

AVOID LIABILITY WHEN HIRING A FARM LABOR CONTRACTOR

A routine audit by the department of Labor & Industries (L&I) last summer brought to light some serious issues that could financially impact growers who use a farm labor contractor (FLC) to bring workers to their farms to plan, harvest, prune, etc.

During the audit of a large FLC, L&I found violations of workers' compensation law, such as misclassifying all of the workers into the lower risk class of "hand-harvest laborers" because the premium costs were lower and underreporting worker hours. This FLC had contracted with 65 growers and was responsible for 1,300 - 1,400 workers. The audit found that the FLC owed about \$50,000 in back premiums.

If the FLC did not pay, L&I could go directly to the 65 growers who benefited from the work to collect the back premiums. That is because Washington State law makes anyone who hires a contractor of any kind potentially liable for workers' compensation premiums if the contractor does not pay.

Further, a grower who knowingly hires an unlicensed FLC who then fails to pay the workers is liable for unpaid wages, damages, and penalties. Normally, the FLC's bond would be used to cover unpaid wages, but in the absence of a bond, the grower who benefited from the work ultimately becomes responsible. This may mean the grower pays twice.

How can growers protect their businesses when hiring FLCs? Take these basic steps:

Go to the following link:

www.Lni.wa.gov/workplacerright/argriculture/farmlabor

to make sure the FLC has a current license from L&I, and

Go to the following link :

www.premiumstatus.Lni.wa.gov

under "Employers" to verify the FLC is registered with L&I for workers' compensation coverage.

Need more information? Call or visit the nearest L&I office or call the L&I FLC supervisor directly at (360) 902-4537 or by email at

Petrisa.zepeda@Lni.wa.gov.

ESSENTIAL TRAINING: TWO DAY SUPERVISOR TRAINING (SPANISH)

January 26 & 27 Mt. Vernon OR
Jan. 28 & 29 in Pasco (8:00 a.m. to 4:00 p.m.) - Your orchard, dairy or farm supervisors will have the opportunity to attend a two-day seminar on supervisory skills in Spanish, with a breakfast presentation to owners in English to summarize the training that workers are receiving. Registration is limited to 50 workers at each location so register today at www.wsfb.com to secure a seat for your supervisors. The cost is \$150 per person and includes lunch both days, owners breakfast, and a textbook (Spanish or English).

LABOR CONFERENCE

February 25 in Wenatchee - Topics will include: How should you respond when a government inspector "drops by.;" L&I 2010 agriculture outreach – will you be impacted?; Updating your Employee or Field worker handbook; Legislative update and much more! Full day conference allows in depth coverage of topics. More details and registration coming soon to www.wsfb.com!

Editor

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FEDS ANNOUNCE NEW I-9 AUDITS AND FINES

The first round of employer audits for I-9 infractions apparently went so well that Immigration and Customs Enforcement (ICE) has decided to extend the audit program and reveal the fines for violations.

ICE's original plan called for 650 employer audits. The agency has completed about half of those and so far has categorized 16% of I-9s as "suspect" and fined 61 employers for a total of \$2.3 million; 267 more employers are still scheduled for audit under the original program. Now, the agency is gearing up to audit 1,000 more employers, according to an agency announcement.

Responding to a Freedom of Information Act request by the American Immigration Lawyers Association, ICE disclosed its factors for assessing fines when it finds I-9 violations. In the past, ICE had calculated fines within the legal limits (up to \$1,000 for the first offense and \$2,500 for a knowing violation) based on five factors: business size, good faith, seriousness, employment of unauthorized aliens, and history of compliance.

The new ICE factors: knowingly hire or continuing to employ vs. paperwork violations; first, second, or third offense; percentage of total reviewed I-9s that have violations; and other factors such as business size, good faith, seriousness, unauthorized aliens, and history.

Some ICE examples of how employer fines would be set using the factors:

- Employer A with 25% of I-9s containing paperwork violations and no previously fined violations would be fined \$440 per violation, which would be adjusted up 5% for being a large employer and down 10% for showing good faith with a good history, for a net of \$418 per violation.
- Small Employer B with 5% of I-9s reflecting knowing employment of unauthorized workers (including "constructive knowledge") might only be fined about \$300 per violation.

One final note, Farm Bureau believes that the Social Security Administration will again begin sending "no-match" letters to employers in 2010, which could further complicate an employer's I-9 compliance issues.

DHS' EFFORTS TO ENHANCE DRIVER'S LICENSE SECURITY

Deputy Press Secretary, Matt Chandler, released the following statement on December 18 regarding REAL ID: "As expected, a large majority of states and territories (46 of 56) have informed DHS that they will not be able to meet the December 31 REAL ID material compliance deadline. As the National Governors Association has said, the states have made tremendous progress in driver's license security but simply cannot fulfill the requirements of REAL ID. That's why Secretary Napolitano has supported the efforts of Governors and Congress to enact PASS ID, which puts states on the path to implementing national standards for identification documents and will enhance security across the country."

"In order to ensure that the millions of Americans traveling this holiday season are not disrupted, DHS is extending the December 31 REAL ID material compliance deadline. The May 10, 2011, deadline for full compliance remains in effect, and the Department will continue to work closely with states to meet this deadline. However, Congress must act to address systemic problems with the REAL ID Act to advance our security interests over the long term. DHS is committed to moving forward to implement this key 9/11 Commission recommendation - just last week, the Department announced the availability of \$48 million to states for the Drivers License Security Grant Program, to help prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents."