
are available [on the DLLR website](#).

EXPIRATION: Until cancelled or replaced.

QUESTIONS:

Sabrina Raccuglia
State Monitor Advocate
410.767.3957

sabrina.raccuglia@maryland.gov

Lloyd Day
Director, OWD
410.767.2995

lloyd.day@maryland.gov

Erin Roth
Director of Policy, DWDAL
410.767.5870

erin.roth@maryland.gov

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CANCELLATIONS

The following policies are hereby cancelled and replaced by this policy issuance:

- Workforce Investment Field Instruction (WIFI) 05-11, “Migrant & Seasonal Farmworker Identification and Data Collection through the Maryland Workforce Exchange Virtual One Stop and ETA 5148 Services to Migrant and Seasonal Farmworkers Report,” dated November 15, 2011.

Archived policies are available at: <http://www.dllr.state.md.us/employment/>.

GENERAL INFORMATION

WORKFORCE INNOVATION & OPPORTUNITY ACT

The Workforce Innovation and Opportunity Act (WIOA) was signed into law on July 22, 2014, and went into effect July 1, 2015. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Adult Education and Family Literacy Act, the Wagner Peyser Act, and the Rehabilitation Act of 1973. To help both businesses and job seekers meet their needs, the workforce system established under WIOA is integrated by design. WIOA envisions connecting businesses with job seekers through meaningful partnerships among workforce, education, human services, and economic development entities to ensure optimum results and leveraging of resources. The law addresses the needs of job seekers through establishing a workforce system that helps them access employment, education, training, and support services to succeed in the labor market. Through the American Job Centers (AJCs), WIOA works to address employer needs by matching them to the skilled workers they need to compete in the global economy. As the designated State agency responsible for implementing WIOA in Maryland, the Department of Labor, Licensing and Regulation (DLLR) supports the success of Maryland's agricultural sector by connecting migrant and seasonal farmworkers (MSFWs) with the resources of the State's workforce system.

WIOA SERVICES FOR MIGRANT & SEASONAL FARMWORKERS (MSFWs)

Based on the 1974 court order referred to as the Judge Richey Court Order (Richey Order), MSFWs are a target population for WIOA services. The Richey Order requires the U.S. Department of Labor (USDOL) to implement and maintain a federal and state monitoring and advocacy system to ensure the delivery of employment and training services, benefits, and protections to MSFWs on a non-discriminatory basis. The Richey Order further requires that MSFWs receive workforce system services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers. The MSFW monitoring and advocacy system is governed by regulations set forth under WIOA's Title III, Wagner Peyser employment services.

In addition to Wagner Peyser services, WIOA also funds Maryland's grantee for the National Farmworker Jobs Program (NFJP), a program of services for MSFWs that offers specialized programming and supportive services. Maryland's NFJP grantee works as an integral part of the State's workforce system to counter the chronic unemployment and underemployment experienced by farmworkers.

MARYLAND'S APPROACH TO SERVING MSFWs

DLLR is committed to meeting the letter and spirit of the Richey Order and complying with all WIOA regulations set forth to govern the provision of MSFW services across Maryland's workforce system. DLLR strives to:

- Fully engage Maryland's MSFW population to reach those who can benefit from WIOA services;
- Assist in helping MSFWs to transition to stable employment opportunities that pay a sustainable wage, in either agricultural or non-agricultural occupations, based on the individual's career interests;
- Integrate the full spectrum of MSFW service providers into the American Job Center (AJC) system; and,
- Develop linkages and collaborative efforts with other non-traditional service providers to enhance opportunities for MSFWs to benefit from training and education resources.

MIGRANT & SEASONAL FARMWORKER SERVICES

IDENTIFYING CHARACTERISTICS OF THE MSFW POPULATION

Maryland’s MSFW service team should use three areas of characteristics to identify the MSFW population:

1. The type of work the individual performs.
2. The type of employer for whom the individual works or will work.
3. The individual’s employment background.

1. The type of work the individual performs.

WIOA regulations¹ define farmwork as activities that involve cultivation and tillage of the soil, dairying, production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer, or on a farm, as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market. It also includes 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.²

2. The type of employer for whom the individual works or will work.

MSFW employers must qualify either as agricultural employers or employers in a food processing business defined in 20 CFR §651.10 as an employer who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer.

3. The individual’s employment background.

An MSFW must meet the criteria for either a seasonal farmworker, migrant farmworker, or food processing worker, as described in the following table:³

Seasonal Farmworker	Migrant Farmworker or Food Processing Worker
<p>An individual who is employed, or was employed in the past 12 months, in farmwork (<i>see definition of the term farmwork earlier in this section</i>) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence.</p> <p><i>Seasonal</i> labor is employment exclusively performed at certain seasons or periods of the year. A worker who moves from one seasonal activity to another, while employed in farmwork is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year.</p> <p>A worker is employed on a temporary basis when he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration.</p>	<p>An individual who meets the criteria described for a seasonal farmworker who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.</p> <p><i>Full-time students traveling in organized groups rather than with their families are excluded from the categories described above.</i></p>

¹ According to definitions provided in 20 CFR §651.10 - Definitions of terms used in 20 CFR §§651, 652, 653, 654, and 658.

² 20 CFR §651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

³ 20 CFR §651.10.

MSFW SERVICE OFFERINGS

Per 20 CFR §653.101, each AJC must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, AJCs must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

The supportive services to which MSFWs are entitled include services that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner Peyser Act. These services may include, but are not limited to: linkages to community services; assistance with transportation; assistance with child care and dependent care; assistance with housing; needs-related payments; assistance with educational testing; reasonable accommodations for individuals with disabilities; referrals to health care; assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear; assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and payments and fees for employment and training-related applications, tests, and certifications.

ACCESS TO SERVICES FOR MSFWs

The right of MSFWs to access workforce system services is protected under WIOA Section 188, which prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration or connection with any programs and activities funded otherwise financially assisted in whole or in part under Title I of WIOA because of race, color, religion, sex, national origin (including Limited English Proficiency (LEP)), age, disability, or political affiliation or belief, or for the beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. Recipients must comply with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, and national origin (including LEP).

MSFW rights to system access are also protected under Title VI of the Civil Rights Act of 1964; Executive Order 13166, “Improving Access to Services for Persons With Limited English Proficiency” (August 11, 2000); and United States Department of Justice guidance, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (June 18, 2002). MSFWs who are English Language Learners (ELLs) must receive, free of charge, the language assistance necessary to afford them meaningful access to workforce system programs, services, and information offered by AJCs, as well as a list of available career and supportive services, also in their native language.

Reinforcing and strengthening federal law, **Md. State Government Code Ann. §§10-1101 - 10-1105** recognizes that the inability to speak, understand, or read the English language is a barrier that prevents access to public services provided by state departments, agencies, and programs. It is the policy of the State that its departments, agencies, and programs shall provide equal access to public services for individuals with limited English proficiency.

MSFW STAFF ROLES & RESPONSIBILITIES

Maryland’s MSFW service team includes staff in four roles:

1. DLLR serving as the State Workforce Agency (SWA);
2. The State Monitor Advocate (SMA);
3. The Labor Exchange Administrator (LEA) or another supervisor to oversee MSFW service delivery in the local workforce areas; and
4. Outreach Workers based in the AJCs in Local Workforce Development Areas (LWDAs).

Individuals in all of the MSFW staff roles are required to work collaboratively and with other partner organizations, as appropriate, to achieve the State’s goals for MSFW services.

The following section describes roles and expectations in detail.

DLLR - STATE WORKFORCE AGENCY (SWA)

As the implementing agency for Wagner Peyser in Maryland, DLLR’s Division of Workforce Development and Adult Learning (DLLR-DWDAL) serves as the SWA. In the SWA role, DLLR oversees and is accountable to USDOL’s Employment and Training Administration (ETA) for effective delivery of MSFW services within the State. Unless otherwise noted, the responsibilities of the SWA are led by the DLLR Secretary and are carried out by DLLR-DWDAL Director of Workforce, who has authority to assume or delegate MSFW responsibilities to other MSFW service team members.

DIRECTOR OF WORKFORCE DEVELOPMENT

The Director of Workforce (or designee) must:

- Appoint a SMA in accordance with requirements set forth in 20 CFR § 653.108⁴, and must employ an adequate number of Outreach Workers to meet the needs of Maryland’s MSFW population;⁵
- Provide overall oversight and responsibility for the operation of the Wagner Peyser Employment Service and Employment-Related Law Complaint System in Maryland, including –
 - Working with SMA and LEAs to ensure centralized control procedures are established for the processing of complaints; and,
 - Maintaining a central complaint log that lists all complaints received by Maryland AJCs. The details of collected complaints must include:

✓ the name of the complainant	✓ whether the complaint concerns an employment-related law or Employment Service (ES) regulations
✓ the name of the respondent	
✓ the date the complaint is filed	✓ the action taken and whether the complaint has been resolved ⁶
✓ whether the complaint is by or on behalf of an MSFW	
- Ensure the system for capturing information related to intrastate and interstate clearance orders collects all of the following material terms and conditions of employment;⁷ –

⁴ This section of the CFR focuses on the Employment and Training Administration of the USDOL.

⁵ In accordance with employment qualifications and conditions stipulated in 20 CFR §§653.107,108 and 111.

⁶ 20 CFR §658.410(b), and (c)

⁷ 20 CFR §653.501(c)(1)(iv)

- ✓ The crop
- ✓ Nature of the work
- ✓ Anticipated period of hours of employment
- ✓ Anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available
- ✓ The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size
- ✓ Any deductions to be made from wages
- ✓ A specification of any non-monetary benefits to be provided by the employer
- ✓ Any hours, days, or weeks for which work is guaranteed
- ✓ Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate

- Ensure Maryland’s MSFW service team implements the strategic and operational service goals and plans described in the Agricultural Outreach Plan integrated into Maryland’s WIOA State Plan; and,
- Review reports and documentation, as required, and facilitates the timely filing and transmittal of reports and documentation between state, regional, and national MSFW Monitor Advocates.

STATE MONITOR ADVOCATE

The SMA is the full-time, central coordinator responsible for managing and monitoring MSFW services across the State. The SMA’s role focuses on monitoring outreach efforts, reporting, documentation, partner coordination, complaint handling, and professional development. Detailed information on each area of responsibility is provided in this section.

The SMA must complete the following monitoring activities:

- Conduct regular on-site reviews at the local AJCs where Outreach Workers are based. In preparation for onsite reviews, the SMA must study program performance data, reports of previous reviews, corrective action plans developed as a result of previous audits, complaint logs, and complaints elevated from the local Outreach Workers or concerning the Outreach Workers or LEAs. Upon completion of a review, the SMA must share findings with local staff and provide technical assistance, as needed;
- Review Outreach Workers' daily logs and other reports on a random basis, including those showing or reflecting the workers' activities. (NOTE: A template for the Daily Log is included in **Attachment A – MSFW Daily Log**.);
- Conduct an annual state-wide review of local outreach efforts and share the review with the State’s MSFW service delivery team;
- Immediately advise the Director of Workforce Development and the LEA of the local area of any problems, deficiencies, or improper practices;
- If needed, request a corrective action plan from the LEA to address these deficiencies;
- Advocate to improve services for MSFWs and advise the members of Maryland's MSFW service team on ways to improve the delivery of services;

*** IMPORTANT NOTE ***

SMA's conduct onsite reviews at local AJCs whether or not an Outreach Worker is based at the location. SMA's conduct reviews to assess how MSFWs are being served at the AJC. If there is an Outreach Worker based in the office, the SMA may review the Outreach Worker's services, however it is important to understand that onsite reviews are about more than just reviewing the Outreach Worker's performance. They are about reviewing the AJC to make sure that services are accessible to MSFW customers.

- Work with employers to schedule and conduct field visits to MSFW working and living areas to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers;⁸ and,
- Conduct random, unannounced field checks to agricultural worksites where MSFWs have been placed through the intrastate or interstate recruitment system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

The SMA must complete the following reporting and documentation activities:

- Produce a written report that summarizes any conclusions, recommendations, and/or actions resulting from onsite reviews. The report must be forwarded to the LEA/supervisor for the local Outreach Worker, the Director of Workforce Development at DLLR-DWDAL, and the Secretary of DLLR within 30 days of the completion of the onsite review as described in section II(c)(2)(i) of this policy;
- Document all field visits, describing any issues that require follow-up with local Outreach Workers;
- Lead the development of the Agricultural Outreach Plan (AOP), a required component of Maryland's WIOA State Plan (NOTE: Details on the required elements in the AOP are included in ***Attachment B – Required Elements for MSFW Agricultural Outreach Plan.***);
- Submit a Quarterly Report using USDOL Form 5148, available at: https://www.doleta.gov/programs/pdf/eta_form_5148.pdf;
- Prepare an annual summary of Wagner Peyser services for Maryland's MSFWs delivered in Maryland based on the required annual review (NOTE: The required elements for the Annual Summary Report are included in ***Attachment C – Elements for the Annual Summary Report.***);
- Review and comment on proposed local, state, and federal directives, manuals, and operating instructions, as needed, that relate to serving MSFWs, to confirm that they are clear, workable, and accurately reflect the requirements of the regulations;
- Explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations, and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved; and,
- Participate in any required federal reviews.

The SMA must complete the following activities related to partner coordination:

- Meet on a quarterly basis (either in person or by alternative means) with representatives of Maryland's grantee(s) for the WIOA section 167 National Farmworker Jobs Program (NFJP), to ensure that the Wagner Peyser employment services delivered to eligible MSFWs are coordinated with those of Maryland's NFJP grantee to –
 - Reach all MSFWs who may benefit from NFJP services but are not yet connected to the program;
 - Receive complaints;
 - Assist in referrals of alleged violations to enforcement agencies; and
 - Engage in continuous improvement of service integration.
- Establish a Memorandum of Understanding (MOU) between the SMA and the NFJP grantee;
- Ensure the NFJP grantee is a signatory to the State's partner MOU; and,
- Establish and strengthen contacts with public and private community agencies, employers, and/or employer organizations and MSFW groups in order to facilitate the widest possible distribution of

⁸ Per 20 CFR §653.107(b)(2), Maryland's MSFW service team staff may not enter work areas to perform outreach duties on an employer's property without permission of the employer unless otherwise authorized by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate state laws regarding access.

information concerning employment services. MOUs may be established with other organizations serving farm workers, as appropriate.

The SMA must complete the following activities related to handling complaints:⁹

- Work with Outreach Workers and LEAs to ensure that information pertaining to the use of the Employment Services and Employment-Related Law Complaint System is publicized, which must include, but is not limited to, the prominent display of the USDOL-approved Complaint System poster in each AJC and at agricultural worksites where MSFWs are employed. The approved poster is included as ***Attachment D – Migrant and Seasonal Agricultural Worker Protection Act Poster***.
- Ensure each complaint filed by an MSFW alleging violation(s) of employment-related laws has been referred appropriately for prompt action;
- Ensure that complaints submitted by non-MSFWs to Outreach Workers alleging violation(s) of employment-related laws are logged and referred to the appropriate enforcement agency for prompt action, and that the complainant is informed of contacts with the enforcement agency to which the complaint was referred;
- Participate in and monitor the performance of the Complaint System;¹⁰ and,
- Review the LEA’s informal resolution of complaints relating to MSFWs and confirm that the LEA transmits copies of the Complaint System logs.¹¹

The SMA must complete the following activities related to professional development:

- Attend, within the first 3 months of tenure, a training session conducted by the Regional Monitor Advocate, as well as any additional training sessions required by the Regional or National Monitor Advocate;
- Develop and implement an annual professional development plan for all staff on the MSFW service team that satisfies requirements for initial staff training and ensures that staff stay current on policies, procedures, job duties, and best practices.

LABOR EXCHANGE ADMINISTRATORS (LEAs)

The LEA and/or Outreach Worker Supervisor provides direct supervision and support to Outreach Workers based in AJCs in Maryland’s local workforce areas.

In their supervisory role, LEAs and/or Outreach Worker Supervisors must:

- Facilitate communications between Outreach Workers and the SMA;
- Ensure that all documentation (e.g., daily logs, monthly reports, complaint logs, etc.) are filed and transmitted to the SMA and are maintained for three years, in accordance with DLLR’s record retention policy;¹²
- Assist Outreach Workers with complaint handling, informal resolution of complaints, and appropriate referrals;
- Submit a monthly summary report to the SMA summarizing the outreach efforts of the Outreach Worker(s) based in his/her Local Area. Note: Monthly reports must summarize Outreach Workers’ Daily Logs, and must include an assessment of the overall quality and productivity of Outreach Workers, including the services they provided and the methods and tools they used. The monthly reports and daily outreach logs must be made available to the SMA and federal on-site review teams;

⁹ 20 CFR §658.422 - Handling of employment-related law complaints by the Regional Administrator

¹⁰ As set forth at §§ 20 CFR 658.400 and 658.401

¹¹ Per 20 CFR § 658, Subpart E - Employment Service and Employment-Related Law Complaint System

¹² See the Record Retention section later in this Policy Issuance for a full description of DLLR’s standard record retention requirements.

- If an SMA’s report on a site visit includes a requirement for corrective action, develop and propose a written corrective action plan. The plan must be approved, or appropriately revised, by the SMA. The plan must include actions required to correct or to take major steps to correct any problems within 30 days or if the plan allows for more than 30 days for full compliance, the length of, and the reasons for, the extended period shall be specifically stated.¹³

OUTREACH WORKERS

Outreach Workers are the primary access point to Maryland’s workforce system for MSFWs. Outreach Workers must engage in outreach activities to locate and contact MSFWs who are not being reached by the normal intake activities conducted in and through AJCs.

Outreach Workers must:

- Complete training on local AJC procedures and MSFW services, benefits, and protections, including protections for farmworkers against sexual harassment;¹⁴
- Explain to MSFWs at their working, living, or gathering areas including day haul sites, by means of written and oral presentations either spontaneous or recorded, in a language readily understood by them, the following:
 - The services available at local AJCs and other related services;
 - Information on the Employment Service and Employment-related Law Complaint System;
 - Information on the other organizations serving MSFWs in the area; and,
 - A basic summary of farmworker rights. See *Attachment D - Migrant and Seasonal Agricultural Worker Protection Act Poster*.
- Conduct pre-occupancy housing inspections or work with partner agencies to insure pre-occupancy housing inspections are completed, as required by 20 CFR §653.501(3)(b). Note that Local Workforce Development Boards will be required to specify the party responsible for conducting MSFW housing inspections in their area in the Wagner Peyser section of their WIOA plan. If needed, the Rural Services Coordinator may conduct MSFW housing inspections, but must bill time correctly to the MSFW program. Regardless of which party conducts the pre-occupancy housing inspections, they MUST follow ETA requirements described in 20 CFR §654 Subpart E, found at <https://www.gpo.gov/fdsys/pkg/CFR-2003-title20-vol3/pdf/CFR-2003-title20-vol3-part654-subpartE.pdf>. DLLR will conduct ONE pre-occupancy housing inspection per season, per employer, for agricultural workers who were recruited through an inter- or intra- state job order, including both MSFWs and H-2A workers. For example, if an agricultural employer initially hires MSFWs through inter or intra-state job orders, DLLR will conduct a pre-occupancy housing inspection for those workers. If, during the same season, that employer also hires H-2A workers, the results of the pre-occupancy housing inspection conducted for the MSFW will be applied;
- Encourage MSFWs to go to the most accessible local AJC to obtain the full range of employment and training services. (If an MSFW cannot or does not wish to visit the local AJC, the Outreach Worker must offer to provide assistance at the MSFWs work-site or living quarters.);

*** IMPORTANT NOTE ***

What is a “Job Referral?”

The term “job referral” has a very specific definition under 20 CFR §651.10. To make a job referral, Outreach Workers must make direct contact with the hiring employer, either by phone, email, or in person, to bring candidate MSFWs who are able, willing, and available to fill openings to the attention of the employer. Records of employer contacts for job referrals should be retained for documentation in case notes.

¹³ 20 CFR §653.108 (i)(5)

¹⁴ The primary requirement relates to sexual harassment training, but training also may include similar issues such as sexual coercion, assault, and human trafficking. Such trainings are intended to help Outreach Workers identify when such issues may be occurring in the fields and provide guidance on how to document and refer such cases to the appropriate enforcement agencies.

- Provide MSFWs with job referrals to employment opportunities;
- Assist in preparing complaints and referring them, as appropriate;
- Refer MSFWs to supportive services and/or career services, as needed;
- Assist in accessing resources for MSFW(s) to and from local AJCs or other appropriate agencies;¹⁵
- Make follow-up contacts as necessary and appropriate to provide MSFW services;
- Work with employers to schedule and conduct field visits to the working and living areas of MSFWs, to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers.
- Conduct random, unannounced field checks to agricultural worksites where MSFW's have been placed through the intrastate or interstate recruitment system, to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law;
- Observe the working and living conditions of MSFWs and, on seeing or learning of a suspected violation of federal or state employment-related law, document and refer information to the LEA for processing.¹⁶ Additionally, if an Outreach Worker observes or receives information about apparent violations,¹⁷ the Outreach Worker must document and refer the information to the LEA for their Local Area;
- Be trained in the procedure developed by DLLR for informal resolution of complaints;
- Maintain complete records of contacts with MSFWs and the services delivered, using the following documentation and procedures –
 - Complete a daily log¹⁸ to record information collected during outreach visits to MSFW sites;
 - Send completed Daily Logs to the LEA/supervisor on a monthly basis; and,
 - Document information on apparent violations and complaints, including a description of the actions taken to gather information, and refer to other entities, as appropriate (Descriptions must include the circumstances and names of any employers who have refused to allow Outreach Workers to access MSFWs.);
- Carry and display, upon request, State identification and/or other identifying materials;
- Ensure that wages and working conditions offered to MSFWs are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment or the applicable federal or state minimum wage, whichever is higher;¹⁹ A wealth of information related to wage and hour issues is available on the USDOL website, at: www.dol.gov/whd/regs/compliance/hrg.htm. Current minimum wage laws in Maryland can be viewed at: www.dol.gov/whd/minwage/america.htm#Maryland. See ***Attachment E: DLLR Brochure on Maryland Wage and Hour Agriculture Exemptions*** for additional information.
- Abstain from participation in political, unionization, or anti-unionization activities when performing Outreach Worker duties.

¹⁵ DLLR funding is not available to support transportation assistance.

¹⁶ In accordance with 20 CFR §658.411 – Action on Complaints

¹⁷ As described in 20 CFR §658.419 – Apparent Violations

¹⁸ See Attachment A for template of Daily Log.

¹⁹ Per 20 CFR §653.501(c)(2)(i).

EMPLOYMENT-RELATED LAW COMPLAINT SYSTEM²⁰

WIOA regulations require DLLR to establish and maintain an Employment Service and Employment-Related Law Complaint System, to capture and process employment-related complaints made by individuals, employers, organizations, associations, or other entities. A complaint is an allegation or a representation made or referred to a State or local American Job Center of a violation of the WIOA regulations and/or other federal, state, or local employment related law.

The Employment Service and Employment-Related Law Complaint System covers complaints made within two years of an alleged violation that are: 1) against an employer about a specific job to which the applicant was referred through Wagner Peyser staff; and, 2) involve failure to comply with WIOA regulations under 20 CRF §§ 651, 652, 653, and 654.²¹

Complaints regarding any of the topics noted above must be immediately referred to the appropriate administering or enforcement agency, and/or advocacy organizations, as appropriate, for assistance.

Processing alleged violations of employment-related law:

- Each AJC must have staff available during regular office hours to take complaints. Complaints may be accepted in any AJC or by any member of the MFSW service team.
- All complaints filed through the local AJC must be handled by staff trained in the Complaint System, who must offer to assist the complainant through the provision of appropriate services.
- If the complainant is not a MSFW, he/she should be immediately referred to the appropriate enforcement agency, another public agency, and/or advocacy organizations, as appropriate, for assistance. Following the referral, no follow-up with the complainant is required.
- If the complainant is a MSFW, the Outreach Worker or LEA should attempt to resolve the issue informally at the local level. The only time the SMA should become involved at this point in the complaint process is in situations where the SMA determines that he/she must take immediate action or where informal resolution would be detrimental to the complainant(s). In such cases, the SMA must immediately refer the complaint appropriately.
- If attempts at informal complaint resolution have not succeeded to the satisfaction of the complainant in **5** business days, the complaint must be referred to the SMA, who must immediately refer the complaint to the appropriate enforcement agency for prompt action. The SMA must provide the complainant with his/her contact information and must notify the complainant of the enforcement agency to which the complaint was referred.
- The SMA must follow up with the complainant on a monthly basis until the complaint is resolved.
- If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SMA must initiate procedures for discontinuation of services immediately. If this occurs, the SMA must notify the complainant and the employer of this action.

WRITTEN DETERMINATIONS

The SMA must provide the employer with written notification if services will be discontinued. Notifications must be sent to the employer by certified mail (or another legally viable method) and to the complainant either

²⁰ For more details regarding the complaint process see 20 CFR §658.411

²¹ The Employment Service and Employment-Related Law Complaint System does NOT cover complaints alleging violations of regulations for unemployment insurance, programs funded under title I of WIOA, or veteran programs.

by mail or in an electronic format. Notifications must include the results of any investigation related to the allegations of the complaint and the conclusions reached. In cases where the complaint was not resolved, the SMA must provide the complainant with an explanation. Complaints alleged against DLLR must offer the complainant the opportunity to request, in writing, a hearing within 20 business days after the certified date of receipt of the written determination.²² If the Director of Workforce or designee determines that the employer has not violated the WIOA regulations, the Director or designee must advise the complainant of that the complainant has the opportunity to request a hearing within 20 business days after the certified date of receipt of the notification.²³

COMPLAINT RESOLUTION

A complaint is considered resolved when:

- The complainant indicates satisfaction with the outcome via written correspondence;
- The complainant chooses not to elevate the complaint to the next level of review;
- The complainant or the complainant's authorized representative fails to respond to a request for information within 20 business days or, if MSFW, 40 business days, of a written request issued either by the local LEA/supervisor, SMA, or Director of Workforce or designee;
- The complainant exhausts all available options for review; or
- A final determination has been made by the enforcement agency to which the complaint was referred.

In cases where the complaint is closed because the complainant or his/her representative failed to respond to a written request for information, the complainant or his/her representative may reopen the case within one year after the SMA closed the case.

²² 20 CFR §658.411 (5)(i)(D)

²³ 20 CFR §658.411(5)(ii)

APPARENT VIOLATIONS

If any staff member observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or regulations by an employer,²⁴ the employee must document the suspected violation and refer this information to the LEA. If the employer has filed a job order within the past 12 months, the initial approach should be to reach an informal resolution of complaints. This is true unless the complaint was submitted directly to the SMA or the Director of Workforce Development/designee, and a determination is made to take immediate action. The SMA may also become involved in situations where informal resolution at the local level would be detrimental to the complainant(s) in which case the SMA must immediately refer the complaint to the appropriate enforcement agency. Concurrently, the SMA must offer to refer the MSFW to other employment services. If the employer has not filed a job order with the MSFW service team during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

* IMPORTANT NOTE *

Apparent Violations are an internal process. Staff may witness a violation or learn of one in some other way (i.e., by reading about the issue or hearing about it). In the latter situation, staff should offer to explain the complaint system to that person to see if they wish to make a complaint. If the person does not wish to make a complaint, staff should treat the information internally as an Apparent Violation.

Staff should not offer the person/source an option to treat the information as either a complaint or an Apparent Violation. Staff still have a duty to act, having received information that appears to violate an employment-related law or regulations.

²⁴ Except as provided at 20 CFR § 653.503 for field checks or 20 CFR § 658.411 for complaints.

AGRICULTURAL RECRUITMENT SYSTEM (ARS)²⁵

The Agricultural Recruitment System (ARS) is designed to help agricultural employers find qualified U.S. workers on a temporary or seasonal basis by recruiting and referring qualified workers from within and outside of Maryland. Operational responsibilities for the ARS rest with DLLR.

According to 20 CFR §653.500, Subpart F includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of this subpart. This subpart affects all job orders for workers who are recruited through the employment service intrastate and interstate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

²⁵ 20 CFR Part 653, Subpart F

RELATED PROGRAMS

High-level information on the Foreign Labor Certification (FLC) program and the National Farmworker Jobs Program is provided in this section because these programs serve the same or closely-related populations. The information is not intended to offer comprehensive, detailed coverage of the featured programs.

FOREIGN LABOR CERTIFICATION: H-2A TEMPORARY AGRICULTURAL PROGRAM

FLC programs are designed to assure that the admission of foreign workers to the U.S. on a permanent or temporary basis will not adversely affect the job opportunities, wages and working conditions of American workers. The H-2A temporary agricultural program is an FLC program designed to allow agricultural employers to address a shortage or anticipated shortage of domestic workers by bringing nonimmigrant foreign workers to the United States using H-2A visas. Maryland's H-2A agricultural program is operated by DLLR's State Rural Services Coordinator.

As part of MSFW outreach, H-2A workers are provided with information on farmworker rights, complaint processes, and supportive services delivered to MSFWs, though information on employment and training services may not be appropriate for H-2A workers. H-2A workers served through MSFW outreach activities are included in the MSFW count, though are not considered MSFWs. To ensure time is billed properly between the two programs, staff must document their services in adherence with federal cost principles, clearly indicating the service provided.

THE NATIONAL FARMWORKER JOBS PROGRAM (NFJP)

The NFJP is a nationally-directed, locally-administered grant program that supports employment and training services and housing assistance for MSFWs. The purpose of the NFJP is to strengthen the ability of eligible MSFWs and their dependents to obtain or retain stable, unsubsidized employment, and achieve economic self-sufficiency, including upgraded employment within or outside of the agriculture sector.²⁶ To strengthen coordination between the MSFW service team and the NFJP, an MOU must be in place between Maryland's SMA and the NFJP grantee. Local Workforce Development Areas where the NFJP grantee is active should also have separate MOUs in place. MSFW Outreach Workers should thoroughly understand NFJP offerings, and should refer MSFWs to the program, when appropriate.

²⁶ 20 C.F.R. 685.100 Subpart A - What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?

PERFORMANCE ACCOUNTABILITY

USDOL has expectations that the State of Maryland will use Wagner Peyser Employment Service funding to provide the quality service that has been outlined within this policy. As such, DLLR must commit to USDOL that it will monitor Local Areas to ensure performance goals are being met. Per USDOL guidance, the State shall take corrective action with any Local Area that is not meeting the State's expectations in terms of performance, tracking data in the MWE, and in reporting.

The SMA must ensure that processes and procedures are in place to collect the following required data elements:

- Career service indicator data for the career services specified in WIOA sec. 134(c)(2)(A)(xii);
- Data required for USDOL ETA reports and guidance, on:
 - The number of MSFWs contacted through outreach activities;
 - The number of MSFWs and non- MSFWs registered for career services;
 - The number of MSFWs referred to and placed in agricultural jobs;
 - The number of MSFWs referred to and placed in non-agricultural jobs;
 - The percentage of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;
 - The median earnings of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;
 - The percentage of MSFW program participants who are in unsubsidized employment during the fourth quarter after exit from the program;
 - The number of MSFWs served who identified themselves as male, female, Hispanic or Latino, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, or White;
 - Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities; and,
 - Any other data required by the Department.

Additionally, the SMA must:

- Provide members of Maryland's MSFW service team with necessary training on techniques for accurately reporting data;
- Ensure processes and procedures are in place for members of the MSFW service team to collect and submit data on MSFWs required by Maryland's WIOA State Workforce Plan²⁷.
- Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, submit the data for verification and any additional requested reports to USDOL.
- Maintain documentation for the past performance of Maryland's MSFW service team, as reflected in on-site reviews and data collection.
- Analyze data to forecast the need for services to MSFWs in the upcoming year, comparing prior and projected levels of MSFW activity.

²⁷ Available at: <http://www.dllr.maryland.gov/wdplan/wdstateplan.pdf>.

MONITORING & RECORD RETENTION

MONITORING²⁸

The State of Maryland acknowledges that the USDOL has the authority to conduct fiscal and/or programmatic monitoring related to WIOA Wagner Peyser services delivered to MSFWs. DLLR, as it deems necessary, may supervise, evaluate, and provide guidance in the conduct of MSFW service activities. Monitoring may include desk and/or on-site monitoring. Failure of DLLR to supervise, evaluate, or provide guidance and direction shall not relieve Local Areas of any liability for failure to comply with service requirements.

RECORD RETENTION

In accordance with the Code of Federal Regulations, Maryland requires participating programs to retain records for at least three years following the date on which the final cost report charged to a program year's allotment is submitted, or until all audit and litigation issues are resolved, whichever is later. If any litigation, claim, or audit is started before the expiration of the three-year period, the records then must be retained until all litigation, claims or audit findings involving the records have been resolved and final action has been taken.

²⁸ 20 CFR §658.603 Employment and Training Administration Regional Office responsibility.

REFERENCES

LAW

- [Workforce Innovation and Opportunity Act \(Pub. L 113-128\) Title I](#), dated July 22, 2014;
- [Md. State Government Code Ann. §10-1101 through 10-1105](#) §§10-1101 through 10-1105

REGULATION

- [Workforce Innovation and Opportunity Act Labor Only Final Rule](#): 20 CFR §§ 651.10, 653.100 – 653.111, Subpart B, 653.500 – 503, Subpart F, 654.400 – 654.417, Subpart E, 655.103, 655.121, 655.155, 658.400 – 448, Subpart E, dated August 19, 2016

USDOL GUIDANCE

- Training and Employment Guidance Letter (TEGL), 19-14, [Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act](#), dated February 19, 2015;
- TEGL 17-12, [Responsibility of State Workforce Agency Administrators and State Monitor Advocates in Providing Services to Migrant and Seasonal Farm Workers](#), dated March 11, 2013;
- TEGL 25-16, [Fiscal Year \(FY\) 2017 Foreign Labor Certification \(FLC\) Grant Planning Guidance](#), dated March 30, 2017;
- TEGL 18-16, [Program Eligibility and Enrollment Guidance for the National Farmworker Jobs Program](#), dated January 19, 2017.

OTHER RESOURCES

- Presentation from USDOL National Training Conference – Program Year 2017: The Employment Service and Employment-Related Law Complaint System & Apparent Violations
- United States Department of Labor Employment and Training Administration (USDOL-ETA) website, [Resource Directory for National Farmworker Jobs Program and Monitor Advocate Contacts](#)
- USDOL-ETA website, [National Farmworker Jobs Program Fact Sheet](#)
- Executive Order 13166, “Improving Access to Services for Persons With Limited English Proficiency” (August 11, 2000);
- United States Department of Justice guidance, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” (June 18, 2002).

ATTACHMENTS

Attachment A – MSFW Daily Log

Attachment B – Required Elements for MSFW Agricultural Outreach Plan.

Attachment C – Elements for the Annual Summary Report

Attachment D – Migrant and Seasonal Agricultural Worker Protection Act Poster

Attachment E – DLLR Brochure on Maryland Wage and Hour Agriculture Exemptions

Required Elements for MSFW Agricultural Outreach Plan

The guidance provided in this document should be followed to prepare and submit Maryland's Migrant and Seasonal Farmworker (MSFW) Agricultural Outreach Plan (AOP), as required under 20 CFR 653.107.

Maryland must develop an Agricultural Outreach Plan every 4 years as part of its Combined State Plan.

The AOP must:

- (i) Provide an assessment of the unique needs of Maryland's migrant and seasonal farmworkers (MSFWs) based on past and projected agricultural and MSFW activity in the State;
- (ii) Provide an assessment of available resources for outreach;
- (iii) Describe the proposed outreach activities planned by Maryland's Department of Labor, Licensing and Regulation, Division of Workforce Development and Adult Learning (DLLR-DWDAL), including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted through the State's network of American Job Centers (AJCs); and,
- (iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, including both MSFWs and agricultural employers, through Maryland AJCs.

In developing the AOP, DLLR-DWDAL must solicit information and suggestions from Maryland's WIOA section 167 National Farmworker Jobs Program (NFJP) grantee, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before submitting its final AOP to the U.S. Department of Labor ("the Department"), DLLR-DWDAL must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment.

The State Monitor Advocate, in consultation with the Director of Workforce, must:

- (i) Consider any comments received in formulating its final proposed AOP;
- (ii) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore;
- (iii) Transmit the comments and recommendations received and its responses to the Department with the submission of the AOP. (If the comments are received after the submission of the AOP, they may be sent separately to the Department.)

Annual Summaries must be submitted to update the Department on the progress of Maryland's MSFW outreach efforts toward meetings goals set forth in the AOP.

Elements for the MSFW Annual Summary Report

The guidance provided in this document should be followed to prepare and submit an Annual Summary of Maryland's migrant and seasonal farmworker (MSFW) outreach efforts, as required under 20 CFR 653.108.

The Department of Labor's Employment and Training Administration (the Department) requires Maryland's Department of Labor, Licensing and Regulation, Division of Workforce Development and Adult Learning (DLLR-DWDAL) to submit an Annual Summary Report. The purpose of this report is to provide the Department's Regional and National Monitor Advocate with an overview of the activities and accomplishments of Maryland's MSFW service team during the previous 12-month period.

The summary must include:

- (1) A description of the activities undertaken during the program year by the SMA pertaining to his/her responsibilities as set forth under WIOA regulations;
- (2) An assurance that the SMA has direct, personal access, whenever he/she finds it necessary, to the DLLR-DWDAL's Director of Workforce and that the SMA has status and compensation approved by the civil service classification system, and is comparable to other State positions assigned similar levels of tasks, complexity, and responsibility;
- (3) An assurance the SMA devotes all of his/her time to monitor advocate functions. Or, if the Director of Workforce proposes the SMA conducts his/her functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing;
- (4) A summary of the monitoring reviews conducted by the SMA, including:
 - (i) A description of any problems, deficiencies, or improper practices the SMA identified in the delivery of services;
 - (ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and,
 - (iii) A summary of any technical assistance the SMA provided for the SWA and the American Job Centers (AJCs);
- (5) A summary compilation of the outreach efforts undertaken by all Maryland AJCs;
- (6) A summary of actions taken under the Maryland's Employment Service and Employment-Related Law Complaint System ("the Complaint System"),¹ identifying any challenges, complaint trends, findings from reviews of the Complaint System, trainings offered throughout the year, and steps taken to inform MSFWs, employers, and farmworker advocacy groups about the Complaint System;
- (7) A summary of how the SMA is working with WIOA section 167 National Farmworker Jobs Program grantee and other organizations serving farmworkers, employers and employer organizations in the State, and an assurance that the SMA is meeting at least quarterly with representatives of these organizations;
- (8) A summary of the statistical and other MSFW-related data and reports gathered by the SMA and for the year, including an overview of the SMA's involvement in DLLR-DWDAL's reporting systems;
- (9) A summary of the training conducted for all members of Maryland's MSFW service team, including AJC personnel, on techniques for accurately reporting data; and,
- (10) A summary of activities related to the AOP and an explanation of how those activities helped the Maryland reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of Maryland's MSFW service team's achievements over the previous 4 years to accomplish the goals set forth in the AOP, as well as a description of the goals which were not achieved and the steps the MSFW service team will take to address those deficiencies.

¹ Described in 20 CFR 658, subpart E

Notice

Migrant and Seasonal Agricultural Worker Protection Act

This federal law requires agricultural employers, agricultural associations, farm labor contractors and their employees to observe certain labor standards when employing migrant and seasonal farmworkers unless specific exemptions apply. Further, farm labor contractors are required to register with the U.S. Department of Labor.

Migrant and Seasonal Farmworkers Have These Rights

- To receive accurate information about wages and working conditions for the prospective employment
- To receive this information in writing and in English, Spanish or other languages, as appropriate
- To have the terms of the working arrangement upheld
- To have farm labor contractors show proof of registration at the time of recruitment

Aviso

Ley de Protección de Trabajadores Migrantes y Temporales en la Agricultura

Esta ley federal exige que los patrones agrícolas, las asociaciones agrícolas, los contratistas de mano de obra agrícola (o troqueros), y sus empleados cumplan con ciertas normas laborales cuando ocupan a los trabajadores migrantes y temporales en la agricultura, a menos que se apliquen excepciones específicas. Los contratistas, o troqueros, tienen además la obligación de registrarse con el Departamento del Trabajo.

Los Trabajadores Migrantes y Temporales en la Agricultura Tienen los Derechos Siguietes

- Recibir detalles exactos sobre el salario y las condiciones de trabajo del empleo futuro
- Recibir estos datos por escrito en inglés, en español, o en otro idioma que sea apropiado
- Cumplimiento de todas las condiciones de trabajo como fueron presentadas cuando se les hizo la oferta de trabajo
- Al ser reclutados para un trabajo, ver una prueba de que el contratista se haya registrado con el Departamento del Trabajo

- To be paid wages when due
- To receive itemized, written statements of earnings for each pay period
- To purchase goods from the source of their choice
- To be transported in vehicles which are properly insured and operated by licensed drivers, and which meet federal and state safety standards
- For migrant farmworkers who are provided housing
 - * To be housed in property which meets federal and state safety and health standards
 - * To have the housing information presented to them in writing at the time of recruitment
 - * To have posted in a conspicuous place at the housing site or presented to them a statement of the terms and conditions of occupancy, if any

Workers who believe their rights under the act have been violated may file complaints with the department's Wage and Hour Division or may file suit directly in federal district court. The law prohibits employers from discriminating against workers who file complaints, testify or in any way exercise their rights on their own behalf or on behalf of others. Complaints of such discrimination must be filed with the division within 180 days of the alleged event.

For further information, get in touch with the nearest office of the Wage and Hour Division, listed in most telephone directories under the U.S. Government, Department of Labor.

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



The law requires employers to display this poster where employees can readily see it.

- Cobrar el salario en la fecha fijada
- Recibir cada día de pago un recibo indicando el salario y la razón de cualquier deducción
- Comprar mercancías al comerciante que ellos escojan
- Ser transportados en vehículos que tengan seguros adecuados y que hayan pasado las inspecciones federales y estatales de seguridad, y conducidos por choferes que tengan permisos de manejar
- Las garantías para los trabajadores migrantes a quienes se les proporcionen viviendas o alojamiento
 - * Viviendas que satisfazan los requisitos federales y estatales de seguridad y de sanidad
 - * Al ser reclutados, recibir por escrito informes sobre las viviendas y su costo
 - * Recibir de su patron un aviso escrito explicando las condiciones de ocupación de la vivienda, o que tal aviso esté colocado en un lugar visible de la vivienda

Los trabajadores que crean haber sufrido una violación de sus derechos pueden presentar sus quejas a la División de Salarios y Horas o pueden presentar una demanda directamente a los tribunales federales. La ley prohíbe cualquier discriminación o sanción hacia los trabajadores que presenten tales quejas, que hagan declaraciones, o que reclamen de cualquier manera sus derechos, sea a beneficio de sí mismos o a beneficio de otros. Hay que presentar las quejas de discriminación o de sanción a la división dentro de 180 días del suceso.

En caso de que necesite más información, comuníquense con la oficina de la División de Salarios y Horas más cercana, que aparece en la mayoría de los directorios telefónicos bajo el título U.S. Government, Department of Labor.

Departamento del Trabajo de los EE. UU.
Administración de Normas de Empleo
División de Salarios y Horas

La ley exige que los patrones fijen este aviso en un lugar donde puedan verlo fácilmente los trabajadores.

WH Publication 1376
Revised April 1983



Before Reading Further:

This brochure only pertains to the Maryland Wage and Hour Law, which is different from the Federal Fair Labor Standards Act.

For more information on the requirements of the Fair Labor Standards Act please visit: www.dol.gov.



Employment Standards Service

1100 N. Eutaw St., Room 605
Baltimore, MD 21201
Phone: 410-767-2357
email: dldliemploymentstandards-dllr@maryland.gov

Learn more about Maryland's Wage and Hour Law by logging onto:
www.dllr.maryland.gov/labor/wages/

Rev. 9/2015



**Maryland Wage and Hour
Agriculture Exemptions**



Helping agricultural employers know which employees are exempt from minimum wage and overtime requirements under Maryland law.

Employees are exempt from both minimum wage and over-time requirements if:

- Employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood;
- employed in agriculture if the employer used no more than 500 agricultural-worker days per quarter during the preceding year. An agricultural worker day is any day that an employee works at least one (1) hour;
- engaged principally in the range production of livestock; or

Exemptions (Continued):

- employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that has been and is customarily recognized as having been paid on that basis if the following applies:

A. The individual commutes daily from their permanent residence to the farm where he or she is employed and if during the preceding calendar year, was employed in agriculture less than thirteen (13) weeks.

OR

B. The individual is under the age of 17, is employed on the same farm as a parent or guardian, and is paid at the same rate as an employee who is at least 17 years old on the same farm. (Reminder: teen workers must have a minor work permit to work in Maryland).

Other employees are entitled to over-time after sixty (60) hours per week if:

- Employee is engaged in agriculture and exempt from the overtime provisions of the federal Act.

Note: Agriculture means work performed by a farmer or on a farm as incidental to or in conjunction with farming operations.

Additional Information:

For additional information about the Maryland Wage and Hour Law exemptions for agricultural workers, please contact the Employment Standards Unit of the Division of Labor and Industry under the Maryland Department of Labor, Licensing and Regulation. Our contact information can be found on the back of this brochure.

