

# FELS

Farm Employers Labor Service



Serving Agriculture in Labor Management Relations

## FARM EMPLOYERS LABOR SERVICE PERSONNEL & LABOR AUDIT CHECKLIST

Company: \_\_\_\_\_ Company Representative(s): \_\_\_\_\_ Date: \_\_\_\_\_

### REQUIRED POSTERS

- Posting of Notices, Locations and Availability
- Fill-in Notices where necessary

### WAGES & HOURS OF WORK

#### MINIMUM WAGE

- Federal \$7.25; CA: 1/1/17: \$10 for employers of 25 or less; \$10.50 for employers of 25 or more; 1/1/18: \$10.50 less than 25; \$11 for more than 25; 1/1/19 \$11 for less than 25; \$12 for more than 25; 1/1/20: \$12 for less than 25; \$13 for more than 25; 1/1/21: \$13 for less than 25; \$14 for more than 25; 1/1/22: \$14 for less than 25; \$15 for more than 25; 1/1/23: \$15 for less than 25
- Minimum Wage Exception
  - CA: Learners 18 years of age and older: 1<sup>st</sup> 160 hours in a job w/no previous experience: 85% of min. wage
- Piece Rate
  - Compensation at min. wage or higher contractual rate
  - Extra compensation at min. wage for employer-directed non-production time

#### OVERTIME

- Agricultural Occupation
  - 1½ times regular rate of pay
    - \* Over 10 hours/workday
    - \* 1st 8 hours on 7th day of work in a workweek
  - 2 times regular rate of pay
    - \* Over 8 hours on 7th day of work in a workweek
  - **Note:** Recent legislation changing ag overtime rules beginning 1/1/19 does not invalidate overtime exemptions for irrigators, truck drivers regulated by state or federal hours-of-service regulations, salaried managers, and immediate family members
  - **Note:** 2016 overtime legislation may apply Labor Code § 510 to agricultural employees, requiring double-time after eight hours on any seventh day of a workweek
  - **Note:** Under FLSA, employee gets 1½ times regular rate of pay for hours worked over 40 in a workweek in which employee handles product of another farmer
- Non-Agricultural Occupations/Industries
  - 1½ times regular rate of pay
    - \* Over 8 hours/workday
    - \* Over 40 hours/workweek
    - \* 1st 8 hours on 7th day of work in a workweek
  - 2 times regular rate of pay
    - \* Over 12 hours/workday
    - \* Over 8 hours on 7th day of work in a workweek

### PIECE-RATE COMPENSATION

- Averaging # of piece produced over hours worked no longer permissible
- Employees must be separately compensated for hours when producing pieces, hours when not producing pieces due to employer's direction (other non-productive time, and rest/recovery (heat illness) time
- Required rates: no less than Minimum Wage for other non-productive time; average hourly rate including all time excluding rest periods for rest/recovery periods

### WAGE-HOUR ISSUES:

- Mechanics
- Winery Employees
- Working under two IWC Orders

### OVERTIME EXEMPTIONS

- Truck Drivers; state vs. federal
  - **Intrastate Vehicles**
    - \* Generally three axles & >= 10,000 lbs. GVW,
    - \* Truck tractors; buses; farm labor vehicles; trailers designed or used to transport more than 10 persons
    - \* Two-axle trucks towing combination exceeding 40 feet in length, transporting hazardous material or towing a trailer with a GVW of more than 10,000 pounds
    - \* FLSA: fruits or vegetables which are "just-harvested" exemption
    - \* Applies during workday
  - **Interstate:** Driver is ready, able to drive interstate
    - \* Includes "driver's helper"
    - \* Applies during workweek
    - \* 4-month rule restricted to only drivers driving covered vehicles
- Exempt Status
  - Performs exempt work primarily (over 50% of time per workweek)
  - Exercises discretion & independent judgment
  - Salaried (2 times CA min. wage @ 40 hours/week; \$3640/mo.)
  - DLSE Exempt Status Analysis - DLSE Management Memo 93-5
- Salespeople (Inside & Outside Sales)
- Part-time Employee - 7th day of work; max. 6 hours/day & 30 hours/week
- Irrigator; spends >50% time performing duties as an irrigator
- Sheepherder; \$1866.88/mo. for employers of 26 or more,

1771.98/mo. for employers of 25 or fewer minimum wage

- Exemptions: Employer's own parent, spouse or child

#### PAID SICK LEAVE

- Posting
- Employee notice
- Employee eligible to earn PSL after working for a CA employer for 30 days
- Eligible to use accrued PSL after working for current employer for 90 days, beginning 7/1/15
- Employer can choose to award 3 days paid sick leave
- Employees accrue 1 hour PSL for every 30 hours worked
- May limit accrual to 6 days or 48 hours
- May limit use to 3 days or 24 hours
- Use must be permitted by employee's oral or written request
- May not require doctor's note
- PSL paid at usual rate of pay
- PSL benefit must be explained in LC § 2810.5 notice

#### OTHER WAGE CONSIDERATIONS

- Split-Shift Premium: one hour at min. wage in addition to min. wage for that workday
- Bonuses, Incentives, Commissions  
Example
  - \$10/hour RRP = \$15/hour O.T.
  - \$3,000 bonus divided by 3,000 hours worked = \$1/hour
  - \$1 Bonus + RRP = \$11/hour or \$16.50/hour O.T. – a shortfall of \$1.50/ hour
  - Back out overtime to reduce impact
- Indemnify employees for their expenditures & losses
- Reporting Time Pay: ½ scheduled (a min. of 2 to a of max 4 hours)
- Waiting time: free to leave work site
- Standby Time: controlled vs. uncontrolled
- Preparation Time
- Alternative Workweeks (Non-Ag Only)
  - 4-10 hour days, voted by 2/3 of employees
  - Make-up time at request of employee; must be in writing, work up to 11 hours/day, at request of employee
  - See: [fels.net/Data/Laws/AB60update.htm](http://fels.net/Data/Laws/AB60update.htm)
- 72-Hour Max Weekly Hours of Work; IWC Orders 8 & 13
- Travel Time Pay
  - Home to work, and work to home, not compensable
  - In company provided transportation (voluntary vs. non voluntary)  
Performing work before or after work – Compensable
  - Home to another work site, meetings – Compensable
  - Between job sites – Compensable
- Weekends and Holidays - no special treatment required

#### WORKING CONDITIONS

- Tools & Equipment
  - Must provide tools unless employee earns 2 times min. wage
- Uniforms: required to wear items of designative design or color
- Required Personal Protective Equipment (PPE)
- 1 Day's Rest in 7 - Agricultural Exemption; 4 days off in each month
- Change room, Resting facilities, Seats, Temperature, Elevators
- Meal Periods
  - Ag: After each 5-hour work period
  - Non-Ag: 1st after 5 hours worked; 2nd after 10 hours worked
  - Must relieve employee of all duty for 30 minutes, but

employee may, with employer consent, choose to work through meal period

- Waivers
- On-duty meal periods
- Must be recorded (unless "operations cease")
- Failure to provide: Must pay 1 hour at employee's RRP
- Rest Periods
  - Rate: 10 minutes per 4 hours (or major fraction of 4 hours) worked
  - Counted as hours worked
  - Fail to provide: Must pay 1 hour at employee's RRP
- Lactation
- One-day's-rest-in-seven – applies to ag as of 1/1/17
  - Employer may not "cause" an employee to work more than six days in seven (workweek) without providing an equivalent day of rest elsewhere in the same calendar month
  - "Cause" means to compel or induce employee to work more than six days in seven
  - Employee may work seven straight days if not compelled or induced and with understanding of the right to a day of rest
  - Use a signed acknowledgement for maximum employer legal protection

#### CHILD LABOR

- Posting Notice
- Agricultural Zone of Danger
- Age requirements; 16-17 most jobs, <16 very restrictive
- Work Permits: acquired from school, required any time of year
- Hours & Times of Work: listed on back of work permit

#### CAL/OSHA

- Posters
- Cal/OSHA, 300, 300A & 301 (or Form 5020 Rev 7 for Form 301)
- Dual Employer: Engaging a FLC - Direct contact
- Multi-Employer: Exposing, creating, controlling or correcting employer
- Injury and Illness Prevention Program (T.8, CCR §3203)
  - Records
  - Cal/OSHA required to review during inspection
- Written Hazard Communication Program (T.8, CCR §5194)
  - Inventory hazardous substances
  - Insure secondary containers are labeled
  - Acquire and provide to employees SDS (Safety Data Sheets in compliance with Global Harmonized System)
  - Train employees in substance safety and using SDS's
- Respiratory Program (T. 8 CCR §5144 and T. 3, CCR §6739)
  - Written program
  - Qualified administrator selected
  - Medical evaluations
  - Fit testing and training
  - Voluntary use – Posting
- Medical Services (T. 8, CCR §3400)
  - Provide medical services "near proximity to the workplace"
  - Employees trained in first-aid and CPR
  - Remote locations, one per 20 employees trained in first-aid
  - First-aid kits nearby, and in supervisor's vehicle(s)
- Emergency Action Plan (T. 8, CCR §3220)
- Fire Prevention Plan (T. 8, CCR §3221)
  - Inspection of flammable areas

- Fire extinguishers
- Lockout/Tagout; written program, training and self audit
- Hearing conservation (testing, and analysis)(exceeds time-weighted average sound level of 85 db)
- Heat Illness Prevention (T. 8, CCR §3395)
  - Drinking Water - 1 qt./employee/hour; suitably cool
  - Shade present < 80°F; sufficient for the number of employees taking a rest, cool-down break or the number of employees remaining on-site during a meal period
  - High-Heat Procedures >95°F
  - Training
  - Written Compliance & Emergency Procedures available for Cal/OSHA inspection in field
- Proposition 65 (Clean Water Act)
  - Postings - clear and reasonable warning
  - List of Prop 65 chemicals at: <http://oehha.ca.gov/prop65.html>.
- Access to Medical Records (T. 8, CCR §3204)
- Weeding, Thinning & Hot Capping (T. 8, CCR §3456)
  - Use of short-handled tool: Prohibited
  - By hand: Generally prohibited; Exceptions:
    - \* When there is no readily available, reasonable alternative
    - \* Hand weeding is occasional or intermittent and incidental (20%)
    - \* The commodity plants being weeded are any of these:
      - Planted 2 inches apart
      - Registered as organic
      - Seedlings
      - Horticultural & grown in tubs or containers with an opening of no more than 15 inches
    - \* Whenever not intermittent: must provide additional 5-minute rest period and supply gloves and kneepads
- Field Sanitation Facilities (T. 8, CCR §3457)
  - Alternative Compliance (<5 employees, <2 hours)
  - Toilet and Handwashing: within 1/4-mile walk or 5 minutes
  - One per gender, 5 or more in crew, 1/20 employees/gender
  - Drinking Water: Pure and readily accessible
  - Employee Notices: hand-washing water only; good hygiene
  - Signage: Use gender-neutral "Restroom," not "Men/Women" or "Hombres/Mujeres"
- Permits/Inspections
  - Pressure vessel; Air tank >= 6" dia. And >= 15 psi
  - LPG tank; > 60 gallons, DOT approved exempt
  - NH3 tanks not covered
  - Excavation, scaffolding (3-stories), demolitions, elevators
  - Pressure Vessel Office Phones: (510) 622-3066; (714) 567-7208
- Report accidents to Cal/OSHA within 8 hours when hospitalization > 24 hours, dismemberment or death
- Ergonomics standard (T. 8 CCR §5110)
  - = or > 2 RMs, same job, diagnosed by physician, 50% job related, within 12 months
  - Evaluation, exposure control, employee training
- Roll Over Protection (ROP):
  - All tractors after 10/26/76, except: Orchards, hops, vineyards, inside barns and greenhouses,

when used with mountable equipment incompatible with ROPs , and stationary power units, e.g. pumping units

- Seat belts
- Safety Training
  - New employees, new assignments, new processes
  - Supervisory Safety Training
  - Equipment; forklift, tractor (annually)
  - Pesticide Safety
  - Emergency action plan training
  - First Aid & CPR
  - Medical & Exposure Records - Access
  - Hearing Conservation - use of hearing protection devices
  - Heat Illness Prevention
  - Tree Work
  - Fire prevention, fire extinguisher
  - Lockout/Tagout
  - Welding & Cutting Safety – Hot Work Safety
  - Wheels or Rims – Servicing
  - Medical responders, first-aid/CPR
  - Personal Protective Equipment
  - Respiratory Protection
  - Confined space entrants and rescue teams
  - Battery charging
  - Cotton Dust
  - Ergonomics - When triggered by §5110
  - Fall Protection
  - Bloodborne pathogens, doesn't apply to agriculture
  - Hazard Communication
  - Other non-agricultural jobs may have specific training requirements

#### HOUSING

- Postings
- Inspection & Permits
  - MSWPA one or more migrant worker housed
  - MSWPA Housing Notification - Post WH-521
  - State >=5 employees house in connection to employment
- Housing agreement recommended

#### PESTICIDES

- Postings
  - PSIS; Safety Info. A-8 and A-9
  - Field Postings; REI (up to 24 hours prior to applications)
  - Storage signs
  - Applications at Central Locations
  - Pesticides applied through irrigation water
  - Fumigations; emergency response plan
  - Voluntary respirator use notice
- Hazard Communication Procedures
- Qualifications of Trainers: written training program
- Respiratory Procedures; Administrator, Medical evaluation, Training
- Decontamination Facilities
- Records/Documents - See PSIS A-8
- Medical supervisor, Danger or Warning and Organophosphate or carbamate

#### TRANSPORTATION

- Any vehicle, including tractors (transporting employees)
  - Valid driver's license, meet safety regulations, seatbelts
  - Insurance (WC or \$100,000/seat - max. \$5 million + \$50,000 liability insurance)
- Tractor drivers (drawing certain items) must be licensed
- Farm Labor Vehicle
- DOT Drug and Alcohol Testing

- PULL Notice Program; Class A and B drivers
- Liabilities FLC, Supervisors, Going-and-coming rule

**Migrant & Seasonal Ag. Worker Protection Act (Flc/Grower):**

- Postings
- Worker Information - Provided to migrant at recruitment
- FLC Registration - FLC Employees - Housing & Transportation Endorsements
- FLC Payroll Records (retain for 3 yrs.)
- FLC Workers' Comp Certificate
- Joint Employment Relationship

**Farm Labor Contractor (State):**

- Postings
- Copy FLC License - DLSE FLC Verification
- Day Hauler
- Land or Vineyard-Management Services
- Labor Contractor Agreement - Rebuttable presumption
- County Agricultural Commissioner Registration
- Verify FLC's compliance with minimum requirements

**RECORDS/DISCLOSURES:**

- Record Retention
  - Most records 3 years, except in the following instances:
  - **Two-year retention:**
    - \* Application for Employment - filed with DLSE - Retained 2 years after employment
    - \* Applicant Identification Record
    - \* Employment announcements, referrals, training announcements
    - \* Promotions, overtime made to employees
  - **USCIS Form I-9:** one year after employment and 3-year minimum
  - **Four-year retention:**
    - \* Employee Identification Information (name, address, gender, etc.)
    - \* Workweek/Workday, Hourly/Piece Rate, Overtime
    - \* Payroll earnings, deductions, dates of payroll
    - \* FICA, FUTA, Income Tax Withholding
    - \* Written Employment Contracts
  - **Five-year retention:**
    - \* Cal/OSHA Form 300, 300A, 301
    - \* Drug and Alcohol Testing Results
    - \* Affirmative Action Programs & Documents
  - **ERISA** - Reporting or disclosing the information - 6 years
  - **IRS** - Records documenting business expenses- 7 years, but preferably forever. No time limit in cases of fraud.
  - **Discrimination Lawsuits** - Until "final disposition" of the charge or lawsuit
  - **Employee Health Records** - 30 years after employment
- Required Records - General
  - USCIS Form I-9
  - IRS/EDD Form W-4
  - Time Worked/Payroll Records
    - \* Beginning & Ending Times (IWC)
    - \* Piece Rate Units Produced (MSWPA & IWC)
    - \* Meal Periods (IWC)
    - \* Split Shift Intervals (IWC)
  - Workweek/Workday Defined (Calif. Labor Code)
  - Value of Board, Lodging or Other Compensation (IWC)
  - See also these specific sections of this checklist: 1) Cal/OSHA, 2) Pesticides, 3) Time Records & Paycheck Itemization, 4) Farm Labor Contractor (Federal) & (State) 5) Employment Benefits - FMLA, 6) Child Labor and 7) Discrimination

- Required Personal Records
  - Documents with employee's signature
  - Records relating performance or grievance
  - Records relating to promotion, compensation, or disciplinary action, including termination.
  - Applications for employment (2 years - 4 years recommended)
- Documents Filed in Separate Files
  - Medical Records, e.g. Respiratory Medical Questionnaire
  - EEOC Documents: e.g. Applicant Identification Record
  - Self-Identify Disability or Veterans Status
  - Recommended
    - \* USCIS Form I-9
    - \* Safety Training Records
- Employee Personnel Information
  - Name of Employee (MSWPA & IWC)
  - Permanent Address (MSWPA) - Home Address (IWC)
  - Occupation (IWC)
  - Social Security Number (MSWPA & IWC)
  - Birthday, if under 18 years (IWC)
- Paycheck Itemization (paycheck stub)
  - Name of Employee (MSWPA & IWC)
  - Social Security Number (last four digits) or Employee Identifier
  - Basis for Wages Earned (MSWPA)
  - Total Hours Worked (MSWPA & Labor Code)
  - Number of Piecework Units Earned (MSWPA)
  - Total Pay Period Earnings (MSWPA & Labor Code)
  - Specific Sums Withheld & Purpose (MSWPA & IWC)
  - Net Pay (MSWPA & Labor code)
  - **Paid Sick Leave (earned & used)**
  - Employer's Name (MSWPA & IWC)
  - Employer's Address (MSWPA & Labor Code)
  - Employer's IRS Identification Number (MSWPA)
  - Inclusive Dates of the Pay Period (IWC)
  - FLC include grower & grower address engaging services (LC)
- Disclosures (not otherwise noted in another section)
  - Children's Health Insurance Program Reauthorization Act of 2009
  - Affordable Care Act notice (upon hire; after Mar. 2014, 14 days)
  - LC §2810.5 - Wage Theft Prevention Act with PSL notification
  - LC §2751 - Written Contract for Commission Pay
  - Health Insurance Premium Payment Act Notice (state)
  - Time Off to Vote
  - Notice of right to take job-protected leave for domestic violence, sexual assault or stalking (7/1/17)

**WORKERS' COMPENSATION INSURANCE**

- Posting of Notice
- New Employee Orientation - WC Carrier Pamphlet
- Employees covered by labor provider, e.g FLC, payroll, company Must have a written agreement to extend WC coverage to using ER.
- Employee Physician Pre-designation (if covered by ER health plan)

**EDD: UI - SDI - PFL**

- Posting Notice
- SDI Pamphlet DE 2515 - PFL Pamphlet DE-2511 (At Hiring)
- New Employee Reporting Act; DE34, within 20 days
- Independent Contractor Reporting; DE 542, within 20 days

- Layoff, Termination or Change of Status Notice
- Earned Income Tax Credit - Sent with W-2 earnings
- UI-SDI Pamphlet DE2320 (At Discharge)
- Order EDD Forms at (916) 322-2835

**PAYMENT OF WAGES**

- Time and Location Notice
- Pay period: at least twice each month on days designated in advance
- Within 7 days of the end of payroll period, 4 days FLC
- Discharge or Layoff
- Quitting Employees - 72 hours, unless, 72-hr. pre-notification by employee
- Set Offs, Deductions from Wages
  - Written approval for all paycheck deductions, except governmental
  - Deductions from "Promised Rate"
  - Lost of equipment, cash shortage and breakage
  - Uniforms and equipment
  - Loans, balloon payments
- Retaliation prohibited for disclosure of wages by employees
- Garnishment of Wages - Child Support

**SOCIAL SECURITY - INCOME TAXES**

- No-match Letters from Social Security Administration
- Withholding - Form W-4

**DISCRIMINATION**

- Posters
- Sexual Harassment Notice
- Supervisor Harassment Training (50 or more employees, 2hr/2years) including **Abusive Workplace Conduct training**
- American's With Disabilities Act (ADA)
- Pregnancy Leave provisions
- Civil Rights Act (Title VII) & FEHA
- Privacy In Employment, Privacy-Off the job
- Sexual Orientation, Gender Identity
- Leaves of Absence - Domestic Violence Leave Act, Literacy, etc.
- Applicant Identification Record (DFEH)
- EEOC Report (100 or more employees)

**LABOR RELATIONS ACT (ALRA/NLRA)**

- Protected Concerted Activities
- FLC Employees
- Supervisor Training-ULPs; Access

**IMMIGRATION**

- Verification of Employee Status (USCIS Form I-9)
- Anti-Discrimination Provisions

**EMPLOYMENT BENEFITS**

- Patient Protection and Affordable Care Act
- Health Insurance-COBRA/Conversion
- Health Insurance Portability and Accountability Act (HIPPA)
- Pension ERISA
- Vacation Benefits ; Suastez
- Family and Medical Leave Act - California Family Care Act
- WARN - Worker Adjustment and Retraining Notification Act

**EMPLOYMENT CHECKLIST**

- Pre-Employment Required
  - Worker Disclosure Information (MSPA)

- Applicant Identification Record (DFEH)

Optional

- Application for Employment
- Job Testing and Investigate References

- At Time of Hire

Required

- Issue Disability Insurance Pamphlet DE-2515
- Issue Paid Family Leave Pamphlet DE-2511
- Sexual Harassment handout or in employee handbook
- Workers' Compensation - Physician Pre-designation form
- Affordable Care Act notice (upon hire; after Mar. 2014 14 days)
- IRS Form W-4
- USCIS Form I-9 (Employment Eligibility Verification Form)
- Pesticide Haz Comm & Training (Field/Handlers)
- Payroll Deduction Authorization (e.g., Health Ins., Housing, etc)
- Wages & Benefits - LC §2810.5 Written Notice
- Written Contract for Commission Pay
- Safety Training provided to employee
- Explain Hazard Communication Program and SDS's
- Location of Sanitation Facilities & Good Hygiene Practices
- New Employee Registration Act, DE-34
- Work Permit for Minors

Optional

- Issue Employee Handbook, Signed Receipt
- Orientation Company Rules/Procedures
- Tools & Equipment Loan Agreement
- Housing Agreement
- Bonding for Employees Handling Funds
- Physical Examinations

- Annually

Required

- Children's Health Insurance Program (CHIP) Notice each Group Health Plan Year
- Earned Income Tax Credit
- IRS Form W-2
- EEOC Report (100 or more employees)

- Terminations

Required

- Final Paycheck
- Written Notice of Termination, Layoff
- Payment of Non-Forfeitable Benefits (vacation, etc.)
- Return Deposits for Loaned Equipment Plus Interest
- EDD Pamphlet DE 2320 For Your Benefit. . .
- COBRA 60-Day Notification for Group Health Plan
- Health Insurance Premium Payment Act Notice (state)
- Health Insurance Portability and Accountability Act (HIPPA)

Optional

- Notice to Vacate Housing
- Exit Interview (Voluntary Quit)
- USCIS Form I-9 to Inactivate File

