

Governor's Council on Migrant Labor Minutes

Wednesday, October 20, 2021

10:00 AM – 12:00 PM

Via WebEx

Call to order: 10:00 a.m.

Roll Call

MEMBERS PRESENT:

John Bauknecht, Erica Sweitzer-Beckman, Laura Waldvogel, Jose Martinez, Erica Kunze, and Kate Lambert

MEMBERS ABSENT:

Senator Bob Wirch, Guadalupe "Wally" Rendon, Jeanine M. McCain, Senator Jerry Petrowski, Aimee Jo Castleberry, and Lupe Martinez

DWD STAFF PRESENT:

Katie Mueller (Section Chief – BJS), Andy Janssen (Program & Policy Analyst – BJS), and Jennifer Wakerhauser (DWD Chief Legal Counsel)

AGENDA ITEMS

1. Call to Order:

Note: There were only 6 Council members present and 7 are needed for a quorum. **Erica Sweitzer-Beckman** took over duties to lead the Council meeting in the absence of **Lupe Martinez**.

Erica Sweitzer-Beckman called the meeting to order. Since there was not a quorum, the members moved on to items that did not require a vote.

2. Approval of Agenda:

No motion made due to lack of quorum.

3. Approval of Minutes:

No motion made due to lack of quorum.

4. Legislative Updates

No legislative updates

5. Migrant Seasonal Farmworker (MSFW) Updates

Katie Mueller (Bureau of Job Service Section Chief) gave the **Migrant and Seasonal Farmworker Status Report** (as of 10/13/2021) to the Council members.

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MIGRANT HOUSING APPLICATIONS

- 2020: 75 Migrant Camp Applications received
- 2021: 190 Migrant and H-2A Camp Applications Received

MIGRANT HOUSING CERTIFICATIONS

- 2020: 71 camps certified
- 2021: 205 migrant and H-2A camps certified or partially certified
 - 52 Migrant Workers Only
 - 135 H-2A Visa Workers Only
 - 18 Both

MIGRANT LABOR CONTRACTORS/CREW LEADERS

- 2020: 63 Contractors certified
- 2021: 46 Contractors and 48 Agents certified

MIGRANT AND SEASONAL FARMWORKER OUTREACH:

- 2020: 2,174
- 2021: 2,551

FOREIGN LABOR CERTIFICATION (Program year: October 1 to September 30)

Year End Report for Federal Fiscal Year 2020 (October 1, 2019 – September 30, 2020)

H-2A (Temporary Agricultural Workers):

- 109 applications received since October 1, 2019
- 2,022 workers requested; 2007 workers approved

H-2A Housing inspections since October 1, 2019:

- 131 housing sites certified

Federal Fiscal Year 2021(October 1, 2020 – September 30, 2021)

H-2A (Temporary Agricultural Workers):

- 137 applications received
- 2,405 workers requested; 2,011 workers approved

Federal Fiscal Year 2021(October 1, 2021 – September 30, 2022)

- No applications filed

EVENTS/MEETINGS

- Governor's Council on Migrant Labor next meeting: Wednesday, October 20, 2021
- WFC COVID Response Steering Committee – ongoing
- 2021 National Labor Trafficking Conference: October 13 – 15, 2021
- UMOs SMA/NFJP Training: Wednesday, September 1, 2021

Jose Martinez asked questions about data

Kate Lambert - Commented that it has been a huge issue and there has been difficulty in recruiting workers. Due to fears about travel and COVID-19 have made it a struggle to retain a workforce. She added that due to increased resources and their partnership with La Clinica, they did see some new people come about because of the resources they were able to provide. She believes it is going to be a challenge going forward with recruitment. They are now looking at ways to automate some processes to help alleviate the struggles they are experiencing with recruitment.

6. Old Business:

- Approval of the Ad Hoc Committee for Minimum Hours Guarantee
- **Review Governor's Council on Migrant Labor Annual Report**

Katie Mueller discussed that the report was required by the bylaws in August of each year. The report is submitted to the DWD Secretary's office. She drafted a report and sent it to the council and wanted their input for review. She is awaiting any input and additional feedback on the content of the report.

She will work with Lupe on a letter of introduction and cover page to the report for the Secretary. She set as deadline for the Council to provide any feedback by Friday, October 29, 2021. **Erica Sweitzer-Beckman** agreed that this would be a good idea for members to be able to review and add comments.

Laura Waldvogel expressed appreciation for Katie's efforts in putting this together for the council.

Jose Martinez requested a copy of the latest version.

John Bauknecht stated that he has no problem with the content. He felt that since this has been prepared by the DWD, he thinks that the report might need to be approved by the council.

Erica Sweitzer-Beckman suggested we keep the deadline for the written comments of Friday, October 29, 2021. She stated that the Council could put it on the agenda for the next meeting for approval.

John Bauknecht asked if there would be negative consequences of not approving this immediately.

Jennifer Wakerhauser (DWD Chief Legal Counsel) was asked if there was an issue with them not approving an annual report in August. Jennifer stated that there is not violation of the law but it was a violation of the bylaws but there is no a penalty. She noted that no report was submitted last year, and she commended the Council for wanting to get back on track with this task.

Erica Sweitzer-Beckman suggested keeping the Friday, October 29, 2021 deadline for submission of comments and feedback to the annual report by Council members and this putting the item on the next agenda for approval.

- **Additional Migrant Labor Inspector**

Katie Mueller delivered a report back to the Council regarding John Bauknecht's question of whether the DWD could create an additional inspector within their existing budget. She stated that the additional inspector position was requested by the DWD and Governor Evers put the position in his biennial budget. However, this position was not included in the final budget that the Legislature passed and sent to the Governor.

The secretary does have discretion to create new positions. However, there must be funds available in appropriate budget category or funding source. The funding source for migrant inspectors are state funds because they are enforcing state laws. Federal funds cannot be used for administering state law. The allotment DWD receives in state fund migrant labor inspector positions is allowed to be used for youth apprenticeship, registered apprenticeship, and the administration and enforcement of migrant labor laws. Each year this funding is overspent. That is why DWD requested an extra migrant labor inspector position in the most recent budget.

H2-A Program which is a federal program also requires an inspector. The federal government provides a grant to the state but is only sufficient to fund one position.

Katie stated that she has a great team who have been able to ensure they are meeting state and federal guidelines in providing services to migrant workers and H2-A workers and ensure employers are following state and federal guidelines.

One adjustment they have made in the Bureau of Job Service is to not require that Migrant Labor inspectors work in a job center. The Migrant Labor Inspectors used to spend time in the "off season" working and providing services in the Job Centers. Their position title is technical an Employment & Training Specialist which is the same title as job center staff across that state.

This adjustment has allowed these inspectors to assist with the H2-A program related duties and ensure that all inspections are up to date. Katie stated that when she first began in the position there were investigations that were not completed. She said those have been completed and they have been able to maintain inspections, investigations, and ensure that all federal guidelines are being met and services to workers are being provided.

Erica Sweitzer-Beckman – Thanked Katie Mueller thorough review and explanation. She was thankful that the hour change was helpful. Her concern is that issues arise post occupancy. She said there might be some concerns about capacity for post occupancy inspections.

Katie Mueller stated that they do post occupancy inspections as well. In addition, that outreach staff go out during the season in the evenings. They report issues to inspectors when they observe them.

Erica Sweitzer-Beckman – Do outreach staff have training identify violations?

Katie Mueller – stated that they are knowledgeable about issues but not trained specifically in inspection protocols.

Jose Martinez asked for clarification of the funding source for inspectors. He asked if it was WIOA funding? Katie stated that WIOA funding cannot be used for Migrant Labor Inspectors because they enforce state law. She further stated that when Migrant Labor Inspectors worked in job centers, the funding source for that is Wagner-Peyser which is WIOA.

John Bauknecht asked for clarification about the final state budget. He stated that the additional inspector position was included in the Governor's budget but not the final budget. He wanted to know what "final budget" meant.

Katie Mueller explained the budget process where state agencies submit their budget requests to the Governor and then he puts together a biennial budget for submission to

Legislature. The governor included the migrant labor inspector in his budget, but it was not approved by the Legislature.

Laura Waldvogel stated that there is a lot of funding flowing from the federal government for COVID related activities. She asked if the state could possibly tap some of these funds for potential use for an additional inspector.

Katie Mueller they are always looking at grants and funding for these purposes.

Erica Sweitzer-Beckman and **John Bauknecht** both wished for the state to pursue any additional funds that might be used for this purpose.

Erica Sweitzer-Beckman asked if inspection penalties could this be used to fund a position. **Katie Mueller** said any penalties fund collected must all go back to the DWD general budget.

7. New Business:

- **Updates to the Migrant Labor Worker Agreement**

Katie Mueller reviewed changes to the Migrant Labor worker agreement to the Council members. She shared her screen in the virtual meeting to allow members to follow along and see the changes that have been proposed by DWD.

Changes in the Migrant Labor Worker Agreement include:

- Shortening "Migrant Labor Contractor" to "MLC" throughout the document.
- Section 3. Kind of Work Available - A check list was added for type of work which now includes "Raising" which is in the statutes but was not on the previous form. Also, "Grading" and "Storing" were separated on the form. The previous form had them listed together.
- Section 4. Applicable Wage Rates - Under the "Hourly Wage Rate" check box, new fields were added that had been previously listed in Section 3. These fields are: Position Recruited, Recruited Hourly Wage, Position Hired, Hired Hourly Wage. In addition, a section was added for updated information which includes: Updated Position, Updated Hourly Wage, Updated Date, Worker Initials, Employer/MLC Initials. Finally, a check box was added for "Piece-Rate Wage (If necessary, attach schedule)". Under this check box language was added to show the rate per crop and the per hour wage rate.
- Section 6. Pay Period – Check boxes were added to show which day of the week a work will be paid on.
- Updated "Actual Start Date" to "Actual Report to Work Date" to reflect the statutory language.

- Section 9. Housing – Reorganized this section to make a clear separation between "Family Housing" and "Non-Family Housing". The "Type of Housing" was reworded to match the type of housing listed on the migrant housing application.
- Under the two lists for "Family Housing" and "Non-Family Housing" is now the cost for housing. A new question was asked on this form to indicate if a security deposit was required and if so the amount.
- Section 11. Transportation – This section was divided into two parts. They are: "Transportation provided or reimbursed by Employer/MLC from worker's permanent residence to place of employment or housing." and "Transportation provided or reimbursed by Employer/MLC from worker's temporary residence to worksite." New check boxes under "Mode of transportation" were added to include: "Car/Truck" and "Worker's own transportation". There is also a check box to indicate that the worker is reimbursed and space to explain how and when they will be reimbursed.
- Section 12. Other Authorized Deductions – Check boxes were added to this section to detail the types of deductions and where in the form you can find additional details about the deductions. This section also includes an "Other, please describe" check box with additional space to add details.

The PDF, once finalized, will be a fillable form and will also be translated to Spanish and Creole and made available on the DWD website.

Kate Lambert – Ask if it is the intent of DWD to have this updated, approved and posted on the DWD website by January 1, 2022? **Katie Mueller** confirmed this was the intent of DWD.

Kate Lambert – Asked if there was a consideration by DWD of allowing for electronic signatures. **Katie Mueller** said that DWD will consider this option.

Erica Sweitzer-Beckman had a question about the pay section. She wanted to confirm that pay offered at recruitment set the bar and could not be lowered subsequently. She wanted to make sure that this was clear, in terms of enforcement that the workers' pay could not be lower from original offer. **Katie Mueller** confirmed that Erica was correct.

Erica Sweitzer-Beckman had an additional question about the work guarantee section. Some concerns that the worker will be receiving guarantees before they sign the agreement. She suggested requiring the signature at the time of recruitment which could be facilitated by the use of an electronic signature to be able to verify that information was provided to the workers.

Katie Mueller responded by stating they would consider these suggestions. She further clarified that the statutes do not require a signature at the time of recruitment but require the signature at the time of hire. Katie also explained that the employer or MLC

needed to check a box to signify that they provided written recruitment disclosure statement and that the agreement described the terms and conditions of employment.

Erica Sweitzer-Beckman stated that this was a change from the previous form and subsequently stated she would withdraw her previous suggestion. She stated she was glad it was corrected.

Erica Sweitzer-Beckman asked about when they may know about the ability to use an electronic signature. **Katie Mueller** stated that there was no timeline because she needed to discuss the issue with DWD Legal Counsel.

Erica Sweitzer-Beckman asked about whether there have been requests to have attachments to the forms translated. **Katie Mueller** has not seen requests for translation of attachment to the forms.

- **Options After EmR2109 Expires**

Katie Mueller - The rule was extended to December 16, 2021. The department is looking at promulgating a new emergency rule. This would require a new statement of scope and can take 4-6 weeks to complete and promulgate an emergency rule. The department is also exploring the option of a permanent rule. It is highly unlikely that a permanent rule could get promulgated before the 2022 season. The other thing to consider is what would a permanent rule look like. Would it make sense to put in place a permanent rule and change the administrative code given the changing nature of COVID. They would need to ensure that a permanent rule would not negatively impact employers and workers should the pandemic end or continue to change.

Katie Mueller stated that DWD is welcoming feedback from the Council on pursuing another emergency rule or moving to create a permanent rule.

Erica Sweitzer-Beckman stated that she would be interested in hearing from health care workers about recommendations about dealing with COVID or possibly a new communicable disease in a congregate living setting or if they had some input or recommendations on best practices.

Jose Martinez – Talked about looking to guidance from WHO or CDC. He wondered if language could be incorporated in an emergency rule or permanent rule that refers to WHO or CDC guidelines in the face of current pandemics or emerging pandemics.

Laura Waldvogel stated that Jose made a great point about looking for guidance through those types of authorities. There are healthcare professionals we can look to and referencing current resources, so we don't have to continue to extend an emergency rule.

Erica Kunze recommended forming a subcommittee on what we would need to implement and what recommendations would be needed to carry forward. She thought that it would be beneficial to have a committee look deeper into this and get input from a variety of sources about how to move forward on this issue.

Erica Sweitzer-Beckman what is the timeline for DWD on new emergency rule or permanent rule.

Katie Mueller stated that in the next couple of weeks DWD needed to take steps to move toward a new emergency rule because H2A workers begin arriving to the state in January so DWD need to be prepared to deal with this. She further stated that formation of a subcommittee, due to the bylaws, would take time because the committee would have to proposed and approved by the Executive Committee and then approved full council during a subsequent meeting, thus causing a delay in dealing with this issue.

Laura Waldvogel stated she like the idea of a subcommittee but questioned whether the committee would have to come from the Council. She asked whether a committee on the topic could be formed by DWD.

Erica Sweitzer-Beckman asked whether council members and other interested groups could submit comments to DWD on this topic but also be mindful on not having Council walking quorum issues. She added that there is an existing ad hoc committee of the Council that could meet on this and get feedback to DWD.

Laura Waldvogel questioned if an existing committee could engage non-Council members.

Erica Sweitzer-Beckman answered Laura by stating that an existing committee would need to follow the open meetings process but could invite experts to a notices committee meeting to get input and feedback from them.

Kate Lambert asked whether this would allow workers to offer input into the process regarding their needs and wished for accommodations.

Erica Sweitzer-Beckman stated that since this would be an open meeting, they could certainly participate and offer testimony if there would be an agenda item for open comment. She also asked DWD Legal Counsel to confirm this.

Jennifer Wakerhauser (DWD Chief Legal Counsel) stated that once the meeting was noticed and the agenda set, they could have anyone offer testimony or comments. She also stated that during the rule making process, either emergency or permanent, that there are other opportunities for public comment and input from Council members and other stakeholders. There are multiple opportunities for public comment during the

emergency rule process. Once a statement of scope is published, there is an opportunity for public comment. Additionally, the DWD can hold a hearing on the statement of scope where public comment and input can be offered. Once the statement of scope is approved and the emergency rule drafted and hearing on the rule can take place where additional comments can be offer by the public.

Erica Sweitzer-Beckman asked **Jennifer Wakerhauser** to walk the Council through the process of a permanent rule and how the Council and others may offer input, testimony, and comments during this process.

Jennifer Wakerhauser (DWD Chief Legal Counsel) stated that in the permanent rule process are similar opportunities for public comment and input. She stated that the "statement of scope" process remains that same. Once the statement of scope is approved and published DWD would work on a draft of the permanent rule and it would go to the Legislative Clearinghouse where the Legislative Council would take public comments. Then, when the rule published, the Legislature can assign it to standing committee who might wish to hold hearings giving Council members, the public, and stakeholders an opportunity to offer testimony. In addition, the rule will also to the Joint Committee on Review of Administrative Rules (JCRAR) where hearings can be held, and testimony given. Once the approved by JCRAR, the rule would become permanent. This means that during this process there are potentially many more opportunities, but guaranteed, for public comment. This is a much longer process than that of an emergency rule and the Legislature must be in session for this process to be completed. She stated that the DWD is looking for some guidance from the Council about the best course of action given the time constraints and the difference in the process between pursuing an emergency rule, a permanent rule or both.

Jose Martinez thought the best approach might be an emergency. **Jennifer Wakerhauser** stated that is possible to get a permanent rule through, she agreed that an emergency rule would be more efficient.

Jennifer Wakerhauser suggested that the Council consider changes to the bylaws about making the creation of committees less cumbersome.

Laura Waldvogel stated that she feels that DWD should pursue both an emergency rule and permanent rule. **Erica Sweitzer-Beckman** agreed that this would be her opinion, too.

Jose Martinez agreed with pursuing emergency and then pursue a more permanent rule.

Erica Sweitzer-Beckman recapped that the feeling of the Council was to pursue an emergency rule and something more permanent and the Erica Kunze and Kate Lambert

expressed a desire to see that both employers and workers had opportunities to offer comment and input on both.

Laura Waldvogel offered to volunteer or be assigned to any workgroup to offer comments and ideas on what should go into a new emergency rule or a permanent rule.

Jose Martinez also offered to be part of this.

8. Announcements:

There were no announcements.

9. Public Comment:

Note: A Spanish interpreter was available for this portion of the meeting to translate comments of those who could not speak English.

Erica Sweitzer-Beckman stated that though members of the Council do speak Spanish she asked that when the public comments or asks questions, they wait for the interpreter to translate.

Erica Sweitzer-Beckman thanked the public for their time and willingness to be with the Council today.

Public Comments:

Indira Alvarado stated she is the mother of Isabela Cervantes and is glad to be here today and meeting the Council. She commented her experience with UMOS programs in Beaver Dam. She said that for her the program has helped her greatly especially the food program. In addition, she was appreciative of the help and support from UMOS and thanked Maria who introduced her to the program. She thanked the Council on behalf of herself and her husband for the help and support. *(Her comments were translated by the interpreter.)*

Erica Sweitzer-Beckman asked question are there anything that worker advocates and employers can do to make your stay better?

Indira Alvarado said that she has been her for only 4 months. She said it was difficult to understand the meeting because it was in English but expressed a desire to have the meeting in Spanish, too. She expressed a desire to learn English. She wanted to know if the UMOS program helped in this regard. She said that speaking English would be a big help for her in her work here.

Vanessa Maria Valdez stated that she lives in Jefferson for 5 years and migrated from Texas with her children. She said she has had a hard life. She thanked the UMOS programs for their

help, especially Marisol. She also said that she was a victim of sexual assault and that she and her family were given many resources to help them. This has been a change for her working in this industry, but it has helped her mentally and her children to be able to live in the apartment they have. This helps her children who are in school and she hope that because of this her children will not have to work the way she does.

Erica Sweitzer-Beckman asked question are there anything that worker advocates and employers can do to make your stay better?

Vanessa Maria Valdez stated that the pandemic has been an obstacle for many. She is happy that her job is picking up and that she can get as many hours as she can. She does worry that work will stop because of this. *(A portion of her comments were translated but she did speak English for some of it.)*

Anabel Sanchez said good morning to the Council and that she lives in Jefferson, Wisconsin. She is an immigrant from Texas. She said the person at UMOS who has helped her, and her kids is Marisol. She said the assistance they receive from UMOS has been helpful and made their stay here better.

Erica Sweitzer-Beckman asked if there was anything else that she would like us to know and thanked her for her comments.

Anabel Sanchez responded that everything has been going well and she works at Seneca Foods and thanks to God everything has been going well. She thanked the Council.

Erica Sweitzer-Beckman asked if there were any other members of the public that wished to speak.

Vanessa thanked UMOS for their programs and help. And talked about how her work experience has been different but good. She expressed thanks for being introduced to the programs at UMOS.

Reyes Polomo commented that he has been treated very good. He has worked for the company in Plover, Wisconsin for more than 20 year. Thanks everyone for the assistance he has received.

Erica Sweitzer-Beckman asked if he could hold the phone closer to his mouth to reduce the static.

Reyes Polomo added he is very grateful and thankful for all the help he has received and is glad they are helping those that come from Texas to work here.

Erica Sweitzer-Beckman followed up with Mr. Polomo to say that the Council is composed of worker advocates and employer and if he wanted to talk about any issues or problems he has encountered or seen that the Council could focus on for improvements.

Reyes Polomo responded that he has the phone number to call if there are issues and can give it to others. He stated that they have been helpful regarding his work, unemployment. He said that he has appreciate the help from Mr. Montano and everything is going well. *(His comments were translated by the interpreter.)*

Luz Cavazos said she is a migrant from Texas to Plover for the past 4 year. She has been having problem finding housing. She works at del Monte Foods and it's hard rent an apartment, so they use a hotel, but it is \$1,000 to \$1,400 per month. She said she appreciates the bonuses they get for gas and food but getting short term and affordable housing it extremely difficult.

Jose Martinez asked for the location of the hotel she was living in Wisconsin. **Luz Cavazos** responded that during the season she was living in Plover. *(Her comments were translated by the interpreter.)*

Maricela Acevedo stated she has been coming to work in Wisconsin for the past 8 years. She and her husband work in Seneca Foods in Cumberland. Her kids attend UMOS Head Start. Though grateful for the help she and her family have received, she commented that they do not get vouchers for food and gas like previous speakers have mentioned.

Erica Sweitzer-Beckman thanked her for her comments and asked if there were any other questions for the speaker.

Maricela Acevedo thanked the Council and everything they do for families.

Erica Sweitzer-Beckman thanked everyone for taking the time to offer comments and that she understands it is a busy time of year for them.

10. Migrant Labor Council 2022 Meeting Schedule:

Katie Mueller announced she would send out the meeting invitation for members to hold these future meeting dates on their calendars.

- Wednesday, January 19, 2022
- Wednesday, April 20, 2022
- Sunday, August 7, 2022 (Tentative) – Public comment in conjunction with the Farmworker's Appreciation Day Picnic
- Wednesday, October 19, 2022

11. Adjournment:

The meeting was adjourned at 12:03 p.m.

DRAFT