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Thank you for your work on revising the Migrant Labor Worker Agreement, as well as the opportunity for members of the Council on Migrant Labor to provide feedback on the form revision. I am providing comments on a few items that have been issues for Legal Action of Wisconsin's farmworker clients. This form, if properly completed, has the potential to prevent fraud in labor recruitment and to protect the existing legal rights of Legal Action of Wisconsin's farmworker clients.

- I. **The intro statement regarding § 103.915 (1)(a) has the potential to ensure that Wisconsin's farmworkers receive the legally required disclosures at the time of recruitment. The added sections regarding disclosures should make it clear that it is the *employer's and/or recruiter's* responsibility to provide disclosures.**

The proposed added language regarding the disclosure requirement will benefit Legal Action of Wisconsin's clients. In previous seasons, many of our clients only received the legally required disclosures *after* making the trip to Wisconsin, if they received the disclosures at all. This added compliance reminder may help more employers and recruiters remember to provide the required information at recruitment and at hiring. With this legally required information, Wisconsin farmworkers can make informed decisions about the advantages and disadvantages of traveling to Wisconsin for work.

Wisconsin law requires that the employer, not the worker, bear the responsibility for providing the legally required disclosures. Wis. Stat. § 103.915(1)(a) requires the party that "...bring(s) or arrange(s) for another to bring a migrant worker into this state for employment" is the party responsible for providing the work agreement and the required disclosures. Contrary to the responsibilities set forth in Wis. Stat. § 103.915, the current draft of the form implies that it is the worker, not the employer who bears the responsibility for compliance with this section.

Consider the situation of a worker who was verbally promised \$10 an hour at recruitment; but, did not receive this disclosure in writing. The worker moves to Wisconsin with her family and then is presented with a work agreement outlining pay as \$8.00 an hour. This worker decides to take the \$8.00 an hour job because she has already made the decision to travel to Wisconsin, already turned down other work, and needs to make the best of the situation in order to feed her family. However, the \$8 an hour is not the wage she was promised at recruitment. This worker may even sign the work agreement agreeing to the lower rate and state that she received the disclosures at recruitment, even if she did not, because she wants to begin working as soon as possible. When workers do not receive written disclosures at time of recruitment, in addition to at hiring, workers are exposed to the risk that they may not receive what was promised.

One option to avoid the situation exemplified above would be to require the employer or recruiter to certify on the form that the worker was provided with the required disclosures at the time of recruitment. Additionally, Migrant Labor Inspectors could conduct work agreement audit interviews in confidential settings so that workers could share their situation without fear of retaliation.

**II. The language requirements under Wis. Stat. § 103.915(8) should be noted on the form.**

Most of Legal Action of Wisconsin's farmworker clients prefer to communicate in a language other than English. Wis. Stat. § 103.915 (8) dictates that all required terms of the form, including any needed attachments, should be in English and in the language spoken by the worker, and that the Department shall, upon request, provide assistance in translating these statements and agreements. Adding a statement regarding these statutory language requirements would make it clear to the person completing this form that they have the responsibility to provide the information in the language spoken by the worker and the right to receive assistance with translation.

**III. The “other authorized deductions section” (Item 17 of the current form) protects migrant and seasonal farmworkers from unpleasant surprises at payday.**

Many of Legal Action of Wisconsin's clients have been shocked by deductions from their paycheck at payday. Wis. Stat. § 103.914 (4)(b) requires that “any other charges or deductions from wages beyond those required by law” be included in the work agreement and disclosure statement.” These provisions provide workers with the tools to make informed decisions about whether to accept work in Wisconsin and allow workers to anticipate the amount they can expect to receive in their paychecks.

**IV. Provisions necessary to include for compliance with the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq. as well as 20 CFR § 653.501 (d)(10).**

Wisconsin farmworkers are best protected when vital state and federal protections are addressed in a cohesive manner. Many of the protections mandated by the federal laws above are set forth in form wh-516 (included as an attachment) and could easily be incorporated into Wisconsin's Migrant Labor Work Agreement.

- A. Though DWD 301 permits a single work agreement for each family, for the information to satisfy the disclosure requirements under the federal Migrant and Seasonal Agricultural Worker Protection Act, each individual worker must be provided with the information.
- B. The proposed Migrant Labor Worker Agreement omits the unemployment insurance provisions (Item 18 of the current form). Changing the language, instead of omitting the language completely, would provide more protections to Wisconsin's farmworkers. The UI language in the current Worker Agreement is misleading to workers. Many of Legal Action's clients receive the impression that

an employer has the power to determine a worker's eligibility for unemployment insurance, and the current Worker Agreement perpetuates this misunderstanding. At the same time, unemployment insurance language is required under 20 CFR § 653.501, as well as the Migrant and Seasonal Agricultural Worker Protection Act Standard disclosure form (wh-516). Further, many of Legal Action of Wisconsin's clients may or may not accept positions based on whether they would receive wage credit for their work. A language change on the form to clarify the purpose of the unemployment insurance provision could be helpful to our clients and other migrant workers in Wisconsin. For example, it could read:

The work done at this place of employment is/ is not covered by unemployment insurance.

*Note: A worker's eligibility to receive unemployment benefit is determined by Wisconsin's unemployment insurance laws and cannot be promised by any recruiter or employer.*

- C. The proposed Migrant Labor Worker Agreement draft omits the language regarding workers' compensation insurance. This information is required by the Migrant and Seasonal Agricultural Protection Act (AWPA). The AWPA regulations, § 29 CFR 500.75(b)(6)) require the employer to disclose not only whether workers' compensation insurance is provided, but also the name of the workers' compensation carrier and the person(s) who need to be notified in case of an accident. The Wisconsin form could add a section similar to the current WH-516 in this regard. Information regarding worker compensation insurance coverage is critical information for workers injured on the job, especially when employers may fail to notify the insurer on a prompt basis.
- D. The AWPA regulations require notice of the existence of any strike or other concerted work stoppage by employees at the place of employment. § 29 CFR 500.75 (b)(7). The current version of Wisconsin's form includes this information in section 19. Adding the language into the proposed section 20 would ensure compliance with these provisions and may also protect worker rights under Wisconsin's Fraudulent Advertising for Labor Statute, Wis. Stats. § 103.43.
- E. The AWPA also requires disclosure regarding the existing of any commission arrangement between agricultural employers and farm labor contractors § 29 CFR 500.75 (b)(8).

In addition to being required by AWPA, the commission arrangement reports are important in detecting labor trafficking, as well as wage theft in Wisconsin. Workers with debts to employers and recruiters are especially vulnerable to labor exploitation and trafficking and it is important to detect debts that workers may owe to third parties that are affiliated with recruiters or employers.

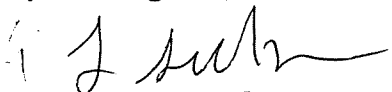
- F. Under the AWP, 29 USC 1841 (b), vehicles used to transport migrant and seasonal farmworkers must be insured. Though we have been fortunate not to have a motor vehicle accident involving worker death or injury in Wisconsin in recent years, many of Legal Action of Wisconsin's counterparts around the country have encountered cases in which injured workers discover that the agricultural employer or recruiter did not have the required insurance on the vehicles used to transport workers. A requirement to include the vehicle insurance information with the work agreement would promote further compliance with these important provisions.
- G. Under 20 CFR § 653.501 (d)(10) workers who are working under jobs described in clearance orders must be provided with a statement indicating that they have the right to receive a complete copy of the clearance order, in addition to the required disclosure information.
- V. Finally, a few very minor changes to the form could be useful to the DWD in conducting any future required prevailing wage and prevailing practice surveys.

The availability of this data is helpful to Legal Action of Wisconsin clients because it protects the wages and working conditions of both US workers and workers who work on H2-A visas. Additionally, efficient means of data collection allow the Department of Workforce Development to conserve its scarce resources in order to devote more time and resources to education and enforcement of worker protections.

For example, the Section 9 could include a question regarding whether or not family housing is offered. The form could also include a very brief introductory question regarding experience requirements and production standards.

Again, thank you for the opportunity to provide feedback regarding Wisconsin's Migrant Labor Work Agreement. The form has the potential to prevent worker rights abuses and to protect Wisconsin's farmworker families and I appreciate your attention to these issues.

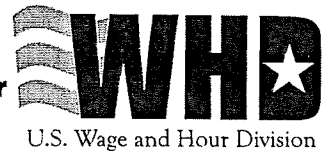
Very best regards,



Erica Sweitzer-Beckman  
Farmworker Attorney and Project Legal Director  
Legal Action of Wisconsin  
Member of the Governor's Council on Migrant Labor

Migrant and Seasonal Agricultural  
Worker Protection Act

U.S. Department of Labor  
Wage and Hour Division



OMB NO: 1235-0002  
Expires: 08/31/2020

**Worker Information—Terms and Conditions of Employment**

1. Place of employment: \_\_\_\_\_

2. Period of employment: From \_\_\_\_\_ To \_\_\_\_\_

3. Wage rates to be paid: \$ \_\_\_\_\_ per Hour Piece Rate \$ \_\_\_\_\_ per \_\_\_\_\_

4. Crops and kinds of activities: \_\_\_\_\_

5. Transportation or other benefits, if any: \_\_\_\_\_

Charge(s) to workers, if any: \_\_\_\_\_

6. Workers' compensation insurance provided: Yes ☐ No ☐

Name of compensation carrier: \_\_\_\_\_

Name and address of policyholder(s): \_\_\_\_\_

Person(s) and phone number(s) of person(s) to be notified to file claim: \_\_\_\_\_

Deadline for filing claim: \_\_\_\_\_

7. Unemployment compensation insurance provided: Yes ☐ No ☐

8. Other benefits: \_\_\_\_\_ Charge(s) \_\_\_\_\_

9. For migrant workers who will be housed, the kind of housing available and cost, if any: \_\_\_\_\_

Charge(s) \_\_\_\_\_

10. List any strike, work stoppage, slowdown, or interruption of operation by employees at the place where the workers will be employed. (If there are no strikes, etc., enter "None"):

11. List any arrangements that have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None"):

Name of Person(s) Providing This Information: \_\_\_\_\_

**Note:** The Department of Labor—Wage and Hour Division makes this form available in certain other languages to enable employers to satisfy the requirement that the terms and conditions of employment be disclosed in a language common to the workers. Contact the nearest office of the Wage and Hour Division to obtain such forms.

While completion of Form WH516 is optional, it is mandatory for Farm Labor Contractors, Agricultural Employers, and Agricultural Associations to disclose employment terms and conditions in writing to migrant and day-haul workers upon recruitment, and to seasonal workers other than day-haul workers upon request when an offer of employment is made to respond to the information collection contained in 29 CFR §§ 500.75-500.76. This optional form may be used to disclose the required information. Thereafter, any migrant or seasonal worker has the right to have, upon request, a written statement provided to him or her by the employer, of the information described above. This optional form may also be used for this purpose.

We estimate that it will take an average of 32 minutes to complete this collection of information, including the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Room S3502, 200 Constitution Avenue NW, Washington, D.C. 20210. **Do NOT send the completed form to this office.**