



# Agricultural and Seasonal Workforce Services Advisory Committee

## Meeting details

**Date:** Wednesday, September 20, 2023

**Time:** 1:00 p.m. – 5:00 p.m.

**Location:** Cosecha Court II Community Room 250 Cherry Hill RD Granger, WA 98932

### Committee members present

- Delia Peña
- Jon Devaney
- Michele Besso
- Rosalinda Guillen
- Michael Gempler
- Diana Lopez Batista

### Guest Presenters

- Cristina Rodriguez, Fraud Prevention Labor Standards, WA LNI
- Krister Engdahl, Regional Monitor Advocate, Employment and Training Administration, USDOL

### Non-voting agency representatives present

- Uriel Iñiguez
- Gerald Caird

### ESD Staff

- Joy Adams
- Bertha Clayton
- Daniel Zeitlin
- Vickie Carlson
- Petra Meraz
- Margarito Cabrera
- Carlos Sandoval-Larios

### Committee members absent

- Jeff Perrault
- Edgar Franks
- Ignacio Marquez

## Summary

### Welcome and Introductions

Employment Security Department (ESD) Acting Policy Director, Chairperson, Joy Adams, welcomed everyone, roll call was taken. A quorum was established, five voting members were present. Motion to approve August meeting minutes: Jon DeVaney; second: Delia Peña. Motion carried unanimously.

### Agenda

(Addendum I)

Chairperson Joy Adams reviewed the agenda for the meeting and asked if anyone had any questions.

### Committee Administration – Daniel Zeitlin, Chief of Staff, Executive Programs, ESD (Addendum II.)

**RCW 50.75.005** - Intent (for creation of agricultural and seasonal workforce services office)

**RCW 50.75.040** (Advisory committee—Composition—Report to governor and legislature)

**Purpose:** Make the H-2A program operate effectively and as efficiently as possible.

Each committee member shared about their organization and why they are serving this committee

**ASWS Office – Bertha Clayton, Director, ASWS Office, ESD**

(Addendum III.)

**Regional Monitor Advocate (RMA) visit**

- RMA helped us understand how the top 4 states administer their H-2A programs
- No report was generated; RMA visit was a technical assistance visit

**JLARC Audit - ESD's administration of the H-2A program.**

- Preliminary report will be available at the January meeting in 2024
- Final Report will be provided in April 2024

**Office of Foreign Labor Certification (OFLC) Review:**

- Fiscal and Program reviews
- Final report will be addressed to Commissioner Feek
- Exit conference with OFLC is scheduled for 9/29/23.

**Transient Accommodations- Updated approach by SWA**

- We have paused our approach on this work- pending OFLC findings report

**FLC Applications – Petra Meraz, FLC Program Supervisor**

Slides provided in advance, no report presented.

**Compliance Team update – Margarito Cabrera, Compliance Supervisor**

Slides provided in advance, no report presented.

**Federal regulatory compliance, ETA and WA specific updates**

(Addendum IV.)

**Krister Engdahl, Regional Monitor Advocate & Federal Project Officer, US Dept. of Labor, Employment & Training Administration**

Questions & Answers / Comments:

**Michele:** What is the most important thing you do? **Krister:** Review the LEARS Quarterly report. Maintaining good relationships with the State Monitor Advocates (SMA).

**Bertha:** What domestic recruitment trends are you seeing nationally? **Krister:** The Agriculture Recruitment System (ARS) is an underutilized system.

**Michele:** What is the staff power in the Northwest? **Krister:** I cover all of the Northwest.

**Farm Labor Contractors in Washington – Licensing & Regulation**

(Addendum V.)

**Cristina Rodriguez, Agricultural Employment Specialist, Fraud Prevention Labor Standards, Washington State LNI**

The Farm Labor Unit provides enforcement, outreach, technical assistance (plaintalk guidance on administrative policy).

Questions & Answers / Comments:

**Petra:** Are H-2A workers shared between FLC's? **Cristina:** No

**Rosalinda:** Is a bond required? Is so, what is it? **Cristina:** Yes, legal its called a surety.

**ASWS Topics for Follow-up: FLC**

**Good of the Order – Joy Adams**

**Future Agenda Items:**

- DOL Proposed Rulemaking, Comments due November 14<sup>th</sup>, legislative analysis given in November
- Agricultural Overtime

**Public Comment - None**

**Adjourned**

Joy Adams thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 5:00 p.m.

**2023 Meetings**

The next Agricultural and Seasonal Workforce Services Advisory Committee meeting is on:

- **October 18, 2023 – 1:00 p.m. to 3:00 p.m. via Zoom**

**Addendums**

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ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee  
 Wednesday, September 20, 2023 | 1:00 pm – 5:00 pm | Cosecha Court II Community Room 250 Cherry Hill RD  
 Granger, WA 98932

TIME	TOPIC
1:00 pm	Welcome Joy Adams, Deputy Director, ESD Employment System Policy & Integrity Division <ul style="list-style-type: none"> <li>• Roll Call – Vickie Carlson</li> <li>• Agenda Review – Joy Adams</li> <li>• Approval of the August meeting minutes</li> </ul>
1:10 pm	Committee Administration Dan Zeitlin, Chief of Staff, Executive Programs, ESD <ul style="list-style-type: none"> <li>• History of ASWS Advisory Committee Formation – Purpose and Objectives</li> <li>• Committee Membership Identification and Representation</li> <li>• Committee Bylaws – committee members’ use of proxies</li> <li>• State Agency Membership – Role in H-2A Program – ESD, L&amp;I, DOH, ARG</li> </ul>
1:40 pm	ASWS Office Update <ul style="list-style-type: none"> <li>• ASWS Office – Bertha Clayton, Director, ASWS Office, ESD</li> <li>• FLC Applications – Petra Meraz, Foreign Labor Certification Program Supervisor</li> <li>• ASWS Compliance Update – Margarito Cabrera, Compliance Unit Supervisor</li> </ul>
2:10 pm	Ignacio Marquez, Directors Office, Washington State Department of Agriculture, Discussion Facilitator Cristina Rodriguez, Fraud Prevention Labor Standards, Washington State LNI <ul style="list-style-type: none"> <li>• Farm Labor Contractors in Washington – Licensing &amp; Regulation</li> </ul>
3:10 pm	Break
3:30 pm	Krister Engdahl, Regional Monitor Advocate & Federal Project Officer, US Dept. of Labor, Employment & Training Administration <ul style="list-style-type: none"> <li>• Federal regulatory compliance, ETA updates, and WA specific updates</li> </ul>
4:15 pm	Open Discussion Time
4:50 pm	Good of the Order – Joy Adams
4:55 pm	Public Comment
5:00 pm	Adjourn

GROUND RULES

No side conversations | Phones on silent | Let people speak without interruption | Respect the opinion of others | Strive for understanding | Speak your mind | Strive for common ground | Assume good intent | Stay focused on task at hand and be willing to come back to the topic | Make sure everyone understands | Look out for each other | Take care of your own comfort | Ask for what you need

ADDENDUM II

## ASWS Advisory Committee Administration



Dan Zeitlin, ESD Chief of Staff, Former ASWS Advisory Committee Chair

## RCW 50.75.005 Intent (for creation of office of agricultural and seasonal workforce services)



### Economic Impact

The legislature finds that the agricultural industry in the state of Washington employs more than one hundred thousand workers per year and brings more than seven billion dollars of economic activity to our state. This industry and its workers are a vital part of Washington's role in the global economy.

### H-2A Program Growth and Impacts on Domestic Workers

The legislature further finds the number of the H-2A temporary agricultural workers coming into the state of Washington to harvest crops has grown by more than one thousand percent since 2007 and the funding provided by the federal government is insufficient to adequately ensure the protection of workers and growers. The legislature also finds the need to ensure this growth does not have an adverse impact on the domestic agricultural labor force.

### Worker Protection & Employer Support

The legislature declares it to be in the public interest to clarify the state's role in the H-2A temporary agricultural program to provide adequate protections for foreign and domestic workers and provide education and outreach opportunities to help growers maintain the stable workforce they need.

## RCW 50.75.040 Advisory Committee-Composition – Report to governor and legislature (excerpts)



- (1) The commissioner shall appoint an advisory committee to review issues and topics of interest related to this chapter.....
- (3) On issues and topics of interest related to this chapter, the committee shall provide comment on department rule making, policies, implementation of this chapter, and initiatives, and study issues the committee determines require consideration.
- (4) In even years, the committee shall submit a report to the governor and the legislature by October 31st that:

(a) Identifies and recommends approaches to increase the effectiveness of the employment security department's recruitment process as part of the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in Washington; and

(b) Analyzes the costs incurred by the office to administer the H-2A program, the funds to administer other department programs for farmworkers, and the amount of funds allocated by the federal government to administer the H-2A program and all other agricultural programs within the department.

## Committee member designation of “proxy” alternates



- *Any Board member may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend a meeting.*
  - Adopted by ASWS Advisory Committee 03/2023

### ADDENDUM III.

## ASWS Office Updates



Bertha J. Clayton, ASWS Director, ESD

## Office update –September 2023



- Monitoring ESD Programs
  - USDOL Employment Training Administration (ETA): 20 CFR 658.602 (National Monitor Advocate, during harvest season) must visit four states with highest level of MSFW activity during the prior fiscal year) - August 21, 2023
    - USDOL Participants: Laura Tramontana, National Monitor Advocate, Krister Engdahl, Region 6 Monitor Advocate, Timothy Dudley, National Monitor Advocate Support Staff
    - ESD Participants: Dan Zeitlin (Chief of Staff), Joy Adams (ESPI Interim Director), Bertha Clayton (Acting State Monitor Advocate), Greg Ferland (ESD Monitoring), Jamie Murphy (ESD Monitoring), Alberto Isiordia (Employment Connections Operations Manager)
    - Discussed service delivery to MSFWs in WA, Role of SMA, state obligation to conduct intra- and inter-state posting of agricultural job orders, quarterly reporting.
  - Joint Legislative Review Committee (JLARC) – Legislative Audit
    - Draft report to be delivered to ESD November 14 (for technical review and feedback).
    - Final report published February 23, 2024.

## Office of Foreign Labor Certification Monitoring – August 21-24, 2023



- Fiscal Review
  - 3 OFLC Staff
  - ESD Financial Service Staff (3)
- Program Review
  - 3 OFLC Staff
  - ASWS Director, Administrative Assistant, FLC Team (3)
  - Craig Carroll, ESD Employment Connections
- Housing Inspection Review (DOH)
  - 4 OFLC Staff
  - 2 DOH Staff
  - 3 TWH Housing Inspections

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## Office of Foreign Labor Certification Monitoring – August 21-24, 2023



- What's Next
  - Official exit conference (9/29/23)
  - Commissioner receives OFLC monitoring report
  - Submit corrective action plans for any findings to OFLC within 30 days
  
- Work with DOH and LNI to revise existing housing inspection agreement
- ESD: continue to utilize ASWS compliance staff to verify housing compliance until new agreement is implemented.
- Keep committee informed.

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# Transient Accommodations- Updated approach by SWA



**Inspections of TA units continue, but the following procedure is paused until OFLC Monitoring report received:**

- ASWS developing “stop-gap” procedure to verify that all TA units housing Temporary Workers meet federal TWH standards.
  - DOH plans to implement dual licensing model for TA facilities housing temporary workers “prior to 2024 growing season”.
- Enhanced verification procedures will include confirming that minimum square footage per occupant standards are met. Additionally: number of beds, kitchenette, personal storage will be prioritized.
- Phases: Design → Train Staff → Pilot → Implement → Evaluate/Make adjustments
- Target: September 1 (all TA units on ETA-790s filed after 9/1/23 will be verified for TWH compliance by ASWS).



ASWS receiving instruction from Tom Silva, District Director, of USDOL WHD regarding labor law enforced by USDOL WHD.



ASWS receiving instruction from Ruben Lugo, Regional Director of USDOL WHD regarding H-2A updates, rules, and violation trends.





ASWS Internal Training – 9-13-2023, WorkSource Yakima



ESD NewsNet (employee newsletter) 9/13/23 story regarding shepherd H-2A workers in WA. This story details the experience of ASWS Compliance Specialist, Anthony Aceves performing a site visit to a H-2A shepherd near Sunnyside, WA (and the lengths he took to get there!).

**Top Story**



Submit a story idea to NewsNet  
Sept. 13, 2023

**The ASWS Compliance staff and their unique customers**

*By Bertha Clayton, director of ESD's Agricultural and Seasonal Workforce Services*

The Agricultural and Seasonal Workforce Services (ASWS) has received a record number of H-2A applications this year. H-2A is a program that allows agricultural employers to bring foreign workers to the U.S. to perform temporary or seasonal work.

To date, ASWS has received 418 H-2A applications requesting over 35,000 H-2A workers. Most of these agricultural jobs are for seasonal crop field work. However, there are some unique roles among these jobs.



For example, shepherders! These workers are responsible for herding and tending to flocks of often hundreds of sheep that graze in the most remote rangeland areas of Washington state.



Because of the terrain, shepherders often herd sheep on horseback or all-terrain vehicles. Shepherders bed down the flocks, guard them from predatory animals and steer them away from eating poisonous plants on the range. Shepherders must have the necessary skills and knowledge to avoid overgrazing the sheep, recognizing signs of illness among the flock, and assist in lambing (birthing) pregnant ewes and pairing orphaned lambs with new mothers. Most H-2A shepherders presently in Washington state are from Peru. Sheep products include wool, lanolin and meat. Additionally, the grazing of large flocks of sheep is used to reduce wildland fire fuel and reduce or mitigate the impact of a wildfire!

ASWS compliance staff travel to meet with H-2A shepherders and provide education regarding worker rights, H-2A program assurances, workplace injuries, Paid Family and Medical Leave, and resources for filing a workplace complaint.

Recently, **Anthony Aceves**, an ASWS compliance specialist assigned to the ASWS Walla Walla region, traveled to remote rangeland near Sunnyside to visit a shepherd. The shepherd's location in the range was so remote that it was not reachable by car. Anthony had to walk all the way to the worksite! The photo is of the shepherd atop his mode of transportation – his horse.

# FLC Applications



Petra Meraz, Foreign Labor Certification Program Supervisor, ASWS, ESD

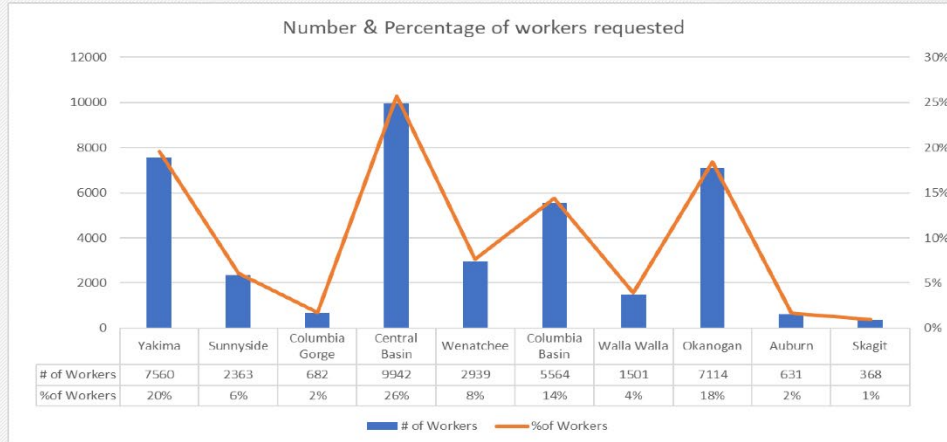
# FLC Applications update



	PY 2023 H-2A Data		PY 2022 H-2A Data	
	10/1/2022	9/10/2023	10/1/2021	9/10/2023
	Applications	Workers requested	Applications	Workers requested
Total processed to date	426	38664	396	34658
Withdrawn/Denied	31	2743	33	2843
Contracts Commenced	386	35203	357	31526
Contract Impossibility	0	0	4	299
Active Cases	352	32915	306	31043

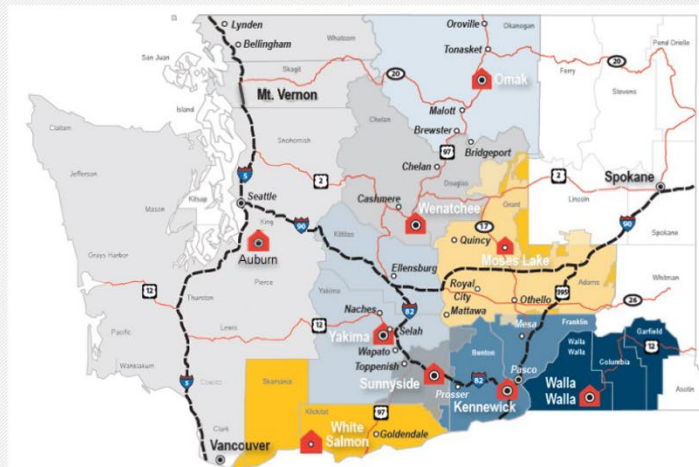
\*The numbers reported are not reflective of the number of foreign workers that arrive in Washington State.

# Main Application Holding Offices



Confirmed by 15 Employers – 691 workers are in Washington

# Main Application Holding Offices Map



# Compliance Team

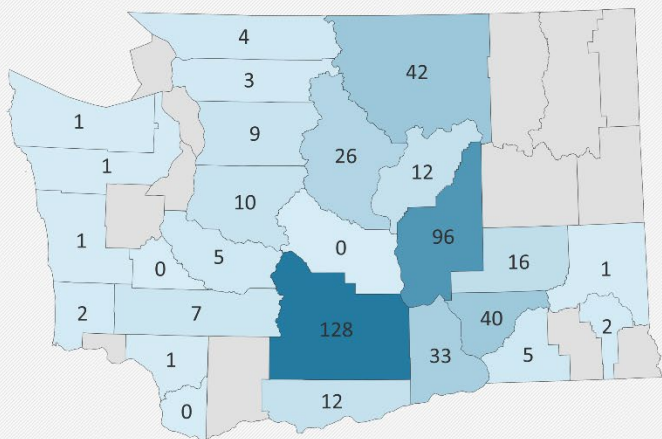


Margarito Cabrera, ASWS Compliance Unit Supervisor, ESD

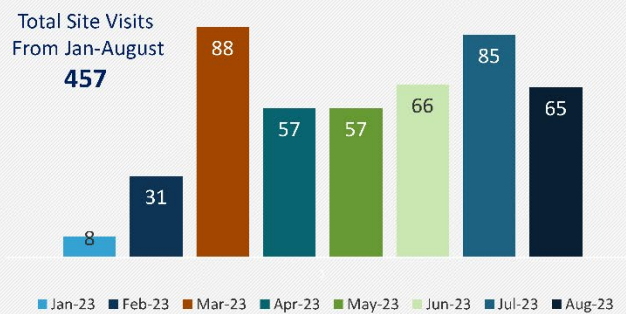
# Site Visits



Site Visits By County from Jan-August 2023



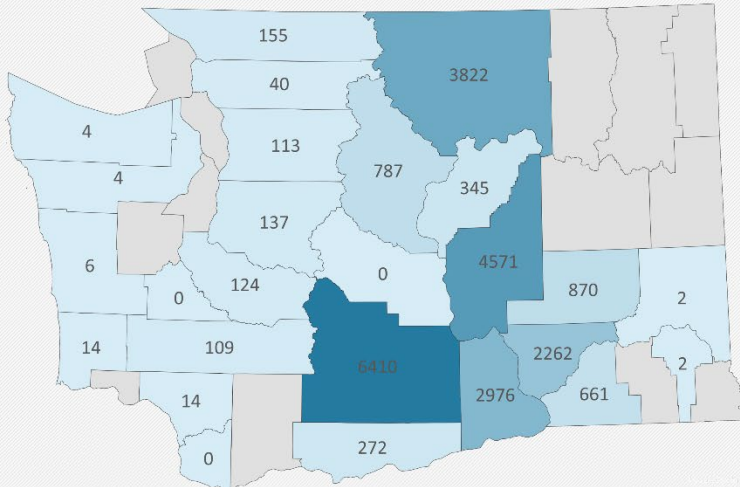
Site Visits by Month



# Approximate Workers Contacted



By County from Jan-August 2023



Workers Contacted by Month

Total From Jan-August  
**23700**



# Field Checks – 2023



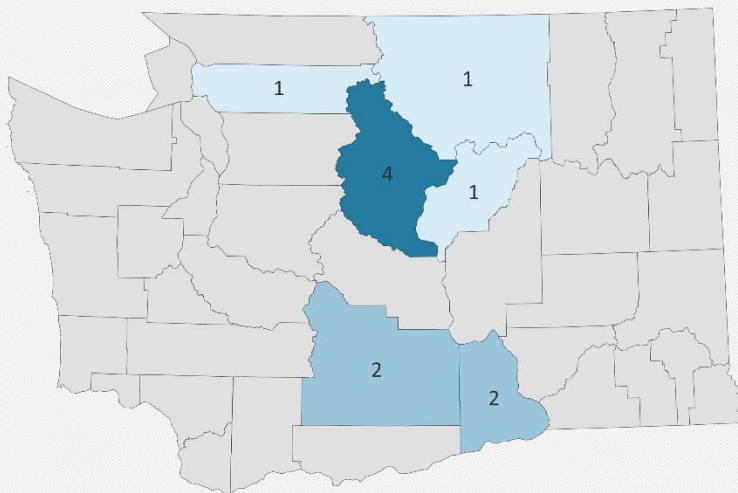
## 20 CFR 653.503 Field Checks

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

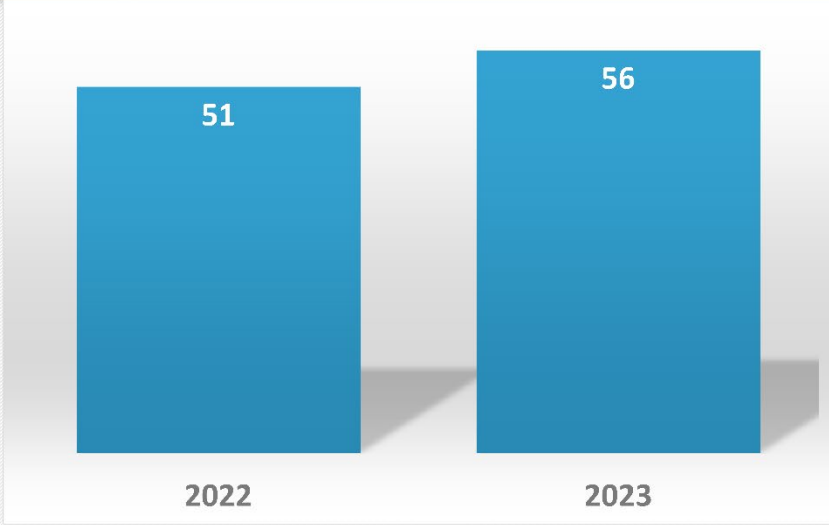
Number of Placements <i>(seeker referred and started working)</i>	<b>18</b>
Number of Field Checks Performed by ASWS	<b>11</b>
Number of Field Checks currently pending	<b>5</b>

# ASWS Field Checks by County in 2023

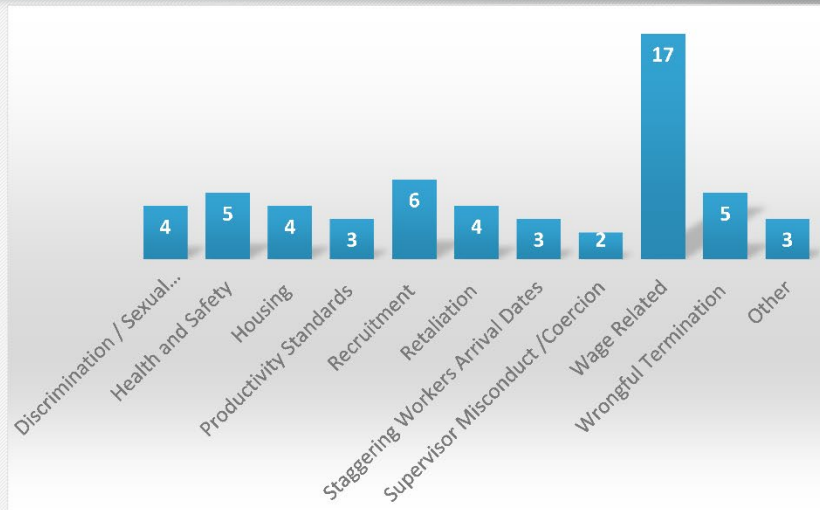


Total Field Checks  
**11**

# Complaints / Apparent Violations – 2022 vs 2023



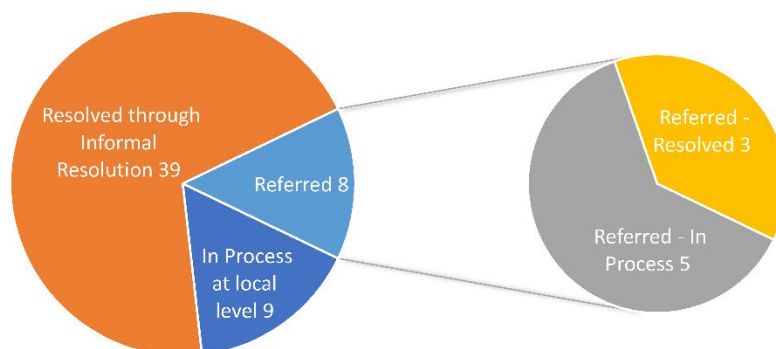
## Type of Allegations: On Complaints / Apparent Violations Jan - August 23



## Status: Complaints / Apparent Violations Jan - August 2023



Complaints/apparent violation received Total: 56





ADDENDUM IV.

Federal Regulatory Compliance, ETA updates, and WA specific updates



Krister Engdahl, Regional Monitor Advocate & Federal Project Officer,  
U.S. Department of Labor, Employment & Training Administration

Monitor Advocate System

Role of Regional Monitor Advocate and ETA/DOL updates

ASWS Advisory Committee  
September 20, 2023



The United States Department of Labor, Employment and Training Administration

# Creation of MAS

1973: NAACP v. BRENNAN (Civil Action No. 2010-72) →

1974: Judge Richey Court Order (Richey Order) created the MAS

*MAS is a federal-state monitoring system, which reviews the provision of ES, benefits and protections to Migrant and Seasonal Farmworkers (MSFW), the functioning of state complaint systems, and compliance of state ES offices with applicable laws, regulations, and directives.*

**The Richey Order required or established:**

- SWA outreach to MSFWs
- SWA self-monitoring, including State Monitor Advocate positions
- The ES and Employment-Related Law Complaint
- The Agricultural Recruitment System (ARS) requirements for processing temporary agricultural clearance orders
- Other important safeguards to ensure MSFWs have access to the full range of services

**B. Defendants Have Subjected Minority Farmworkers To Racial, National Origin, Sex and Age Discrimination, and Have Denied Minority Farmworkers the Employment Services to Which They Are Entitled.**

The report to the Assistant Secretary for Manpower submitted by the Special Review Staff of the Manpower Administration documented extensive problems and inequities which existed in the RMS and ES. The Report was publicly adopted as the Department's official findings and made public on April 21, 1972, by the Manpower Administration of the Department of Labor. While counsel for the Defendants have argued that the Report contains statements and conclusions of the investigators which are not sufficient in themselves to establish the facts that various statutory and regulatory violations had occurred, it is inconceivable to the Court that any other interpretation could be placed upon the detailed and specific findings contained therein. In accordance with the materials delineated in the SRS Report, the Court finds that Defendants approved the program operations of and provided financial support for State RMS and ES agencies which engaged in the following practices:

1. Denied Minority farmworkers the full range of employment services including testing, counseling, and job training and up-grading services.
2. Subjected minority farmworkers to racial, national origin, sex and age discrimination in recruiting and referring applicants for local, intra- and interstate employment.
3. Provided only substandard day-haul placement services and facilities to minority farmworkers.
4. Processed interstate clearance orders that discriminated by allowing employers to predesignate farmworkers by race, national origin, sex and age.
5. Processed misleading, inaccurate and incomplete job orders for agricultural labor.
6. Referred migrant farmworkers to employers who violated minimum wage and child labor laws.
7. Referred farmworkers to employers who failed to make social security payments to the workers' accounts.
8. Referred migratory and seasonal farmworkers to jobs where the living and working conditions violated housing, health and sanitation laws.
9. Referred migratory farmworkers to segregated housing.
10. Referred farmworkers to unlicensed crewleaders or to crewleaders who operated illegally.
11. Failed to enforce the Federal Contractor Registration Act.
12. Failed to assist Federal officials charged with enforcing the Immigration and Naturalization Act and to follow their own regulations and directives that have been enacted to protect job opportunities, wages and working conditions of domestic farmworkers.
13. Been unresponsive to farmworkers' complaints. The Defendants approved, without modification based on the SRS Report, the State RMS and ES program operations for fiscal 1973 and refunded the State RMS and ES agencies in July of 1972, a time at which they had knowledge, through the SRS Report, of the findings cited above. The Thirteen Point Plan announced by then Assistant Secretary Lovell was not initially implemented until August of 1972.<sup>13</sup> Through these actions, Defendants knowingly acquiesced in and helped to perpetuate the discriminatory and otherwise improper practices of the State RMS and ES agencies. Because of those actions, Defendants failed to fulfill their obligations under the Fifth Amendment, Title VI of the Civil Rights Act of 1964, and the Wagner-Peyser Act, and are responsible for the violations of Plaintiffs' rights under those laws.

*MAS implements the Richey Order requirements within Wagner-Peyser ES*

**Monitor Advocate System – What it Does**

The Monitor Advocate System is charged with:

- 01 Ensuring equitable services for farmworkers;
- 02 Managing the Complaint System;
- 03 Implementing and sustaining an Outreach Program;
- 04 Providing farmworkers notification of available employment services and workers' rights;
- 05 Facilitating the Agricultural Recruitment System for U.S. workers;
- 06 Monitoring the provision of services through the Employment Service; and
- 07 Ensuring that services provided are in accordance with federal regulations and the appropriate Acts.



## Regional Monitor Advocates (RMA)

### Must...

- ✓ Review the effective functioning of the SMAs in their region
- ✓ Review the performance of SWAs in providing the full range of employment services to MSFWs
- ✓ Take steps to resolve ES-related problems of MSFWs which come to their attention
- ✓ Recommend to the Regional Administrator (RA) changes in policy towards MSFWs
- ✓ Review the operation of the Complaint System
- ✓ Serve as an advocate to improve service for MSFWs within the ES
- ✓ The RMA must be a member of the Regional Farm Labor Coordinated Enforcement Committee
- ✓ Have direct personal access to the RA whenever they find it necessary
- ✓ Participate in training approved by the national office within the first three (3) months of appointment
- ✓ Assist the RA and other line officials in applying appropriate corrective and remedial actions to state agencies
- ✓ Participate in the review and assessment activities required in §§658.603, 658.700 through 658.711

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20 CFR 658.603(f) through (p)

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## Regional Monitor Advocates (RMA) cont'd

### Must...

- ✓ Visit each state in the region that is not scheduled for an onsite review during the current fiscal year
- ✓ Initiate and maintain regular and personal contacts with SMAs
- ✓ Provide technical assistance to SMAs in the region
- ✓ Have personal and regular contact with the NMA
- ✓ Establish routine and regular contacts with NFJP, other farmworker organizations and agricultural employers and/or employer organizations in his/her region
- ✓ Attempt to achieve regional solutions to any problems, deficiencies, or improper practices concerning services to MSFWs which are regional in scope
- ✓ Attend MSFW-related public meetings conducted in the region
- ✓ Initiate and maintain contacts, as necessary, with RMAs in other regions to resolve problems concerning MSFWs who work, live, or travel through the region
- ✓ Establish regular contacts with the regional agricultural coordinators from WHD, OSHA, and any other regional staff from other federal enforcement agencies/committees, including the Regional Farm Labor Coordinated Enforcement Committee
- ✓ Participate in the regional reviews of state plans

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20 CFR 658.603(r) through (x)

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## RMA as a Monitor (Compliance) cont'd

- ✓ Review the operation of the Complaint System
  - ❖ Monitoring the effectiveness of the Complaint System
  - ❖ Apprising appropriate State and ETA officials of deficiencies in the Complaint System
  - ❖ Providing technical assistance to SMAs in the region
- ✓ Assist the RA and other line officials in applying appropriate corrective and remedial actions to state agencies
- ✓ During the calendar quarter preceding peak MSFW activity in each state, the RMA must meet with the SMA and review the SWA's capability of providing the required full range of services to MSFWs during the upcoming harvest season
- ✓ Must visit each state in the region during peak harvest season, that is not scheduled for an onsite review during the current fiscal year
  - ❖ Meet with the SMA and other ES staff to discuss MSFW service delivery
  - ❖ Contact representatives of MSFW organizations to obtain information concerning ES delivery and coordination with other agencies and interested employer organizations
- ✓ Take steps to resolve ES-related problems of MSFWs which come to their attention



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20 CFR 658.603(j)(1) through (3), (l), (q), (r)

## DOL Updates

### Must...

- ✓ Visit each state in the region that is not scheduled for an onsite review during the current fiscal year
- ✓ Initiate and maintain regular and personal contacts with SMAs
- ✓ Provide technical assistance to SMAs in the region
- ✓ Have personal and regular contact with the NMA
- ✓ Establish routine and regular contacts with NFJP, other farmworker organizations and agricultural employers and/or employer organizations in his/her region
- ✓ Attempt to achieve regional solutions to any problems, deficiencies, or improper practices concerning services to MSFWs which are regional in scope
- ✓ Attend MSFW-related public meetings conducted in the region
- ✓ Initiate and maintain contacts, as necessary, with RMAs in other regions to resolve problems concerning MSFWs who work, live, or travel through the region
- ✓ Establish regular contacts with the regional agricultural coordinators from WHD, OSHA, and any other regional staff from other federal enforcement agencies/committees, including the Regional Farm Labor Coordinated Enforcement Committee
- ✓ Participate in the regional reviews of state plans

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20 CFR 658.603(r) through (x)

## DOL/ETA Updates

Proposed WP regulation changes still in clearance. The proposed rule can be found at <https://www.dol.gov/newsroom/releases/eta/eta20220419>

Comment period open as of September 12 for the Proposal Improving Protections for Workers in Temporary Agricultural Employment in the United States

<https://www.dol.gov/newsroom/releases/eta/eta20230912>

Agricultural Recruitment System Forms Affecting Migratory Farm Workers: Department of Labor Publishes Thirty-Day PRA Notice with comment due October 12.

<https://www.govinfo.gov/content/pkg/FR-2023-09-12/pdf/2023-19552.pdf>

## Resources

### Monitor Advocate Office

Monitor Advocate System Webpage: <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/>

#### Direct Contacts:

**Krister Engdahl, Regional Monitor Advocate**

E-Mail: [engdahl.krister@dol.gov](mailto:engdahl.krister@dol.gov)

Phone: 415-625-7960

**State Monitor Advocate Directory:** <https://www.dol.gov/agencies/eta/agriculture/monitor-advocate-system/contact>  
(contains contact information for all SMAs and RMAs)

#### ETA's Toll-Free Help Line:

1-877-US-2JOBS (TTY: 1-877-889-5267)

ADDENDUM V.



# Farm Labor Contracting

9/20/2023

Agricultural and Seasonal Workforce Services Advisory Committee

Cristina Rodriguez, Agricultural Employment Specialist



## Purpose

The information in this presentation is to help keep the agricultural community up to date on the new agricultural overtime eligibility regulations.

The Employment Standards Program is committed to help educate the public about workplace protections.



## Presentation overview

- Farm Labor Unit
- Farm labor contracting
- Verification tools
- Referrals and complaints
- Agricultural overtime
- Contacts and resources



## Overview of the Farm Labor Unit

- Enforces the Farm Labor Contractor Act (FLCA) and corresponding regulations, including Agricultural Employment Standards.
- Administers the statewide Farm Labor Contractor (FLC) licensing system and Farm Internship Program (FIP).
- Conducts onsite statewide FLC audits, investigates referrals and complaints, and determines outcomes of cases.
- Provides education and outreach services statewide through virtual and in-person meetings targeted to the agricultural and forestry industries.
- Provides technical guidance regarding wage and hour rules, regulations, and administrative policies.
- All Farm Labor Unit agents are bilingual in both English and Spanish. Email us at [ESFarmLabor@Lni.wa.gov](mailto:ESFarmLabor@Lni.wa.gov).

**Kathlie Valentin – Mount Vernon**  
Outreach Specialist  
360-399-5300  
[Kathlie.Valentin@Lni.wa.gov](mailto:Kathlie.Valentin@Lni.wa.gov)

**Emmanuel Campos Gonzalez – Spokane**  
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**Cristina Rodriguez – Tumwater**  
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**Cesar Sanchez – Wenatchee**  
Farm Labor Contractor Compliance Investigator  
Farm Internship Program Coordinator  
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[Cesar.Sanchez@Lni.wa.gov](mailto:Cesar.Sanchez@Lni.wa.gov)



## Farm labor contracting

A farm labor contractor is any person/entity who, for a fee, does one or more of the following:



...workers for farms and other agricultural work.





## Farm labor contracting

The Farm Labor Contractor Act (FLCA) provides the following definitions for:

- Agricultural Employer**

  - Any person engaged in agricultural activity, including farm labor, reforestation, and Christmas tree farming.
- Farm Labor Contractor**

  - Any person, or their agent or subcontractor, who for a fee, performs any of the six farm labor contractor activities.
- Agricultural Employee**

  - Any person who renders personal services to, or under the direction of, an agricultural employer in connection with the agricultural employer's agricultural activity.



## Farm labor contracting industries

- Farm and nursery labor

  - Growing, producing, or harvesting farm or nursery products
- Forestation/Reforestation

  - Planting, transplanting, tubing, pre-commercial thinning and thinning of trees and seedlings
- Christmas tree harvests



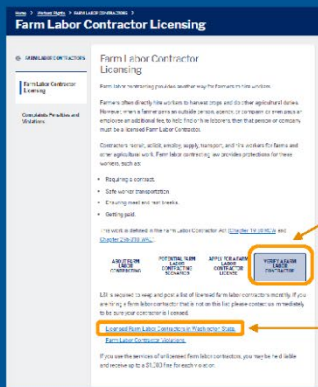


## Farm labor contractor licensing

- Farm labor contractors must obtain and keep a current license issued by L&I in order to perform any farm labor contracting work.
- Washington State Farm labor contractor licenses from L&I are valid for the calendar year.
- It is recommended to file for a new license in November for the upcoming year to ensure the license is issued in January. We send renewal packets to current license holders by mid-November.
- The farm labor contracting law provides the following protections for workers:
  - ✓ Terms and conditions of employment agreement
  - ✓ Safe worker transportation
  - ✓ Ensuring meal and rest breaks
  - ✓ Getting paid



## Farm labor contractor verification tool




Verify that a farm labor contractor is properly licensed.

View the licensed farm labor contractor database.

More Info: [Verify a Farm labor Contractor](#)



## Farm labor contractor database


 Washington State Department of Labor & Industries  
**2023 WASHINGTON STATE LICENSED FARM LABOR CONTRACTORS**  
 Updated June 26, 2023  
 For more information, please contact the [Employment Standards Farm Labor Unit](#).

License #	Business Name	UBI #	Contact	Address	City	State	Zip	License Type	Surety Amount	Transport
001-23	KERSHAW FARM LABOR MANAGEMENT, INC	604 315 459	SAM SLUTS	151 LCW ROAD	YAKIMA	WA	98908	FARM LABOR	\$40,000	YES
002-23	SUPER INVESTMENTS, INC	600 269 723	SAM SLUTS	151 LCW ROAD	YAKIMA	WA	98908	FARM LABOR	\$40,000	YES
003-23	SAGEMOR GROUP MANAGEMENT SERVICES, INC.	601 394 722	JUAN GAYTAN	81 ALLAN ROAD	NACHES	WA	98937	FARM LABOR	\$40,000	YES
004-23	LEGACY FRUIT, LLC	604 342 021	W. DEAN GARDNER	12 HOFFER ROAD	WARATO	WA	98951	FARM LABOR	\$40,000	NO
005-23	WASHINGTON ORCHARD MANAGEMENT, LLC	604 340 725	W. DEAN GARDNER	12 HOFFER ROAD	WARATO	WA	98951	FARM LABOR	\$40,000	YES
006-23	MEDDUGALL FAMILY FARMING, INC.	605 558 629	IRENE BIRDSELL	305 OLDS STATION RD	WENATCHEE	WA	98801	FARM LABOR	\$40,000	YES
007-23	THE HIGHLAND PARTNERSHIP II, INC.	604 574 615	DOUGLAS STOKWELL	PO BOX 1706	WENATCHEE	WA	98807	FARM LABOR	\$40,000	YES
008-23	JMST, LLC	600 823 258	SHAWN GAY	5400 S GARFIELD ST	KENNEWICK	WA	99137	FARM LABOR	\$40,000	YES

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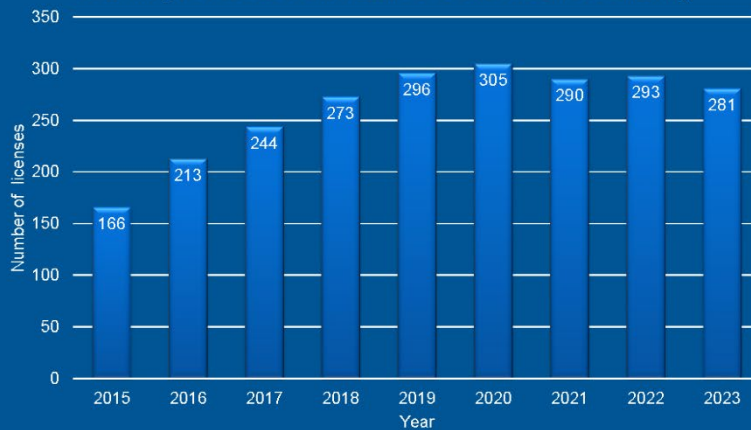
More info:

[Licensed Farm Labor Contractors in Washington State](#)



## Data trends

Washington State Farm Labor Contractor Licensing





## Farm Labor Contractor Complaints

- Complaints trigger FLCA investigations.
- Complaints ensure anonymity to the individual filing the complaint.
- Company-wide investigations
- Referrals
  - Workers
  - Family members
  - Community organizations
  - Agency counterparts
  - Third parties
- Aside from complaints, we also do regularly-scheduled field audits and consultations.



## Contacts & resources

### L&I Farm Labor Contracting Unit inbox

[ESFarmLabor@Lni.wa.gov](mailto:ESFarmLabor@Lni.wa.gov)

### L&I Employment Standards Customer Service

[ESGeneral@Lni.wa.gov](mailto:ESGeneral@Lni.wa.gov)

1-866-219-7321

### L&I Webpages

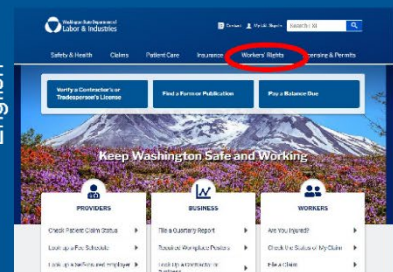
#### English

- [Agricultural Overtime](#)
- [Agricultural Overtime FAQs](#)

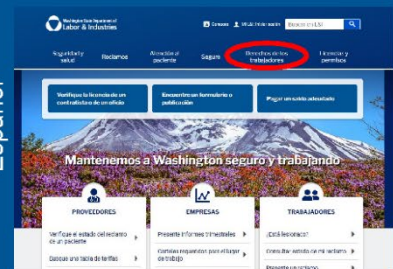
#### Español

- [Horas extras \(Agricultura\)](#)
- [Preguntas frecuentes sobre horas extras en la agricultura](#)

English



Español





## Agricultural and Seasonal Workforce Services ADVISORY COMMITTEE



Employment Security Department  
WASHINGTON STATE

Break until 3:30pm

## Open Discussion Time



Employment  
Security  
Department  
WASHINGTON STATE

Open Committee Discussion, Joy Adams

## ASWS Topics for Follow-up



1. WhatsApp communication with farmworkers
2. Employer resources (website, videos, template forms, compliance guides, etc.)
3. Two-way texting between ESD and farmworkers (for direct and ongoing communication with domestic applicants)
4. Waiver from USDOL (DENIED) to allow H-2A employers to manage and access their own recruitments through ESD's recruitment system (un-suppression of employer information in WorkSourceWA job orders)
5. Inter-agency emergency response for climate related disasters (freeze, wildfire, etc.) and social safety net for impacted farmworkers
6. H-2A Labor Roundtable Forum
7. Accessibility/relevance of ASWS Advisory Committee meetings to farmworkers
8. Translation of ESD materials (Eng-Esp)

## Good of the Order



- Summary of Meeting
- Future Agenda Items
- Public Comment



### Agricultural and Seasonal Workforce Services ADVISORY COMMITTEE



Employment Security Department  
WASHINGTON STATE

#### Next Virtual

#### ASWS Advisory Committee Meeting

Wednesday, October 18, 2023

1:00 p.m. – 3:00 p.m.

Zoom

#### Next In-Person

#### ASWS Advisory Committee Meeting

Wednesday, November 15, 2023

1:00 p.m. – 5:00 p.m.

KDNA

121 Sunnyside Ave, Granger WA  
98932

#### Contact information

Joy Adams, Chairperson, Acting Director of Employment System Policy & Integrity Division

*Employment Security Department • Employment System Policy & Integrity*