

Agricultural and Seasonal Workforce Services Advisory Committee

Meeting details

Date: Thursday, May 19, 2022 **Time:** 8:30 a.m. – 11:30 a.m.

Location: ZOOM meeting due to COVID-19

Committee members present

- Jonathan DeVaney
- Edgar Franks
- Michele Besso
- Victoria Ruddy
- Jeff Perrault
- Michael Gempler
- Delia Peña

Non-voting agency representatives

- Todd Phillips
- Ignacio Marquez

Committee members absent

Rosalinda Guillen

• Uriel Iniguez

ESD staff

- Dan Zeitlin
- Bertha Clayton
- Vickie Carlson
- Petra Meraz
- Tamara Johnson
- Olga Kondratjeva
- Carmen Rivera
- Carlos Sandoval-Larios
- Gustavo Aviles
- Rene Maldonado
- Juan Martinez
- Ana Alcala-Rodriguez

Summary

Meeting Recorded

This meeting was recorded and is available on https://esd.wa.gov/newsroom/Ag-committee

Welcome and Introductions

Employment Security Department (ESD) Policy Director, Dan Zeitlin, welcomed everyone and asked Vickie Carlson to take roll. Seven voting members were present, one was absent.

Agenda

Recording timestamp 00:4:04

Dan Zeitlin reviewed the agenda for the meeting and asked if anyone had any questions. (See Addendum I.)

Meeting Minutes

Dan Zeitlin requested that everyone review the meeting minutes for April 19, 2022 and provide their feedback. Jonathan DeVaney made a motion to approve the April 19, 2022 minutes. Victoria Ruddy seconded the motion. The April 19, 2022 meeting minutes were approved.

Recording timestamp 00:06:55

ASWS Office Update – Bertha Clayton, ASWS Director (See Addendum II.)	
FLC Applications – Petra Meraz, FLC Coordinator	Recording timestamp 00:07:34
ASWS Compliance – Bertha Clayton	Recording timestamp 00:13:36
Site Visits by Compliance Region	
• Field Checks	
Creation of Standard Work: F.I.R.E	Recording timestamp 00:18:38
ASWS/L&I Community Relations – Bertha Clayton & Carmen Rivera	Recording timestamp 00:27:53
Action Items:	
• Add number of employers to compliance coverage area	
• Consider metrics to measure effectiveness of F.I.R.E.	
2022 ASWS Report Recommendations – Bertha Clayton (See Addendum III.)	Recording timestamp 00:58:46
Recommendations 1 – 4	Recording timestamp 01:01:30
Customer Experience Study –Olga Kondratjeva, Operation Research Specialist	Recording timestamp 01:38:03
Recommendations 5 & 6	Recording timestamp 01:47:07
Action Item:	
• For customer experience study, can we follow up with domestic workers that solving they plan on staying with the employer or what they plan to do?	are placed to see how
2022 Report Timeline, Next Steps – Bertha Clayton (See Addendum IV.)	Recording timestamp 02:10:09
MSFW Proposed Rule – Gary Kamimura. Manager, Workforce Policy Gary provided information on Wagner-Peyser Rulemaking as well as Notable Propose Addendum V.)	Recording timestamp <u>02:10:40</u> ed Rule Changes (See
MSFW Disaster Relief Preparedness – Bertha Clayton	Recording timestamp 02:25:35
Bertha opened the floor for discussion on these specific topics: (See Addendum VI.)	
Define scope of ASWS Committee's role in disaster relief planning	
• Formation of ASWS Committee subgroup to furthur define scope and propo	se informed solutions
Future Agenda Items	
ASWS Office Update	
ETO/Case Management Replacement System Update	
 Disscussion of Complaint Coordination with possible additional Recommendarequest) 	ation (Michele Besso

Public Comments

None

Adjourned

Dan Zeitlin thanked everyone for their continued active participation and for their commitment to this work, then ended the meeting at 11:27 a.m.

2022 Meetings

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

• June 16, 2022 – 8:30 a.m. to 11:30 a.m. – Zoom Meeting

Addendums

ADDENDUM I.



AGENDA

Agricultural and Seasonal Workforce Services (ASWS) Advisory Committee Thursday, May 19, 2022 | 8:30 am - 11:30 am | Zoom

TIME	ΤΟΡΙΟ
8:30 am	 Welcome – Dan Zeitlin, Director, ESD Employment System Policy & Integrity Division Roll Call – Vickie Carlson Agenda Review – Dan Zeitlin
8:40 am	Approval of Meeting Minutes – Dan Zeitlin • April 21, 2022
8:45 am	 ASWS Office Update – Bertha Clayton, Director, ASWS Office FLC Applications – Petra Meraz, FLC Coordinator ASWS Office – Bertha Clayton ASWS Compliance – Bertha Clayton ASWS/L&I Community Relations Pilot Project – Bertha Clayton & Uriel Iniguez
9:15 am	 2022 ASWS Report Recommendations Update – Bertha Clayton, Director, ASWS Office Customer Experience Study – Olga Kondratjeva, Operation Research Specialist, Data Architecture, Transformation and Analytics
10:00 am	Break
10:15 am	MSFW Proposed Rule – Gary Kamimura, Manager, Workforce Policy
10:35 am	MSFW Disaster Relief Preparedness Discussion - Bertha Clayton, Director, ASWS Office
11:10 am	Closing Discussion • Agenda Items
11:20 am	Public Comment
11:30 am	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 Office Update

Employment Security Department

Advisory Committee Presentation May 19, 2022

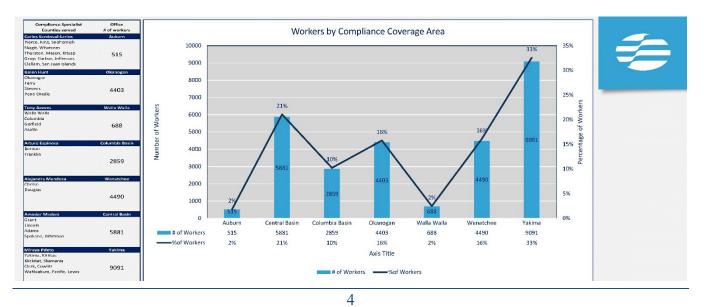
Petra Meraz, FLC Coordinator, ESD Bertha Clayton, ASWS Director, ESD **Employment Security Department**

FLC Applications Update



	2022				2021			
2022 H-2A Program Data (10/1/2021-5/16/2022)	Applications processed	Workers Requested			Applications processed	Workers Requested		
Total Applications Received/Processed:	322	30,165	Active	Active Workers	269	23,084	Active	Active Workers
Number of Applications Withdrawn/Not Processed by DOL:	19	2,307			13	591		
Contract Impossibility:	0	-			0	-		
Total Number of Contracts Commenced:	242	22,542	230	21,822	194	27,030	184	16,216

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





Site Visits by ASWS Compliance Region 1/1/2022 – 5/16/2022

ASWS COMPLIANCE REGION	1 Yakima/SW WA	2 Central Basin	3 Chelan-Douglas	4 Benton-Franklin	5 Walla Walla	6 NE WA	7 Western WA
No. of site visits	72	18	18	20	4	13	18
No. of workers contacted	3228	986	1075	1193	8	424	251

Total Site Visits (YTD): 163 Total No. of workers contacted (YTD): 9,382

* Note: Compliance specialists in regions with lower volume regularly provide assistance in higher volume areas and at times where staff are on leave.

Field Checks – 2022



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 <u>random</u>, <u>unannounced</u> 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 (seeker referred and started working)	6
Number of Field Checks Performed by ASWS	3
Number of Field Checks currently scheduled	2
**2 placements made and 2 field checks scheduled since April 20	22 ASWS meeting

Creation of Standard Work - LEAN Project F.I.R.E. FORMAT, INFORMATION, REASSESSMENT, EXECUTION



Context and Background

- New Team
- Feedback From Workers and Employers
- Value of Standard Work
- Professional, Experienced, and Informed Presentation in All Regions
- Project under direction and guidance of LEAN certified facilitator
- F.I.R.E.

Goals and Objectives

- Standard site visit experience for workers and employees
- Informed and focused on essential topics, retaining flexibility to respond to questions and specific needs
- Clear and discernible expectations for compliance team
- Ease in onboarding
- Best positioned to adjust and improve
- Standard work program within 30 days of 5/9/2022
- Model for other states

ASWS Compliance & L&I Community Relations - Coordination of Outreach Pilot

Employment Security Department

Bertha Clayton, ASWS Director, ESD Employment Security Department Carmen Rivera, Program Specialist, for *Uriel Iniquez* L&I Community Relations

Background & Context

- Legislative history of RCW 50.75.040 cites coordination of outreach
 - NEW SECTION. Sec. 3 (1) The office of agricultural seasonal workforce services is established within the department.
 - (2) The duties of the office are:
 - (c) Conducting field checks and field visits, as required by the United States department of labor. When conducting
 a field check, the office shall coordinate, to the extent possible, with the department of labor and industries,
 department of health, and department of agriculture in order to limit disruption to agricultural employers and
 efficiently use government resources
- 2020 ASWS Report; pg. 43 (Employer Perspectives):"Employers also recommend that the ASWS
 office plan and coordinate compliance visits to H2A employer locations in partnership with WA
 State L&I as a means of achieving operational efficiencies while increasing enforcement of H2A
 regulations.
- L&I Community Relations has statewide team doing outreach to MSFWs. This group's outreach is informational not inspections.
- Uriel Iniguez proposed coordinating outreach with ASWS Compliance site visits.

Scope and Objectives

- Started April 2022
- Coordinated Outreach between ASWS Compliance Specialist and L&I Community Relations Outreach Specialist
- Limited to ASWS Northwest Region
 - NW region selected because there is already a good coordination foundation between ESD and L&I
 - Fewer employers, smaller contracts. Better opportunities to capture employer and worker feedback.
- Opportunity for both employers and workers to get comprehensive information and support.

Logistics and Progress

Timeline: To be determined

Methods: Calendar sharing, monthly check-ins for updates to contract roster, overlapping issues, resolution tracking; additional check-ins, as needed

Focus: Gathering data, gauging employer feedback, evaluating whether this partnership adds value to workers and employers

How it's going: Overall, good reception from employers and workers

Cross sectional issues have been resolved more efficiently

Next Steps: Evaluate data and determine whether to implement this project in other compliance areas

 Building on relationship with L&I; also working together on accepting H2A complaint referrals from L&I

ADDENDUM III.

2022 ASWS Report Recommendations

Security Department washington state

Advisory Committee Presentation May 19, 2022

Bertha Clayton, ASWS Director, ESD Olga Kondratjeva, Operation Research Specialist, ESD Employment Security Department



SB 5438

In even years, the committee shall submit a report to the governor and legislature by October 31 that:

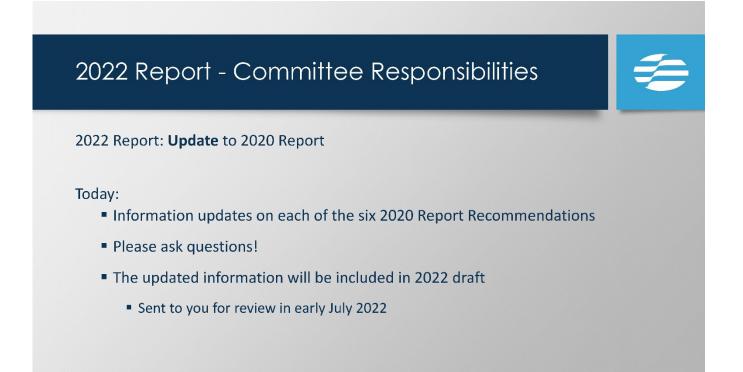
- (a) Identifies and recommends approaches to increase the effectiveness of ESD's recruitment process as part o the H-2A application. If deemed advisable by the committee, the report may include recommended changes to state law that would lead to increased recruitment and hiring of domestic workers in agricultural employment in WA;
- (b) Costs/Budget (covered by Dan Zeitlin at April 2022 meeting)

2020 Report

Outlined the committee's strategic priorities that will guide its work in meeting the intent of RCW 50.040.

Priorities:

- Strategic Alignment : Create strategic regional enforcement, training, and administrative positions to work with agricultural employers, farmworkers, and key stakeholders to ensure compliance with the H2A Program requirements
- Training and technical assistance: Work with internal and external stakeholders to develop training and technical assistance curriculum
- Outreach to Employers: Provide technical assistance, information and resources to employers
- Communications Strategy: Develop a uniform statewide message delivered via multiple avenues, including radio, Facebook, Twitter, WhatsApp, flyers, and in person.



Recommendation 1:

The committee recommends that ESD help facilitate a faster connection of workers and employers through process changes including more direct and ongoing engagement with domestic job applicants.

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2020 Recommendation:

- The committee recommends using texting or apps commonly used by the farmworker community for recruiting and job matching, including using text alerts to notify farmworker applicants of new job openings.
- ESD estimates the incremental cost of implementing a texting or app-based outreach to be \$150,000 the first year and \$72,000 each year following. The cost to implement these recommendations can otherwise be met with existing resources. The committee recommends they work with ESD to develop a Request for Information (RFI) to further scope and identify costs for text and/or app-based outreach to farmworkers.

2022 Update:

- The new ETO Replacement Project will include a two-way texting option for WorkSource Staff.
- Customer Experience survey will likely provide additional data that will be used to create strategies for creating process changes to more meaningfully connect with domestic applicants.

Recommendation 2:

The committee recommends ESD directly inform employers of applicants for H-2A job openings, request a waiver from the U.S. Department of Labor (USDOL) to allow H-2A employers to manage and access their own recruitments through ESD's recruitment system, and establish measures to determine the impact and success of the change.

2020 Recommendation:

ESD manages H-2A recruitments on behalf of employers through the WorkSourceWA system following federal guidelines. With other industries, employers manage their own recruitments in WorkSourceWA, which allows them to contact applicants directly.

- The Agricultural Recruitment System (ARS), relied upon by the H-2A Foreign Labor Certification process, requires ESD to test the local labor market by recruiting for H-2A positions, screening applicants, referring applicants directly to employers, and making the workers aware of their rights and obligations under the contract.
- By implementing these recommended changes, ESD will help facilitate a faster connection of workers and employers.
- ESD does not project any cost to implementing this recommendation.

2022 Update:

- This committee voted 5-4 in October 2022 to seek a waiver from the U.S. Department of Labor allowing ESD to "un-suppress" the name of the employer.
- This waiver request was signed by Commissioner Feek on May 13, 2022 and forwarded to DOL for approval on May 16, 2022.
- Measures to determine impact: Committee will be tasked with determining impact.

Recommendation 3:

The committee recommends that ESD track job referral outcomes more consistently.

2020 Recommendation:

- More thorough referral tracking, and follow-up could be achieved through more proactive engagement with both employers and workers to obtain information regarding referral outcomes, to include outreach by phone or text to farmworker applicants who have been referred using an app to communicate with farmworker applicants.
- The committee recommends it work with ESD to develop a Request for Information (RFI) to further scope and identify costs for text and/or app-based outreach to farmworkers.
- The cost to implement these recommendations can otherwise be met with existing resources.

2022 Update - Juan Martinez, *MSFW/Wagner Peyser Program Operator*

- November 17, 2020, the Wagner-Peyser Program Team provided training and implemented more robust H-2A referral tracking and follow-up procedures
- Instruct the applicant to contact WorkSource staff with referral results the following business day if possible.
- Staff must follow up with job seeker and employer no later than two business days from the date of the job referral.
- The Wagner Peyser Program Team is extracting H-ZA applicant data weekly and supporting all 13 H-ZA Order Holding Offices to ensure that we don't have any applications or referrals pending to be reviewed for over one week.
- The Wagner Peyser Team is immediately informing the ASWS Unit of H-2A placements so that they can commence the field checks.
- Implemented two new features in our ETO data management system to ensure that applicants' hiring status is properly coded in order to prioritize domestic workers
 - <u>Candidate Does not Qualify</u>: After careful review and attempt to connect with the customer, the customer is not able, willing, available, or qualified.
 - Ineligible Foreign Worker: Applicant is applying from outside the U.S. with no workers permit.

Outcome: Placements are trending up. Field check activity last quarter was healthy.

Recommendation 4:

The committee recommends that ESD complete a customer experience study to better understand the experience of farmworkers and employers in the ESD application and referral process.

2020 Recommendation:

- The study should focus on hearing the farmworker and employer perspectives on barriers to accessing jobs, usability of ESD systems, and the disconnect between the number of available jobs compared to the number of successful referrals.
- The cost of this recommendation remains to be determined as ESD works with the committee to further develop the study's parameters. The committee recommends ESD develop a Request for Information (RFI) and conduct focus group sessions to design a customer experience study.

2022 update:

- Olga Kondratjeva, Operations Research Specialist, ESD Data Architecture, Transformation and Analytics
- Gustavo Aviles, Manager, Program Evaluation, Research and Analysis

Program Evaluation, Research & Analysis (PERA) Team Updates



Advisory Committee Presentation

May 19, 2022 Olga Kondratjeva, Operation Research Specialist, ESD Employment Security Department

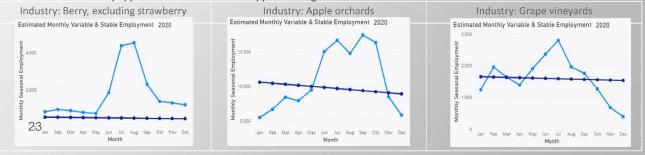
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Customer Experience Study



Phase II - Customer experience study for cherry, berry, apple*, pear*, and grape* production.

• *The activities for these crops will be different in each phase. For example, in Phase I we plan to study apple harvest and in Phase II apple thinning.



**Notes: light blue line = variable employment. Source: ESD

Customer Experience Study

Phase I

- RFP process: May July 2022.
- Interviews taking place in September November 2022
- Final report due: Spring 2023

Phase II

- 2022 Specialty Crop Block Grant Program (SCBGP): Customer experience study was included in Washington State's application to the USDA. (Funds requested: \$250,000)
- RFP process: Winter 2023
- Interviews taking place in May August 2023

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RFP Process for Customer Experience Study

Phase I

Customer Experience Study for apple, pear, and grape production:

Date	Event
5/19/2022	RFP drafts is shared with ASWS Advisory Committee
5/26/2022	Comments due from ASWS Advisory Committee
6/8/2022	RFP is Posted to WEBS
7/8/2022	Due date for submission of proposals
7/22/2022	Proposal evaluations due
7/29/2022	Notify apparent successful bidder (the process can last longer if there are additional concerns)
8/15/2022	Bidder starts the project (interviews may begin in the end of September/beginning of October at the earliest)
4/1/2023	Final report due

Recommendation 5:

The committee recommends that ESD create enhanced resources and best practices for employers to access in order to increase employer compliance with H-2A laws and rules, streamline hiring and help support employers in successfully meeting program requirements.



2020 Recommendation:

- Activities would include providing template forms and letters, compliance tips, interview best practices, and sample interview questions. Best practices would focus on educating employers on common mistakes that have been made in the past and how to prevent those mistakes from happening. It is recommended that resources are provided once to all existing employers, provided to new H-2A employers in the future, and provided to employers by email at the time they set up new recruitments.
- This cost is assumed in the ASWS office budget and tied into best practices to be provided by ASWS compliance staff in coordination with WorkSource.

2022 Update:

Site Visits

- Robust site visit coverage. Counseling and technical assistance provided during/after visits to employer.
- Field Checks
 - Increasing number of field checks. Thorough review. Counseling and technical assistance provided during/after visits to employer.

FLC Application Processing

- Frequent technical support and guidance to employers
- Frequent communication by phone and email.
- Participation in Industry Events and Programs
 - Employer summits and conferencesAgricultural Leadership Cohort

Looking Ahead

- Seeking opportunities to engage with employer groups and educate regarding ASWS role and H2A program rules and assurances.
- Focusing education/training efforts to Supervisor/middle management level
- Evaluation of whether topic specific written materials would be useful
- Development of website with employer resources and FAQs

Recommendation 6: The committee recommends enhancing employer training.



- Training may include formal training sessions, communication about employer resources, making sure employers understand the resources available to them, creating designated points of contact for employers with questions, and building relationships for ongoing conversations and education.
- This cost is assumed in the ASWS office budget and tied into best practices to be provided by ASWS compliance staff in coordination with WorkSource.

2022 Update:

- Agricultural Leadership Program (May 2022) presentations to English and Spanish cohort (Supervisors/HR personnel)
- Early stages of development of webpage with employer resources and tools
- Increased participation in employer events and forums
 - Seeking opportunities for greater employer engagement.

Shared Perspectives - Worker & Employer

ASWS Advisory Committee:

- Believes ESD needs to improve its tracking and monitoring of quarterly domestic worker placements to
 ensure it is then conducting field check as federally required (Juan)
- Believes ESD needs to measure the impacts of implementing recommendations regarding employer resources and training. Committee intends to measure and track the impact of implementing these recommendations.
- Shall work with ESD to examine the allocation of funding sources for H2A administrative functions and identify gaps in funding and needed resources to address those gaps if they exist. ESD will evaluate the existing charging structure to determine how to more accurately track and report costs associated with H2A activities (Dan/Budget).
- Recommends that ESD work to develop mechanisms to strengthen and align coordination with other agencies to effectively and efficiently improve health, safety and working conditions in agriculture.

Report Sections that Need Updating

ASWS Office Status

- Additional positions added and reclassified
- Additional staff added

ASWS COVID-19 Response

- ESD Domestic Recruitment Progress
 - Internal training and placement tracking mechanisms

Field Check and Site Visit Data Update (AKA field visits)

Budget Data

H2A/B Growth Data

Employer and Worker Perspectives

ADDENDUM IV.

Report Timeline - Next Steps

- Draft report will be presented to the ASWS committee for review and feedback by early July 2022
- Discussion during July and August ASWS meetings
- Once feedback received, report will process through internal review prior to submission for signature to Commissioner Feek
- Submission Target: Early September 2022
- Publication Date: 10/31/2022

ADDENDUM V.

MSFW Proposed Rule



Employment Security Department

Advisory Committee Presentation

May 19, 2022 Gary Kamimura, Manager, Workforce Policy, ESD **Employment Security Department**

Wagner-Peyser Rulemaking

- DOL published a Notice of Proposed Rule Making in the Federal Register on April 20, 2022.
- Rule changes are proposed at 20 CFR Parts 651, 652, 653, and 658 to rescind staffing flexibility for Wagner-Peyser, clarify State Monitor Advocate and MSFW outreach staff roles, and enhance MSFW protections.
- The Policy Unit is coordinating analysis of the proposed rules in collaboration with ASWS Unit and EC Division.
- ESD plans to submit comments by the June 21, 2022 deadline.

Notable Proposed Rule Changes

- Allow field checks to be targeted, if necessary, though they can otherwise still be random; require field checks on 100% of clearance orders if placements are recorded on nine or fewer; transportation added to field checks.
- No longer exclude full-time students performing farm work from MSFW counts.
- Significant MSFW states will be determined up to every five years (not annually) based on Census of Agriculture and Quarter Census of Employment and Wage data rather than MSFW participant counts.

Notable Proposed Rule Changes

- Significant MSFW one-stops will be determined based on count of reportable individuals (not just participants) that are MSFW.
- Remove SMA from direct role in the Complaint System.
- Require discrimination complaints to be referred to State Equal **Opportunity (EO) Officer.**
- Require SWAs to consult with DOL's Office of Foreign Labor Certification and Wage & Hour Division regarding debarred and disqualified employers and initiate discontinuation of services.

ADDENDUM VI.

MSFW Disaster Relief Preparedness

Employment

Security Department

Advisory Committee Presentation

May 19, 2022

Bertha Clayton, ASWS Director, ESD **Employment Security Department**

Context & Background

Discussion regarding disaster preparedness prompted by April 2022 "cold snap"

 No current protocol in place to efficiently respond at state level to farmworker needs created by natural disaster events.

Questions:

- How are damage assessment performed by the industry? Can farmworker voices be included? Employer response in meeting and discussion with Dept. of Ag. confirmed that damage assessments occur at the individual grower level and can vary from grower to grower. Extent of damage is often not fully known until a later date. Results of assessments not always reported to the state Dept. of Ag.
- What, if any, is the role of the ASWS Committee in creating a response system and/or broader safety net to address the needs created by natural disasters?

Defining ASWS Committee's Role

Since Last Meeting

- Engagement with Governor's Office and WA State Department of Agriculture
- Learning more about the extent of damage from April 2022 weather

Potential Approaches

- Define scope of ASWS Committee's role in disaster relief planning
- Formation of ASWS committee sub-groups to further define scope and propose informed solutions
- Subgroup meetings before June 2022 ASWS Meeting

Contact information

Dan Zeitlin, Director of Employment System Policy & Integrity Division DZeitlin@ESD.WA.GOV

Employment Security Department • Policy, Data, Performance and Integrity