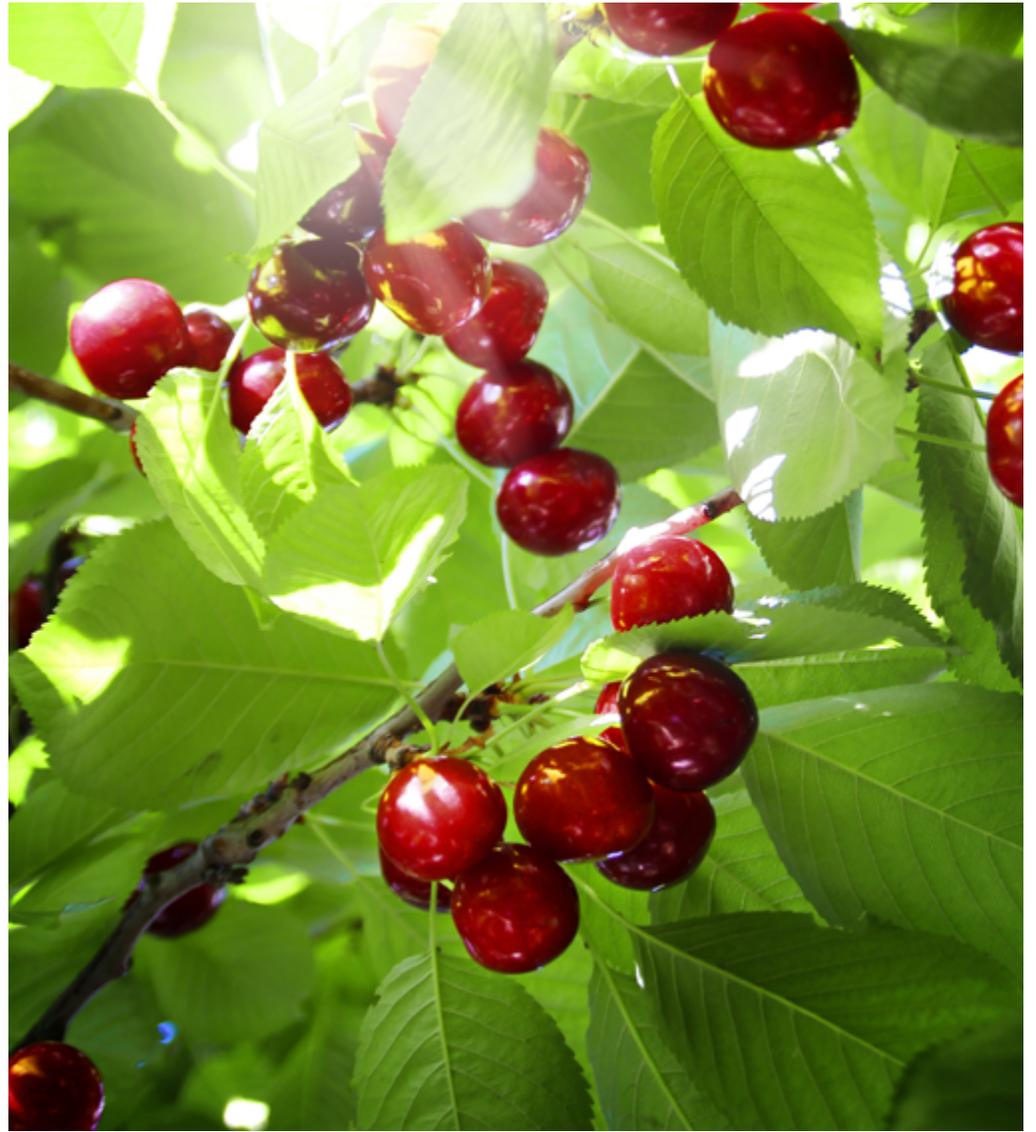


2015



# FARM WORK GROUP REPORT



**Employment Security Department**  
WASHINGTON STATE

# 2015 Farm Work Group Report

Published August 2015

## Introduction

This report summarizes the work of a legislative stakeholder group convened to discuss agricultural labor issues, established by proviso in the 2014 Supplemental Operating Budget, Section 222(9), ESSB 6002, Chapter 221, Laws of 2014. With this proviso, the Legislature charged the Employment Security Department with coordinating the group, which used the title the “Farm Work Group” (Work Group).

The proviso set three goals for the Farm Work Group:

- (i) To educate participants on relevant areas of regulation, business practices and other labor issues of interest to the stakeholders in Washington agriculture;
- (ii) To identify labor-related issues of importance to participants including, but not limited to, housing, workplace standards and agricultural labor supply; and
- (iii) To foster substantive, respectful, problem-solving oriented communication among stakeholders in and affected by the agricultural industry on the identified issues.

The proviso also charged the Work Group with collaborating to develop administrative solutions for agricultural issues identified by representatives of growers and workers as mutual points of concern.

## Work Group Members

The proviso authorized the governor to appoint 10 stakeholders, balanced among representatives for growers and the agricultural industry, and farmworkers and farmworker advocates (hereinafter referred to as “Grower Advocates” and “Worker Advocates,” respectively). The following individuals participated:

### Worker Advocates

Rosalinda Guillen, Executive Director, Community to Community Development

Nina Martinez, Chair, Farmworker Rights & Immigration, Latino Civic Alliance

Teresa Mosqueda, Government Affairs Director, Washington Labor Council, AFL-CIO

Felimon Pineda\*, Vice President, Familias Unidas por la Justicia

Andrea Schmitt, Attorney, Columbia Legal Services

*Jorge Valenzuela\*, Pacific Northwest Regional Director, United Farm Workers*

*(\* Mr. Valenzuela voluntarily resigned due to schedule conflicts and was replaced by Mr. Pineda on September 17, 2014)*

## Grower Advocates

Scott Dilley, Associate Director of Government Relations, Washington Farm Bureau

Mike Gempler, Executive Director, Washington Growers League

Kirk Mayer, Manager, Washington State Growers Clearing House

Jon Wyss, Government Affairs Director, Gebbers Farms

Mike Youngquist, Mike and Jean's Berry Farm

The proviso also directed five agencies to support the Farm Work Group as non-voting, ex officio members. The following agencies participated:

Washington State Commission on Hispanic Affairs

Washington State Department of Agriculture

Washington State Department of Health

Washington State Department of Labor & Industries

Washington State Employment Security Department

A majority of the Work Group members voted at a meeting on June 5 to add the Pacific Northwest Agricultural Safety & Health Center as an ex officio member. The center is part of the University of Washington's Department of Environmental & Occupational Health Sciences, School of Public Health.

## Meetings

The proviso authorized the group to hold up to six meetings in 2014. Before the first meeting, all Work Group members were asked to submit issues pertaining to agricultural labor that were of concern to their members and constituents. All issues submitted by the 10 Work Group members were compiled into a master list, which is attached as **Appendix A**.

The Work Group held four meetings, as follows:

June 5, 2014, Central Washington University, Ellensburg, WA

July 9 – July 10, 2014, Central Washington University, Ellensburg, WA

October 16, 2014, Highline Community College, Des Moines, WA

November 13, 2014, Highline Community College, Des Moines, WA

The June 5 meeting was devoted primarily to presentations by agency ex officio members on the roles and responsibilities of their respective agencies in agricultural labor, with time devoted to answering questions of the Work Group members and audience feedback.

The July 9 and 10 meetings focused on narrowing the issues for discussion and beginning conversations on the problems posed by those issues and potential administrative solutions. The five focus areas chosen by the Work Group were:

1. Agriculture labor supply, including increasing domestic labor supply, and understanding the federal H-2A guest worker program
2. Wage theft and retaliation complaints
3. Sexual harassment
4. Safety and health of farmworkers – pesticide drift and exposure; and
5. Farmworker housing

During its October and November meetings, the Work Group scheduled additional presentations on farmworker safety and pesticide exposure, concluded their discussions of the five focus areas, and identified more specific potential administrative solutions (discussed further below).

The meetings were announced in advance, consistent with the Open Public Meetings Act. Time was set aside at each meeting for the Work Group members to listen to comments and feedback from audience members.

Notes from all meetings can be found on the Employment Security Department's website:  
<https://esd.wa.gov/newsroom/legislative-resources/2014-farm-workgroup>.

## Budget Summary

The proviso appropriated \$50,000 to pay administrative expenses for the Farm Work Group. The total expenditures through February 2015 totaled \$20,722 for the following expenses:

- \$9,992 Administrative
- \$5,817 Travel
- \$4,913 Goods & Services

Including meeting space, translation and interpretation services.

An expenditure breakdown is attached in **Appendix B**.

## Acknowledgements

The Employment Security Department thanks the following state employees for their work in supporting the Farm Work Group:

Washington State Commission on Hispanic Affairs, Uriel Iniguez, Executive Director

Washington State Department of Agriculture: Ignacio Marquez, Community Liaison (additional support from Joel Kangiser, Margaret Tucker)

Washington State Department of Health: Kathy Schmitt, Deputy Director Health Professions and Facilities; Wayne Clifford, Manager, Pesticide Illness Prevention; Joanne Prado, Epidemiologist and Investigator, Pesticide Illness Prevention

Washington State Department of Labor & Industries: Lisa Heaton, Spanish Language Communications Manager; Maggie Leland, Senior Policy Advisor (additional support provided by Sheryl Hutchison, Alan Lundeen, Liz Smith, Tisa Soeteber)

Washington State Employment Security Department: Catherine Hoover, Director of Government Relations (Farm Work Group Facilitator); Alberto Isiordia, Program Policy Director, Workforce and Career Development Division (additional support provided by Gustavo Aviles, Kristina Basic, Alicia Cárdenas-Short, Craig Carroll, Cheryl Flynn, Erica Maki, Daniel Valdez)

Pacific Northwest Agricultural Safety & Health Center: Victoria Breckwich-Vasquez, Director of Community Engagement and Education and Michael Yost, Professor and Chair of Environmental and Occupational Health Sciences

## Report Format

The following discussion provides some background on the five issues discussed by the Farm Work Group, including an overview of applicable laws and regulations and the roles and responsibilities of the agencies. The introductory segments are followed by “Worker Advocates’ Perspective” and “Grower Advocates’ Perspective” summaries. These segments outline the respective viewpoints and experiences of each of the two groups. They include the facts underlying the issues as understood by each group including the scope and extent of the problem, and highlight the fact that in some cases the two groups disagree. The “Perspective” segments are followed by a table summarizing administrative solutions for each issue that both groups agreed to. Administrative solutions proposed by one group but not agreed to by the other are included in **Appendix C**.

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# Chapter 1 - Labor Supply

## Background



The Washington State Department of Agriculture reports that Washington's \$49 billion food and agriculture industry represented 13 percent of the state's economy in 2014.<sup>1</sup> Washington is the third-largest agricultural exporter state in the nation, exporting food and agricultural products of more than \$16.5 billion in 2012.<sup>2</sup> During that period, the food and agriculture industry employed approximately 160,000 workers, a significant number of whom work on a seasonal basis.<sup>3</sup>

Since 2007, most of the growth in agricultural employment is due to an increase in demand for seasonal jobs. In 2007, average annual seasonal employment was 31,843 jobs.<sup>4</sup> In 2013, average annual seasonal employment was 42,454. Over this eight-year period, average annual seasonal employment grew by 10,611 jobs, or 33.3 percent.<sup>5</sup>

Throughout 2013, the crops with the largest proportion of seasonal employment were apples, cherries and grapes, followed by hops, potatoes, pears and onions. Figure 1 shows the employment of seasonal jobs by crop in 2013. In July, there were 86,700 estimated seasonal jobs as the sweet cherry harvest peaked. The pear and apple harvest then began in August. Seasonal employment was 65,410 in August then rose to 69,770 in September, the fall peak. The figure shows that total apple production and total cherry production drove the seasonal surges. Apple activities began to increase in April with 15,810 jobs demanded. This number grew to 21,790 in June then increased to 42,180 seasonal jobs in September. Apple activities made up 60.5 percent of total labor demand in September. Other crop activities that contributed to September demand were pear (5,010 jobs), hops (3,240 jobs) and potato activities (2,480 jobs). Cherry activities surged from 3,000 jobs in May to 38,880 in July and then fell sharply to 12,680 in August.

<sup>1</sup> [agr.wa.gov/News/WSDA-AgFastFactsJanuary2014.pdf](http://agr.wa.gov/News/WSDA-AgFastFactsJanuary2014.pdf).

<sup>2</sup> Id.

<sup>3</sup> Id.

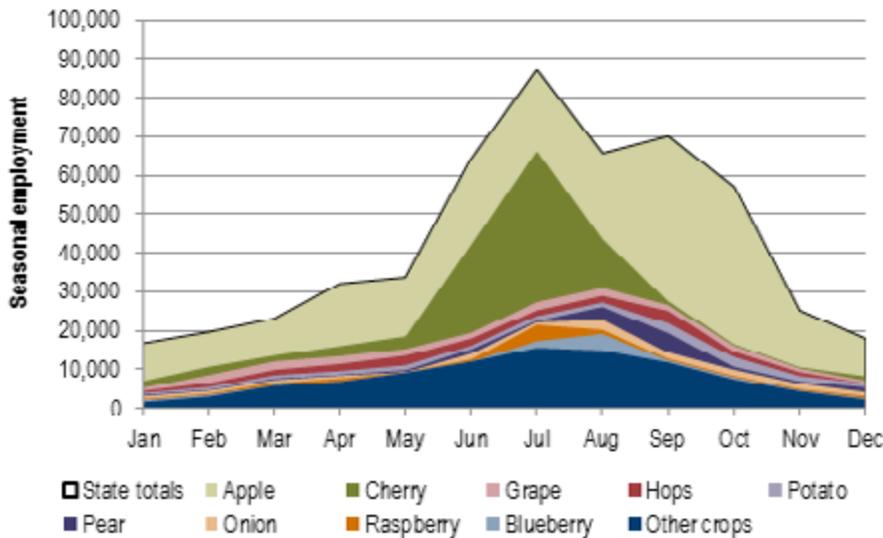
<sup>4</sup> See Agricultural Workforce Reports.

<https://fortress.wa.gov/esd/employmentdata/Widgets/EEIS/ReportsAndPublications/Reports/ShowReport.aspx?id=1386f097-70df-4e6c-b535-efbdcfe97490>.

<sup>5</sup> See Agricultural Workforce Reports. <https://fortress.wa.gov/esd/employmentdata/reports-publications/industry-reports/agricultural-workforce-report>.

For 2013, see Agriculture Employment and Wage Reports. <https://fortress.wa.gov/esd/employmentdata/reports-publications/industry-reports/agriculture-employment-and-wage-report>.

**Figure 1.** Seasonal agricultural workers by crop  
Washington State, 2013  
Source: Employment Security Department / LMPA, Agriculture Employment and Wage survey



\*Only results which passed publication standards (based on number of responses and confidence intervals) are reported here

## Regulation of Agricultural Recruitment and Employment Practices

The federal Wagner-Peyser Act requires that the Washington State Employment Security Department maintain an [Agricultural Recruitment System](#) to ensure the orderly movement of farmworkers within and between states. Key regulatory provisions can be found at [20 CFR 653 Subpart F](#). These regulations establish a system for agricultural job clearance orders through which employers can request workers for less than one year of employment. The provisions require employers to provide specific assurances designed to protect workers who are not seeking permanent relocation, which are otherwise not extended to workers in the general labor market. Through the Agricultural Recruitment System, the Employment Security Department (via WorkSource) can systematically recruit and refer qualified workers from within a state and from other states when there is an anticipated shortage of workers.

Agricultural employers unable to meet their labor demands through the Agricultural Recruitment System or other means may pursue the federal H-2A foreign temporary agricultural labor program. The H-2A program is authorized under the Immigration and Nationality Act and allows a U.S. employer to hire foreign workers on a temporary basis to perform agricultural work when there are insufficient U.S. workers available, as defined in federal law.<sup>6</sup> The H-2A application/certification process involves multiple state and federal agencies. The following represents a brief overview of steps a prospective employer of H-2A workers must follow in Washington state:

1. The employer submits an “ETA Form 790” to the Employment Security Department for review and approval 60 to 75 days before the date work is set to begin. Upon approval, the Employment Security Department (via WorkSource) initiates recruitment of U.S. workers through the Agricultural Recruitment System.
2. The employer submits an application package, including the ETA Form 790, to the U.S. Department of Labor’s Office of Foreign Labor Certification within the Employment and Training Administration for review and approval no fewer than 45 days before the date work is set to begin. The Office of Foreign Labor Certification is responsible for processing the employer-filed H-2A applications and ensuring as a condition of certification that qualified U.S. workers are not available for the job and the employment of temporary foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed. The regulations that guide the labor certification process can be found at [20 CFR 655 Subpart B](#).
3. After receiving certification for H-2A employment from the Department of Labor, the employer must file Form I-129, Petition for Nonimmigrant Worker, on each prospective worker’s behalf to the U.S. Citizenship and Immigration Services department for review and approval.
4. The employer coordinates efforts to ensure prospective workers outside the U.S. apply for a visa and/or admission tied to the employer’s H-2A application. After the U.S. Citizenship and Immigration Services approves Form I-129, prospective foreign workers must:
  - a. Apply for an H-2A visa with the U.S. Department of State at a U.S. Embassy or Consulate abroad, then seek admission to the U.S. with U.S. Customs and Border Protection at a U.S. port of entry; or
  - b. Directly seek admission to the U.S. in H-2A classification with Customs and Border Protection at a U.S. port of entry if a worker does not require a visa.

<sup>6</sup> 8 U.S.C. § 1188.

In addition to the state and federal agencies noted above, other agencies play a role in the administration and oversight of the H-2A program. Those include:

- The U.S. Department of Labor's Wage & Hour Division, which enforces labor-standards protections that extend to temporary agricultural workers admitted to the U.S. under the H-2A program. Regulations that guide the enforcement of contractual obligation for temporary agricultural workers admitted through the H-2A program can be found at [29 CFR 501](#).
- Washington State Department of Health, which certifies temporary farmworker housing.
- Washington State Department of Labor & Industries, which inspects and enforces the temporary farmworker housing regulations in coordination with the Department of Health and administers the State Workers' Compensation system.

While administratively burdensome, agricultural employers have increased use of the H-2A program. Table 1-1 shows data for the program from 2006 through 2014.

**Table 1-1. H-2A certifications**

Washington State, 2006 through 2014

Source: Employment Security Department/Workforce &amp; Career Development Division

Year	Employer applications certified	Percent change year to year	Workers certified	Percent change year to year
2006	11	57.1%	814	*
2007	26	136.4%	1,688	107.4%
2008	34	13.3%	2,513	40.1%
2009	30	-11.8%	1,882	-25.1%
2010	25	-16.7%	2,981	58.4%
2011	18	-28.0%	3,182	7%
2012	33	83.3%	3,953	24.2%
2013	56	69.7%	6,196	56.7%
2014	82	49.1%	9,047	48.5%

\*No 2005 comparison data

## Other laws pertaining to agricultural employment

The Fair Labor Standards Act is a federal law that sets minimum wage, overtime, recordkeeping, and youth employment standards for most employment, including agriculture. The Migrant and Seasonal Agricultural Worker Protection Act protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. The act also requires farm labor contractors to register with the U.S. Department of Labor.

## Summary of Washington Department of Labor & Industries Authority

### *Wage and Hour Laws*

The state Department of Labor & Industries has authority to enforce Washington's wage and hour laws. The agency monitors compliance with rules and regulations including wage payment, meals and rest breaks, hiring minor workers, unlawful deductions, and recordkeeping. See the department's [website](#) for more information on agricultural wage and hour laws.

### *Farm Labor Contracting*

A farm labor contractor is any person, agency or subcontractor who, for a fee, recruits, solicits, employs, supplies, transports, or hires agricultural workers to perform any farm labor contractor activity. They must obtain and keep a current farm labor contractor license issued by Labor & Industries in order to perform any of the activities. Labor & Industries registers farm labor contractors to ensure workers are paid. They are insured and bonded by companies who understand the requirements for paying workers fairly. Workers recruited by farm labor contractors have a right to comprehensive disclosures about the terms and conditions of employment, regular wages, a safe and healthy workplace, help if they are hurt on the job, and protection from discrimination if they report workplace hazards. See Labor & Industries' [website](#) for more information on farm labor contractors.

## Worker Advocates' perspective

Worker Advocates believe that there is sufficient domestic labor to meet Washington's agricultural needs and disagree with the industry's increased use of the H-2A temporary worker program. Worker Advocates believe that Washington growers should be able to attract a sufficient domestic labor supply through a combination of increased wages, benefits and worker protections. They believe some employers use the program for other purposes, such as to push out existing unionized workforces, or to replace workers who have consistently tried to complain about working conditions and wage theft. They note that some farmworkers reside permanently in Washington, and others reside permanently in other states and routinely migrate to Washington for the growing and harvesting seasons. They are interested in trying to quantify the number of agricultural workers in Washington (both domestic and migrant) through regular and reliable studies of agricultural labor.

Worker Advocates also stress the need to explore the wage level and particular benefits and protections that would create incentives for additional workers to enter Washington's agricultural job market. For example, of particular concern to farmworkers is the current practice of paying workers on a piece-rate basis. They believe workers' health and quality of life is harmed when workers must work inhumanely fast in order to earn enough money; a practice they believe benefits the grower more than the worker.

They are concerned about the rights and protections for H-2A workers. Per federal law, H-2A workers are attached to a petition from a specific employer and may not seek alternative employment at other farms if the working conditions are poor, as other workers may do under normal market conditions. They believe this puts H-2A workers at a significant disadvantage in interactions with the employer, and places H-2A workers at risk of mistreatment.

Worker Advocates are also concerned about the effects of the H-2A program on wages and working conditions. Examples include attempts to require U.S. workers to work with the same employer all season, regardless of conditions and pay; and imposition of productivity standards based on the Adverse Effects Wage Rate ("AEWR"), requiring all workers to work more quickly each year.

The AEWR is the rate that the U.S. Department of Labor has determined must be offered and paid by employers using the temporary visa systems (such as H-2A) to foreign and U.S. workers for a particular occupation so that the wages of similarly employed U.S. workers will not be adversely affected. *Rowland v. Marshall*, 650 F.2d 28, 29 (4th Cir. Va. 1981) provides an illustrative description of the AEWR.

Worker Advocates are concerned about the timing for projecting a “labor shortage” under H-2A. Under the law, an H-2A application may be approved if there are insufficient domestic workers available approximately one month prior to the projected harvest date. They report that because domestic workers follow the harvest, it is unrealistic to expect them to apply for work one to two months in advance of harvest. Migrant workers may be in California a month prior to harvest in Washington but plan to arrive in Washington right at harvest time. They say federal rules under H-2A fail to accurately reflect real-world practices, putting local workers at a significant disadvantage when it comes to job security and negotiation of wages and working conditions.

They report that the systems for recruiting and hiring local workers under H-2A contracts are ineffective and often appear set up to confirm, rather than challenge, growers’ need for temporary foreign labor. Although federal law requires growers to actively recruit and provide employment to any qualified and eligible U.S. worker until halfway through the work contract period, Worker Advocates say that some growers fail to comply with this requirement. They say workers report that some growers tell domestic workers they are “not hiring” because they are using H-2A workers, or impose additional or more onerous application requirements which discourage U.S. workers. Farmworkers have routinely complained about how burdensome it is to compete for local jobs once an employer has applied for H-2A and a job order has been announced.

Worker Advocates are concerned that farmworkers are not always respected for their hard work and the benefits they provide to the state and its residents. They believe that the view of farm work as “low level” or “unskilled” casts a negative light on the people doing the work and puts workers in greater danger of mistreatment and retaliation at work. They want to work with growers and state and local public and private agencies and entities on education and outreach campaigns that will create a necessary cultural shift to increase respect and appreciation for agricultural workers.

They also raised concerns about the increasing use of farm labor contractors in agriculture. They believe farm labor contractors are under-regulated and that their increased use makes agricultural workers more vulnerable to abuse than those directly hired on farms. Specifically in the context of H-2A recruitment, they are concerned that a single farm labor contractor controls a vast majority of the H-2A hiring in the state and is exempt from regulation as a non-profit.

## Grower Advocates' perspective

Grower Advocates prefer to hire domestic workers but are concerned that there are insufficient domestic agricultural workers to meet Washington's demands. They seek ways to attract additional domestic workers, such as revised orchard structures; increased mechanisms and tools that make farm work more efficient, less physically demanding, and safer; and attracting and promoting more women. The fact that farm work is largely seasonal is a major challenge. They find that domestic workers who are working full-time or who are seeking full-time work are rarely interested in seasonal work. Grower Advocates report that they continue to explore ways to make the work more stable year-round, such as coordinating with employers who have a high demand for seasonal labor in months when harvesting does not occur. They say that the best recruitment tool is to treat and pay workers well and to respect and enforce good policies. They report that wages are subject to increasing domestic and global competition, but piece rate can be used as a means to attract and reward more productive workers. They report that most growers have a very high return rate of workers each year.

Even with the return of domestic workers each year, Grower Advocates report that the number of domestic workers is insufficient to meet the workforce demands in Washington agriculture. Washington state has the nation's highest state minimum wage, yet growers cannot find a sufficient numbers of workers. Crops are highly perishable and if growers cannot assemble enough workers on the farm to harvest, they face loss of revenue for the entire year. They use multiple methods to announce jobs, from advertising in media and on radio in Washington and other states, posting at local community stores, and using WorkSource. They report that most farms stay in touch with workers from the prior year and notify them of upcoming harvests. Despite these efforts, some growers must use the H-2A program to ensure they will have sufficient workers at harvest time.

The situation is compounded by Grower Advocates' estimates that suggest that as much as 70 percent of the domestic agricultural workforce does not possess proper employment authorization to work in the United States. In recent years, there have been increased inspections of the legal status of the agricultural workforce by the U.S. Immigrations and Customs Enforcement. If Immigrations and Customs Enforcement inspects and finds that a farm's workforce lacks proper legal authorization to work, the grower can be faced with sudden loss of the farm's workforce. Use of the federal "E-verify" Internet system and H-2A workers are means to try to ensure that workers have legal working status for the season. Not only are growers finding it difficult to attract domestic workers, but the lack of legal employment authorization and the rise in federal enforcement activity have resulted in a chronic shortage of available, employment-authorized, domestic employees. As a result, growers use the only other option afforded to them by law – the H-2A program.

They recognize that the H-2A program requirements were designed to prevent domestic workers from being negatively impacted by H-2A workers. In fact, they believe the program can benefit domestic workers. Growers are required to pay H-2A foreign workers and corresponding domestic workers no less than the Adverse Effect Wage Rate, which is \$12.42 as of December 19, 2014, and is adjusted annually. Growers are also required to guarantee at least three-fourths of the contract wages and to pay prevailing wages for surveyed crop activities published by the Employment Security Department, among many other benefits aimed at making these jobs attractive for U.S. workers. Grower Advocates say that employers who fail to comply with the H-2A requirements to actively recruit and hire qualified U.S. workers through 50 percent of the contract work period are subject to sanctions for non-compliance. Regulations are enforced by the U.S. Department of Labor, which also has a process for addressing complaints by guest workers. They do not believe additional regulations in this regard are needed. The U.S. Department of Labor cannot approve an employer's use of H-2A workers unless there is a demonstrated shortage of domestic workers. In order to protect the legal domestic workforce, H-2A employees are only allowed to work for the employer(s) that have petitioned them and completed the U.S. Department of Labor process, and demonstrated a shortage of domestic workers.

As discussed in the Farmworker Housing segment below, Grower Advocates believe that the state needs greater investments in farmworker housing. The number of units of safe, clean and comfortable housing for farmworkers has a direct impact on the agricultural labor supply and the state's economy. Small and family farms have difficulty in getting infrastructure funding for farmworker housing and may be impacted the most.

They say that growers enjoy offering employment opportunities to youth, but find it increasingly difficult and expensive to use youth due to increase in the minimum wage, application of U.S. Department of Labor and state Labor & Industries youth work rules, and the loss of youth availability when school starts in the fall.

Grower Advocates share the Worker Advocates concern that the public lacks respect for farm work. They look forward to working with Worker Advocates, state and local, public and private agencies, and education entities on outreach campaigns to increase respect and appreciation for agricultural workers. Grower Advocates noted that agricultural employers have a high level of respect and admiration for their employees.

They note that agricultural safety is a high priority for the industry as shown by the agricultural industry's partnership with state agencies on safety training and the fact that agriculture is not listed in Labor & Industries' "Top 25 Most Hazardous Industries" report.<sup>7</sup>

<sup>7</sup> See Department of Labor & Industries website. [www.lni.wa.gov/IPUB/417-243-000.pdf](http://www.lni.wa.gov/IPUB/417-243-000.pdf).

## Administrative solutions proposed by the work group

Both Grower Advocates and Worker Advocates agreed to the below administrative solutions on labor supply. To arrive at them, the work group members listed administrative solutions they decided were worth pursuing given the short proviso timeframe, and then they assigned a rank of either “1” or “2,” defined as follows:

1 = High priority

2 = Not a high priority, but of interest; worthy of further discussion, research, review

Employment Security Department undertake study to understand and measure any verifiable shortages of labor in Washington.	1
The agencies should conduct an agriculture industry study to identify ways of increasing local worker participation in Washington’s agricultural industry.	1
Employment Security Department coordinate annual, recurring education about workforce and H-2A for growers, supervisors, and workers (including U.S. Department of Labor).	2
A single toll-free number should be developed for the agencies to allow farmworkers and employers to report incidences of wage theft, retaliation, sexual harassment and pesticide drift, among other incidences.	2

## Information and resources

- [Immigration and Nationality Act](#)
- [20 CFR 653 Subpart F – Agricultural Clearance Order Activity](#)
- [20 CFR 655 Subpart B – Labor Certification Process for Temporary Agricultural Employment in the United States \(H-2A Workers\)](#)
- [29 CFR 501 – Enforcement of Contractual Obligations for Temporary Alien Agricultural Workers Admitted Under Section 218 of the Immigration and Nationality Act](#)
- [Foreign-labor certification policies and regulations \(see H-2A TEGs\)](#)
- [Employment Security Department H-2A Handbook](#)
- [Adverse Effect Wage Rates](#)
- [Agricultural Online Wage Library](#)
- [DOL ETA 385 Handbook - Wage-Finding Process](#)
- [DOL H-2A Employer Handbook](#)
- [DOL H-2A Temporary Agricultural Program web page](#)
- [DOL Wage & Hour Division web page](#)
- [Employment Security Department Fruit Growers Survey](#)
- [H-2A jobs in Washington state](#)
- [iCERT-DOL posting of certified H-2A applications](#)
- [IRS guidance on withholding tax requirements for H-2A workers](#)
- [USCIS H-2A Temporary Agricultural Workers web page](#)
- [WorkSource Washington farmworker & employer services](#)

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## Chapter 2 - Wage Complaints and Retaliation

### Background

#### *Wage Complaints*

The state's Wage Payment Act imposes wage payment obligations upon employers. Labor & Industries reports that most agricultural wage violations involve failing to pay at least minimum wage for hours worked.

When a worker files a complaint, Labor & Industries has 60 days to investigate and issue a decision about whether the law was violated (may be extended for good cause). Both workers and employers have the right to appeal Labor & Industries' decision to the Office of Administrative Hearings. A worker has the right to opt out of the administrative process through Labor & Industries and file a private action instead.

Figure 1 shows the number of wage complaints investigated and wages returned to agricultural workers compared to all workers in fiscal years 2011-2014.

**Table 1-2: Wage investigations and wages collected**

	Wage complaints filed <sup>1</sup>		Wage complaints resolved <sup>2</sup>		Wages collected	
	All workers	Ag workers <sup>3</sup>	All workers	Ag workers <sup>3</sup>	All workers	Ag workers <sup>3</sup>
FY2011	3,920	158	3,939	108	\$2,300,000	\$49,450
FY2012	4,012	177	4,009	116	\$2,000,000	\$79,050
FY2013 <sup>4</sup>	3,772	246	3,740	175	\$3,270,000	\$76,150
FY2014	3,907	78	4,045	80	\$2,100,000	\$26,400

Source: Labor & Industries Employment Standards Program

- 1 This includes all complaints filed, although many are quickly closed for a variety of reasons (they came from out of state or involved a different kind of complaint, etc.).
- 2 Many complaints are not resolved during the year in which they are filed, so the completion numbers will never match the “complaints filed” column.
- 3 Not all complaints received by Labor & Industries are flagged for industry type. The data in this table include only wage complaints flagged specifically for the agricultural industry. In FY 2014, as complaint filing shifted to online, even fewer people chose to identify their industry, so the agricultural numbers appeared to decline, although Labor & Industries staff believe the workload was similar to the previous three years.
- 4 Labor & Industries conducted a massive data conversion in connection with a new complaint tracking system. The new system reflects wage collections from previous fiscal years that were not previously shown in the system. This causes the FY 2013 collections to appear greater than other fiscal years.

### Retaliation

Although it is illegal for employers to retaliate against workers for filing a wage or hour complaint with Labor & Industries, the department has no administrative authority to take enforcement action for this type of retaliation. Under the Industrial Welfare Act, retaliation violations are gross misdemeanors which may only be pursued by criminal prosecuting entities.

### Agricultural wage payment

Agricultural workers may be paid on an hourly or “piece rate” basis. Piece rate is an amount paid for one unit of work, such as picking apples to fill a bin with specific dimensions. Even when an employer pays using piece rates, the employer must verify that the worker receives at least the minimum hourly wage; however, the worker can potentially earn more under piece rates. Labor & Industries also has rules on meal and rest breaks. And if the employer retains H-2A workers, all workers on the job must be paid at least the highest of the applicable “Adverse Effect Wage Rate” in effect at the time recruitment for the job began, the applicable prevailing wage, or the minimum wage.

Washington’s minimum wage applies to agricultural workers in most cases, including piece rate work. Labor & Industries has published a work sheet in English and Spanish that helps piece rate workers track whether they are being paid correctly. The department also developed a bilingual booklet for farmworkers to record hours worked and meals and rest breaks taken.

The minimum wage does not apply for an agricultural worker if all of the following requirements are met:

- The individual is employed as a hand-harvest laborer; and
- The individual is paid on a piece-rate basis in an operation where such payment is customary; and
- The individual is a permanent resident and commutes daily from his or her own residence to the farm; and
- The individual has been employed in agriculture less than 13 weeks in the preceding calendar year.

**Example:** An individual (an adult or minor) who works fewer than 13 weeks per year harvesting berries during berry season, but does not normally work in an agricultural job at any other time, does not have to be paid minimum wage.

Under state law, agricultural workers are not eligible for overtime pay. See Labor & Industries’ website for more information on how minimum wage and overtime apply to agricultural workers.

### Summary of work group discussions on wage complaints and retaliation

During their discussions, all work group members strongly agreed that agricultural workers have the right to receive the payment to which they are legally entitled, have the right to file wage complaints if they believe they have not been paid properly, and have the right to lodge retaliation complaints if an employer punishes or harasses any worker for filing a wage complaint. Further, all agreed that it is the best practice for employers to take questions and concerns raised by a worker about his or her wages seriously and address them quickly.

### Worker Advocates' perspective

Worker Advocates describe a culture of retaliation at some farms which intimidates workers and prevents them from pursuing their legal right to lodge wage complaints. Worker Advocates say that agricultural workers face difficulty pursuing wage and retaliation complaints for several reasons. First, they describe many agricultural workers as reluctant to pursue valid wage and retaliation cases because they fear retaliation. They state that retaliation is a reality for some agricultural workers who may face termination, deterioration of working conditions, loss of housing, verbal or physical abuse, or a transfer to a less productive field or rejection when applying for work the following season. Worker Advocates say that workers have a justified fear of these kinds of retaliation, and it affects the workplace decision-making of many, if not most, agricultural workers. They say this systemic mistrust must be addressed in order for workers to fully realize their rights and protections under the law. Worker Advocates believe that training programs undertaken to reduce fear of retaliation must be conducted by organizations that workers trust and be backed by a demonstrated commitment by employers to fulfill their “no retaliation” promise.

Worker Advocates say that more agricultural workers might consider filing complaints if they could file anonymously, which triggers Labor & Industries' authority to conduct a company-wide audit. Under the Wage Payment Act, Labor & Industries cannot investigate an anonymous complaint because the law is designed for Labor & Industries to seek recovery on behalf of an individual. As an alternative, Labor & Industries may conduct company-wide audits after receiving an anonymous complaint. But because the Wage Payment Act mandates that Labor & Industries investigate and pursue all individual wage complaints, the agency has little discretion to direct its limited investigatory resources to company-wide audits. Worker Advocates say that if Labor & Industries had more investigatory funding, it could conduct company-wide audits in response to anonymous complaints. Labor & Industries has requested additional funding in the 2015-17 biennial budget for a pilot program to conduct directed company-wide investigations.

Worker Advocates say the complexity of agricultural wage payment can also be a barrier to workers filing complaints. The employer may pay an hourly rate, by piece rate, or the Adverse Effect Wage Rate on an H-2A job. They say this can make it confusing for a worker to know the amount to which he/she is legally entitled to receive, particularly if the employer fails to provide receipts and use clear and transparent record-keeping methods. In addition, they are concerned about the piece rate payment system as a whole because they believe it is manipulated by some employers to short workers of wages to which they are entitled. They believe that ending the use of piece rates will benefit both growers and workers, as it will improve working conditions and reduce the complexity of pay calculations.

They also describe the confusion posed by filing and pursuing wage and retaliation complaints because enforcement is divided among state and federal entities. Labor & Industries has authority to enforce wage complaints but not retaliation complaints. Retaliation is a gross misdemeanor under state law that may only be pursued by criminal prosecuting entities. The U.S. Department of Labor Wage and Hour Division has legal authority to pursue both wage and retaliation complaints when federal minimum wage and retaliation laws are broken, but the work group lacks clarity about the factors influencing its enforcement decisions. Given this split of jurisdictional enforcement authority and confusion about state criminal and federal enforcement decision-making, they believe agricultural workers do not always receive clear, appropriately translated, information about their legal rights. Worker Advocates strongly recommend that state law be modified to authorize Labor & Industries to pursue retaliation as a civil regulatory enforcement matter. (Proposed statutory modifications are not an administrative solution that the Farm Work Group is able to address.)

Finally, they believe that agricultural workers face practical difficulty in filing and pursuing wage and retaliation complaints, including language barriers, lack of access to online and electronic resources, lack of transportation, lack of legal advocacy and representation resources, and underfunded and understaffed state agencies.

### Grower Advocates' perspective

Grower Advocates disagree that there is a pervasive culture of retaliation in agriculture, but are concerned with the prospect of wage complaints and retaliation occurring at some farms. They want to partner in addressing the issues; however, they believe additional information would be helpful. They note the number of wage complaints lodged with Labor & Industries by agricultural workers is relatively low compared to other industries. Grower Advocates point out that it would be ideal to work on solutions with a more comprehensive understanding of the extent and scope of the issue.

They state that growers are advised on best practices for accurately recording each worker's hours and production (when piece rate is paid). They state that modern systems using bar codes, receipts and computer tracking allow for accurate record keeping and serve as a means for workers to understand the proper payment to which they are entitled. Workers have access to government wage and hour guidance documents describing their rights and how to keep track of their earnings in English and Spanish. In addition, the federal Migrant and Seasonal Agricultural Worker Protection Act requires disclosure forms be given to all new employees detailing wages, terms, and conditions of employment. Those forms help alleviate confusion about wage rates.

Grower Advocates observe that the best practice to deal with complaints or questions about wages is to quickly resolve them by addressing them directly with the individual. When complaints cannot be resolved informally, they report having good experience with Labor & Industries' process under the Wage Payment Act.

They believe that agricultural workers should feel free to raise issues and concerns about wages without fearing retaliation. They agree to continue to work with Worker Advocates on identifying ways the agricultural industry can help workers feel comfortable going to their supervisors and resolving issues. They point out that clear and understandable training for supervisors and workers can help and should be offered each year, as some complaints stem from a misunderstanding or lack of communication. Many of the Grower Advocates offer training programs to their member growers and staff, including supervisors and workers. Grower Advocates note that sometimes it is difficult to get workers to focus on the training, as they are anxious to get to work quickly to harvest. Grower Advocates with experience in the H-2A program highlighted that H-2A has very detailed advance-notice requirements on how wages will be paid that must be given to workers.

They also share the concern that the wage and retaliation investigation and enforcement authority is fragmented among various federal and state agencies and can be confusing. They observe that agencies vary in their outreach, public education, and communications. Some agencies or divisions within agencies are proactive and clear in their communications, while Grower Advocates rarely hear from others. They reflect that inter-agency coordination and clear communication about regulations and enforcement practices is helpful to everyone.

The Grower Advocates do not believe it is necessary to modify the law to authorize Labor & Industries to administratively enforce retaliation complaints, noting that Labor & Industries has the authority to investigate retaliation complaints and provide their investigative reports to criminal prosecutors. They further note that the process for Labor & Industries' enforcement of complaints under the Wage Payment Act affords a simple, quick and efficient method of recovery to aggrieved workers. The Grower Advocates recommended Labor & Industries make additional efforts to train growers and workers about their rights, such as through accessible webinars on the Labor & Industries' website.

Grower Advocates strongly voiced appreciation for and reliance upon their workers. They state that the best and most reliable way to recruit workers is to treat them well, incentivizing them to return to the same farms each year. Many agricultural employers report that a significant number of their seasonal employees do in fact return to work for them year after year.

## Administrative solutions proposed by the work group

Both Grower Advocates and Worker Advocates agreed to the below administrative solutions to wage complaints and retaliation. To arrive at them, the work group members listed administrative solutions they decided were worth pursuing given the short proviso timeframe, and then they assigned a rank of either “1” or “2,” defined as follows:

- 1 = High priority
- 2 = Not a high priority, but of interest; worthy of further discussion, research, review

Labor & Industries make video trainings for workers available electronically and online in various languages.	2
Agencies develop an outreach campaign to inform workers about their rights, in languages workers understand. The campaign should include on-site visits by agency staff.	2

In their meeting on July 9, work group members discussed agency ex officio members’ ongoing outreach and communications resources, such as the Commission on Hispanic Affairs’ regular radio program addressing agricultural labor issues, that may potentially be leveraged for a public outreach campaign.

## Resources

### *Labor & Industries*

The Department of Labor & Industries has developed extensive information and training to help workers and employers understand Washington’s wage requirements and employment standards. Information specific to the agricultural industry has been consolidated on a single web page to provide easy access.

Labor & Industries also has a “Complaints/Discrimination” web page with information on how to file complaints about unpaid wages, workplace safety, workplace rights and other potential violations. Both web pages have a link to [Spanish translations](#).

### *U.S. Department of Labor*

The U.S. Department of Labor's Wage and Hour Division publishes several fact sheets for workers and employers on wages and retaliation, including:

- Fact Sheet #12:** Agricultural Employers Under the Fair Labor Standards Act,  
[www.dol.gov/whd/regs/compliance/whdfs12.pdf](http://www.dol.gov/whd/regs/compliance/whdfs12.pdf)
- Fact Sheet #49:** The Migrant and Seasonal Agricultural Worker Projection Act,  
[www.dol.gov/whd/regs/compliance/whdfs49.pdf](http://www.dol.gov/whd/regs/compliance/whdfs49.pdf)
- Fact Sheet #77A:** Prohibiting Retaliation Under the Fair Labor Standards Act,  
[www.dol.gov/whd/regs/compliance/whdfs77a.pdf](http://www.dol.gov/whd/regs/compliance/whdfs77a.pdf)

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## Chapter 3 - Sexual Harassment

### Background

Harassment on the basis of sex is a violation of [Title VII of the Civil Rights Act of 1964](#). As defined in [29 CFR 1604.11 \(a\)](#), sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment occurs in all industries, but the conditions in some industries may put workers at higher risk. For example, the isolation of field working conditions and the distance between workers may put some agricultural workers at risk of sexual harassment, even when the employer strongly condemns it and has implemented policies and procedures to prevent it. Additionally, incidents may be under-reported where migrant workers fear retaliation, which could include loss of the worker's employment and housing.

The issue is not specific to Washington state. Protecting immigrant, migrant and other vulnerable workers is one of six national priorities established by the U.S. Equal Employment Opportunity Commission in its [2012 Strategic Plan](#). Representatives of the U.S. Equal Employment Opportunity Commission and Labor Advocate Work Group members describe some cases against farmworkers as particularly brutal. Reported incidents in the United States describe some women farmworkers who experience rape, coerced sex, groping and verbal abuse by supervisors who take advantage of their position of authority as translators between farm owners and workers.

## Enforcement of complaints

Violations of federal sex discrimination and harassment law are enforced by the U.S. Equal Employment Opportunity Commission. Washington's state law prohibiting discrimination, which includes sexual harassment, is set forth in the Washington Law Against Discrimination, Chapter 49.60 RCW. Under the Washington Law Against Discrimination, victims of sexual harassment may file a complaint with the Washington State Human Rights Commission or pursue a private lawsuit. Sexual harassment also may give rise to tort liability on behalf of the employer and/or perpetrator and may be criminal conduct.

The Department of Labor & Industries does not have jurisdiction over unfair or discriminatory treatment in the workplace. However, for victims of criminal assault or criminal harassment resulting in injury, [crime victims compensation](#) may be available to help pay for related treatment costs and other benefits when the crime did not occur on the job. [Workers' compensation](#) may be available for injuries or occupational diseases resulting from criminal assaults that occur on the job. Eligibility criteria are detailed in the links to the department's website.

## Summary of Work Group discussions

All Work Group members strongly condemn sexual harassment and agree that no agricultural worker should be subjected to sexual harassment, be afraid to report sexual harassment, or face retaliation for doing so.

### Worker Advocates' perspective

Worker Advocates describe a “culture” on some farms in which sexual harassment is minimized, ignored or tolerated by supervisors and/or employers, and where survivors of sexual harassment do not come forward due to fear of reprisals by supervisors and/or employers. Worker Advocates describe that in some cases, workers – particularly women – routinely work under conditions in which they are humiliated or subject to crude and demeaning banter and verbal abuse. They also say that incidents of “quid pro quo” sex demanded by a supervisor and cases of physical sexual assault and rape are not uncommon. They point out that these cases are detrimental to the agriculture industry as a whole, because even a small number can stigmatize the industry and drive women away from agricultural work.

Worker Advocates acknowledge that many growers and industry groups are committed to combatting sexual harassment and offer excellent prevention and response trainings. They believe that training is helpful, but they maintain that the most effective preventative measure is civil and criminal enforcement, which starts with the employer. They believe that employers can set a tone of zero tolerance of sexual harassment by (1) clearly expressing a zero-tolerance policy in employee training through regular communications on the farm and in public outreach campaigns, and (2) enforcing a zero-tolerance policy by quickly investigating and taking disciplinary action against perpetrators. Without the second piece, however, they say that workers will not seriously consider the industry’s public stance against sexual harassment and will continue to be afraid to report incidents.

They are concerned that victims of sexual harassment sometimes are required to describe incidents several times to the various entities involved in enforcement, which can include the U.S. Equal Employment Opportunity Commission, the Human Rights Commission, and law enforcement. Ideally, they would like to see more coordination and joint investigation among enforcement authorities to avoid subjecting the victim to this repeated trauma.

### Grower Advocates' perspective

Grower Advocates believe that some degree of sexual harassment occurs in every industry and expressed surprise at the extent of what the Worker Advocates described in agriculture. They are troubled by the prospect of any degree of sexual harassment and assault in the industry. They recognize that it can be harmful to their workers, paint the industry and farm work in a negative light, and thwart their efforts to attract women to agricultural work. Grower Advocates are exploring means to increase workforce participation by women, such as mechanization and harvesting methods that make farm work less physically demanding and safer, and promoting more women into supervisory positions. They view increased workforce participation by women as positive and want women to be protected and feel comfortable working in the industry.

Grower Advocates note there are excellent and comprehensive sexual harassment trainings offered by various organizations every year. They state larger growers consistently require supervisors and workers to take training each year and have good policies and procedures for investigation of and response to sexual harassment. Given the more limited resources of smaller farms, they are not sure whether consistent training and advice on policies and procedures are reaching all medium- and small-sized farms. Many of the Work Group members offered to share their training resources, including materials produced by the Washington Growers League. They also agree that sexual harassment should be a topic in a joint public outreach campaign for farmworkers, with the clear message that workers are entitled to respect and safety, and sexual harassment cannot be tolerated.

## Administrative solutions proposed by the Work Group

Both Grower Advocates and Worker Advocates agreed to the below administrative solutions to sexual harassment. To arrive at them, the Work Group members listed administrative solutions they decided were worth pursuing given the short proviso timeframe, and then they assigned a rank of either “1” or “2,” defined as follows:

- 1 = High priority
- 2 = Not a high priority, but of interest; worthy of further discussion, research, review

<p>Human Rights Commission heads development and implementation of a strategic plan addressing sexual harassment issues in the agricultural workforce, including inter-agency coordination and investigations; clear understanding and memorandum of understanding defining roles and responsibilities in training, investigation and enforcement; education and training for employers and workers, including current training and literature review; data collection and analysis; outreach and public awareness, including fact sheets to aid employers; toll-free number coordination with U.S. Equal Employment Opportunity Commission.</p>	<p>Worker Advocates – 1</p> <p>Grower Advocates – 2</p>
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## Resources

### *Information and assistance*

- Training and education for workers, employers, supervisors on workers’ rights available through the [Human Rights Commission](#).
- Filing sexual-harassment complaints at the state level through the [Human Rights Commission](#).
- Pacific Northwest Agricultural Safety & Health Center, Department of Environmental & Occupational Health Sciences, University of Washington School of Public Health, [depts.washington.edu/pnash/sexual\\_harassment](https://depts.washington.edu/pnash/sexual_harassment).

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## Chapter 4 - Pesticide Drift

### Background<sup>8</sup>

Pesticide drift is the movement of pesticides through the air away from the target site to any off-target site. Complaints of pesticide exposure from farmworkers most commonly involve drift (as opposed to direct exposure or ingestion, for example). Human exposure to drift is more likely when pesticides are applied to one crop which is in close proximity to another crop where workers are present, or where the fields on which pesticides are applied are near to housing or heavily traveled roads. Farmworkers working in or near fields where pesticides are applied are particularly at risk if the applicator fails to comply with application or safety regulations.

The Washington State Departments of Agriculture and Health report that drift most commonly occurs in orchards, as opposed to other types of crops. Pesticides can drift more than a quarter mile from the target site according to national pesticide-illness data and state pesticides drift cases. Orchard air-blast sprayers are designed to deliver pesticides into high-speed fans that shatter the pesticides into tiny droplets and move the droplets to the target. The manner in which these machines function make them inherently prone to drift. However, drift can be prevented or greatly reduced by following necessary operating procedures and best management practices. Thorough training for operators is critical. Operators must properly calibrate and adjust their machines for changing weather conditions. Operators must also be constantly diligent and stop their machines under certain conditions that make drift more likely, such as high or gusty winds and weather inversion. Additionally, lack of communication between farms and between sprayer operators and work crews on the same farm can also lead to accidental exposure. Many researchers, industry groups and chemical companies are exploring safer and more efficient application techniques to minimize public health issues posed by drift.

Fumigants are highly volatile, which increases their tendency for off-site movement. Fumigant incidents, though infrequent, are often very serious. The U.S. Environmental Protection Agency has recently adopted stringent requirements in an effort to minimize off-site movement. As expressed by the Washington State Department of Agriculture, the goal of these requirements is to reduce both the frequency and the severity of these incidents.

<sup>8</sup> Background prepared in consultation with Departments of Agriculture, Health and Labor & Industries.

## Agency roles and responsibilities

In Washington, three agencies have a role in monitoring and/or enforcing pesticide exposure for agricultural workers: the departments of Agriculture, Health and Labor & Industries. Each of these agencies has a different role for ensuring agricultural worker safety, though they work in concert on pesticide issues as specified in a Memorandum of Understanding.

- The Department of Agriculture's Pesticide Management Division protects human health and the environment by ensuring the safe and legal distribution, use and disposal of pesticides in Washington. The division investigates complaints concerning possible pesticide misuse, storage, sales, distribution and applicator licensing. The division also inspects marketplaces, importers, manufacturers and pesticide application sites for compliance with state and federal laws and regulations, and provides training and education. Its Farmworker Education Program is recognized as one of the most robust in the country.<sup>9</sup>
- The Department of Health's Pesticide Illness Monitoring and Prevention Program investigates pesticide related acute illnesses for both workers and non-workers. The state uses data from these investigations to identify public health problems and develop strategies to prevent human exposure and pesticide-related illnesses. Federal, state and local governments, advocacy groups and legislators use the data for similar purposes.
- The Department of Labor & Industries' Division of Occupational Safety and Health develops and enforces rules that protect workers from hazardous job conditions. Labor & Industries also conducts research into workplace health and safety, which focuses on promoting healthy work environments and preventing workplace injuries and illnesses.

Educational institutions conduct research and provide education and outreach on these topics. The Pacific Northwest Agricultural Safety & Health center conducts research and promotes best health and safety practices for Northwest producers and workers in farming, fishing and forestry. Affiliated with the University of Washington School of Public Health, the center integrates expertise from multiple disciplines, institutions and community partners. Areas of emphasis include new production technologies and the needs of under-served and vulnerable populations. Washington State University also conducts pesticide research and provides training and education programs.

Several federal agencies are involved in pesticide regulation, safety and monitoring cases of worker and human exposure, often coordinating with state agencies. These include the U.S. Environmental Protection Agency, U.S. Centers for Disease Control and Prevention-National Institute for Occupational Safety and Health, U.S. Department of Labor Occupational Safety & Health Administration, U.S. Department of Agriculture, U.S. Food and Drug Administration, National Institutes of Health, and National Institute of Environmental Health Sciences.

<sup>9</sup> See WSDA Farmworker Education page: [agr.wa.gov/PestFert/LicensingEd/FarmworkerEducation.aspx](http://agr.wa.gov/PestFert/LicensingEd/FarmworkerEducation.aspx).

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## Chapter 5 - Summary of Work Group Discussions

### Worker Advocates' perspective

Worker Advocates report that exposure from pesticide drift is a major concern for farmworkers. They say many workers who believe they have been exposed do not feel comfortable stopping work, informing employers, or seeking treatment. They report that some workers fear retaliation, loss of income, or being viewed as “trouble makers.” They want to explore means to help farmworkers feel comfortable reporting drift exposure and seeking protection to avoid it.

They believe that the training provided to pesticide applicators is often good, but they are concerned that not all agricultural workers receive comprehensive training on how to respond and when to obtain medical help in case of exposure.

Worker Advocates do not believe that notification and communication requirements are sufficient to protect workers. Existing regulations require notification to workers on the farm where pesticides are applied but do not require notice to neighboring farms and their workers. They recommend that an efficient method be developed and implemented for notifying neighboring farms and nearby communities before pesticides are applied.

They do not believe that current regulations are consistently enforced and feel that the existing penalties for violations by applicators are too low to sufficiently deter violators. For example, the law requires signs to be placed for a specific period around land treated by pesticides. Advocates observe that some notice signs stay up all season long. Workers therefore grow to ignore the signs and may go into the fields before they are safe, putting themselves potentially at risk.

Worker Advocates believe investigation methods should be consistent and agencies should work together to determine best practices that will allow all agencies to accomplish their investigative goals, no matter which agency arrives first on the scene. For instance, consistent practices in evidence gathering and testing should be developed and practiced, such as medical staff always retaining and testing clothing of the person who complained of exposure. These best practices should account for the quick deterioration of evidence in drift incidents.

Worker Advocates also are concerned with inconsistent knowledge and response from medical providers. They believe all responders should have consistent and regular training so they know how to properly detect and respond to pesticide exposure, especially medical providers in areas where pesticides are commonly applied. They want all medical treatment facilities to have adequate accommodations ensuring that all facilities can treat exposed workers with dignity. They report cases where exposed workers have been required to remove clothing and be doused with water naked outside of the hospital. They recommend developing a system in which medical providers treating an exposed worker receive a list of all chemicals sprayed nearby when an affected worker arrives at the hospital.

They also report farmworkers are concerned about day-to-day exposure to pesticides from working in treated fields. Worker Advocates are concerned that all fields and on-site housing have adequate shower, water and laundry facilities so that workers can decontaminate in the manner recommended by the Environmental Protection Agency and other experts.<sup>10</sup> This is important so workers can remove pesticide residues from their bodies and clothing on a daily basis and limit secondary exposure of family members or roommates.

While Worker Advocates recognize that pesticide application is a necessary component of many current farming methods, they also believe that the long-term solution to pesticide exposure is to emphasize methods, equipment and crops that reduce the use of chemicals dangerous to human health.

### Grower Advocates' perspective

Grower Advocates and the Washington State Department of Agriculture anticipate that the U.S. Environmental Protection Agency's new stringent requirements will reduce both the frequency and the severity of the off-site incidents attributed to fumigants. Grower Advocates note that growers use fumigants when establishing new orchards or in mechanized row crops. Both scenarios do not utilize farmworkers, nor is it typical for farmworkers to be near fumigant applications. In addition, they state that pesticide drift of more than a quarter-mile from the target site is a rare scenario. They also point to the state Legislature-funded Department of Health pesticide air-monitoring study, which monitored Washington state orchards during air-blast application periods. The study concluded that, "[i]f the screening levels cited in this study are used as the basis for risk assessment, it appears that agricultural spraying in these regions did not pose a health risk to residents or bystanders by the inhalation route." The study recommends conducting additional research.

<sup>10</sup> Environmental Protection Agency, *Steps to Protect Yourself from Pesticides*, pp. 14-17, available at [nasdonline.org/static\\_content/documents/2021/d000734.pdf](https://www.nasdonline.org/static_content/documents/2021/d000734.pdf).

They want farmworkers to follow standard protocol in ceasing work and leaving an area if they feel they are in danger of exposure to spray. Because air-blast sprayers are noisy, they give employers, supervisors and farm workers advance notice to leave the area if they feel the need to do so. Further, in cases of exposure, the Grower Advocates train workers to take off contaminated clothing, wash themselves with water, and seek medical treatment when necessary.

Grower Advocates agree that consistent training for workers is necessary for their health and safety, as well as cultivating an environment in which workers feel free to take recommended protective actions. Growers and current regulations require their pesticide handlers and other employees to have pesticide-handling training. Growers and workers both have a vested personal and financial interest in encouraging and maintaining safe workplaces. The agricultural industry also currently promotes and hosts trainings for the award-winning WSDA Farmworker Education Program, which provides “Hands-On Handler” and “WPS Train the Trainer” courses. Those training programs are at capacity for their current funding levels. Additional funding is necessary for those programs to expand to meet demand.

They believe that existing regulations on application and notification are sufficient and working. They say that most growers already communicate with each other when spraying, and that the state Department of Agriculture conducted two notification system pilots that failed due to lack of volunteer participation by nursing homes, day cares, hospitals, and other community entities. Grower Advocates are concerned about imposing additional, one-size-fits-all regulations for neighbor notification, but they are willing to continue conversations with Worker Advocates on developing best practices and tips for voluntary neighbor and community notification. They caution that as well as protecting human safety, practices must also be practical, realistic and efficient. In many cases, mandatory notification will not work because growers must apply pesticides or other plant protection products quickly in response to an adverse weather event or to take advantage of unforeseen weather and wind conditions.

Grower Advocates also advise that any discussion of pesticide drift should recognize the positive aspects of pesticide use. They point out that pesticides allow increased crop yields and can, in some cases, protect human and environmental health. Pesticides are expensive tools and growers have a financial incentive to ensure that they are applied accurately, efficiently, and on target. Off-target application wastes product and money, and drift onto human beings is already a violation of current law. Application practices constantly evolve. Growers are always exploring and using safer products and methods, and they must follow the Environmental Protection Agency Worker Protection Standards. As a result, they believe pesticides and pesticide application should not be cast in a negative light. Grower Advocates point out that organic farmers also use pesticides, in some cases requiring more frequent application than non-organic pesticides.

They agree that medical providers should have appropriate facilities, education and knowledge to recognize and treat pesticide exposure. They were surprised to hear from Worker Advocates that some hospitals do not have decontamination areas. Grower Advocates agree that on-farm facilities should be adequate to allow workers to take appropriate protective and reactive measures when potentially exposed. In the past 10 years, growers have made great strides in providing safer workplaces for workers and pesticide applicators. For example, they provide better personal protective equipment, supply more wash stations and participate in cholinesterase tracking. Current state regulations for licensed farmworker housing units require showers and handwashing facilities. Grower Advocates say that existing regulatory requirements are sufficient and, again, caution against adding one-size-fits all requirements.

## Administrative solutions proposed by the Work Group

Both Grower Advocates and Worker Advocates agreed to the following administrative solutions on pesticide drift. To arrive at them, work group members listed administrative solutions they decided were worth pursuing given the short proviso timeframe, and then they assigned a rank of either 1 or 2, defined as follows:

- 1 = High priority
- 2 = Not a high priority, but of interest; worthy of further discussion, research, review

Provide the treating medical provider with a copy of the Material Safety Data Sheet (MSDS) for each product used on the farm. (The manufacturer or importer of a chemical prepares the MSDS, which describes the physical and chemical properties, physical and health hazards, routes of exposure, emergency and first-aid procedures, and control measures.)	1
Consistent enforcement of current pesticide notification signage requirements.	1
Develop model policy for workers to stop work and inform supervisors when they fear exposure, including a no-retaliation policy.	2
State maintained central toll-free number for reporting any problems.	2
Ongoing healthcare provider and first responder training on care and treatment for pesticide exposure, including proper protocol, such as preserving contaminated clothing.	2
Agencies coordinate resources and collaborate to develop information campaigns for workers.	2
Enhance and expand the state Department of Agriculture training.	Grower Advocates – 1 Worker Advocates – 2
On-the-job training throughout the job for safe application by growers, shown by example and in a language workers understand.	2

## Resources

- Department of Health, Pesticide Program website: [doh.wa.gov](http://doh.wa.gov)  
(Search topic “pesticides” for English and “pesticidas” for Spanish information.)
- Washington State Department of Agriculture is currently working on redesigning its web page. Currently, the website has pesticide information for growers, supervisors, workers and healthcare providers. Only some information is in Spanish.
- Labor & Industries’ cholinesterase monitoring program for pesticide applicators: [lni.wa.gov/Safety/Topics/AtoZ/Cholinesterase](http://lni.wa.gov/Safety/Topics/AtoZ/Cholinesterase)
- Labor & Industries’ publications – including Spanish language information: [lni.wa.gov/FormPub/results.asp?Keyword=pesticides](http://lni.wa.gov/FormPub/results.asp?Keyword=pesticides)
  - a. Guía sobre la norma de comunicación de riesgos químicos.
  - b. Jorge’s New Job: Cholinesterase Testing in Washington State / Un Nuevo Trabajo para Jorge(English/Spanish)
  - c. Workers’ Guide to Hazardous Chemicals / Guía del trabajador para el uso de químicos (English/español)
- Pacific Northwest Agricultural Safety & Health: [depts.washington.edu/pnash](http://depts.washington.edu/pnash)
- Environmental Protection Agency pesticides web page: [epa.gov/pesticides](http://epa.gov/pesticides)
- U.S. Department of Agriculture / Pesticide Data Program: [ams.usda.gov/AMSV1.0/pdp](http://ams.usda.gov/AMSV1.0/pdp)
- Food & Drug Administration: [www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/default.htm](http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/default.htm)
- National Institutes of Health/National Institute of Environmental Health Sciences: [niehs.nih.gov/health/topics/agents/pesticides](http://niehs.nih.gov/health/topics/agents/pesticides)
- Center for Disease Control / National Institute for Occupational Safety and Health: [cdc.gov/niosh/topics/pesticides](http://cdc.gov/niosh/topics/pesticides)

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# Chapter 6 - Farmworker Housing

## Background

### Public and Private Development of Farmworker Housing

There are generally three types of farmworker housing, described more fully in a 2005 report prepared by the Washington State Department of Community, Trade and Economic Development (now Commerce):<sup>11</sup>

- Permanent housing, including rental housing and homeownership
- Seasonal housing, including seasonal camps, community-based housing, and on-farm housing
- Emergency housing, including short-term shelter for migrant workers who are homeless and have no immediate income or have been displaced for health and safety reasons

Farmworker housing is funded by federal, state, municipal, charitable, and private funds through loans, grants, and tax incentives. Programs in Washington state include:

### Washington State Housing Trust Fund (Chapter 43.185, 43.185A RCW)

The Housing Trust Fund is administered by the Department of Commerce. Trust funds include revenue from state appropriations, private contributions, loan repayments, and other sources (RCW 43.185.030). Trust funds may be loaned or granted to construct, rehabilitate, or acquire housing or provide rent subsidies for persons and families, including farmworkers, who meet low income and special housing need standards set forth in law (RCW 43.185.050). Certain public and non-profit entities and federally recognized Indian tribes may qualify for the loans and grants (RCW 43.185.060).

Because housing trust fund loans or grants are not available to private, for-profit entities, farms do not qualify to use the funds to build on- or off-farm housing. Between 2006 and 2011, the state funded a Farmworker Housing Infrastructure Loan Program, extending grants and low- or no-interest loans to growers and other entities constructing or rehabilitating farmworker housing (including on-farm housing) and supporting infrastructure. The Infrastructure Loan Program has not been funded by the Legislature since 2011.<sup>12</sup>

<sup>11</sup>FARMWORKER HOUSING IN WASHINGTON STATE: Safe, Decent and Affordable” (March 2005, State of Washington Department of Community, Trade and Economic Development) (“Farmworker Housing Report”). Found at: [commerce.wa.gov/Documents/HTF-Farm-Worker-Housing-Report.pdf](http://commerce.wa.gov/Documents/HTF-Farm-Worker-Housing-Report.pdf).

<sup>12</sup>Information prepared in consultation with Janet Masella, Managing Director, Washington State Housing Trust Fund. Webpage found at: [commerce.wa.gov/Programs/housing/TrustFund/Pages/default.aspx](http://commerce.wa.gov/Programs/housing/TrustFund/Pages/default.aspx).

### Tax Credits for Development of Low-Income Housing (Including Farmworker Housing)

In 1986, Congress adopted the Low-Income Housing Tax Credit Program to incentivize private investment in development and rehabilitation of low-income housing.<sup>13</sup> Under the program, owners investing in low-income rental properties that meet program criteria receive a dollar-for-dollar reduction in federal tax liability for a 10-year period.<sup>14</sup> The Washington State Finance Commission began allocating federal low-income housing tax credits in Washington in 1987.<sup>15</sup> A concise history of the tax credits is included in the Finance Commission’s “Low-Income Housing Tax Credits in Washington State 2013 Annual Report.”<sup>16</sup>

Owners must comply with applicable federal law and regulations, as well as additional state rules.<sup>17</sup> The commission’s 9 percent Low-Income Housing Tax Credit Program allocates a federal income tax credit to developers to encourage the construction and rehabilitation of affordable multi-family housing. This program works closely with the Housing Trust Fund to ensure the alignment of resources and priority of farmworker housing throughout the state. Housing credit in the 9 percent program is allocated through an annual competitive process in which projects are evaluated and scored according to the commission’s established criteria.<sup>18</sup>

### Other collaborative efforts between public, private and charitable organizations

Many public and private entities work in whole or in part to construct, finance, collaborate, or otherwise promote and foster development of farmworker housing and assist farmworkers to find housing. These entities include housing authorities, charitable organizations, local governments, community-based organizations, and private and non-profit entities. One such example is the Office of Rural & Farmworker Housing, a private non-profit entity in Yakima, whose staff attended some of the Farm Work Group meetings.<sup>19</sup>

<sup>13</sup>Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, enacted October 22, 1986).

<sup>14</sup>Washington State Housing Finance Commission Low-Income Housing Tax Credits in Washington State 2013 Annual Report at 3.

<sup>15</sup>The Finance Commission was first authorized to act as the allocating entity under Executive Order 87-10 and its legal authority is presently codified in Chapter 43.180 RCW.

<sup>16</sup> Found at <http://wshfc.org/mhcf/lihtcGovernorReport.pdf>.

<sup>17</sup> Washington State Housing Finance Commission, Tax Credit Compliance Procedures Manual at 1-5. Found at: [www.wshfc.org/managers/manualtaxcreditindex.htm](http://www.wshfc.org/managers/manualtaxcreditindex.htm).

<sup>18</sup>Information prepared in consultation with Lisa B. Vatske, Director, Multifamily Housing & Community Facilities, Washington State Finance Commission. Website found at: [wshfc.org/mhcf/index.htm](http://wshfc.org/mhcf/index.htm).

<sup>19</sup>The Office of Rural & Farmworker Housing’s website is located at: [orfh.org](http://orfh.org).

Work group members discussed the previous Washington State Farmworker Housing Trust, which was a non-profit entity established in 2005. It was formed to create more financial resources to develop farmworker housing in Washington, including direct lending, and to bring together representatives of all stakeholders in farmworker housing to collaborate on statewide policy. The trust was established with federal seed money and received continued support through donations from financial institutions and philanthropic organizations. Representatives from the agricultural industry participated on the Washington State Farmworker Housing Trust board. It was disbanded in 2011 because of insufficient funding.<sup>20</sup>

### *Additional Federal Programs and Funding*

Additional federal programs and funding sources may be used for farmworker housing, including the U.S. Department of Agricultural Section 514/516 Farm Labor Housing Program, Department of Labor's Migrant and Seasonal Housing program, the Department of Housing and Urban Development's Rural Housing and Economic Development program, and HOME Investment Partnership programs.<sup>21</sup>

The U.S. Department of Agriculture's Section 514/516 Farm Labor Housing Program may not be used to construct housing for foreign farmworkers temporarily present in the state under the H-2A program.<sup>22</sup>

## Regulation of farmworker housing construction, health and safety standards

The U.S. Department of Labor and three state agencies regulate farmworker housing construction and health and safety standards in Washington:

- The Departments of Health and Labor & Industries jointly establish rules for construction standards, licensing, inspection, and complaint investigation of temporary worker housing. The agencies have a written inter-agency agreement describing the division of roles and responsibilities for inspection, investigation and enforcement. The inter-agency agreement also includes the Employment Security Department as a party with respect to housing under the H-2A program.

<sup>20</sup>Information provided by Mike Gempler, Board Member and Treasurer of the former Washington State Farmworker Housing Trust.

<sup>21</sup>See USDA Section 514/516 Farmworker Housing: Existing Stock and Changing Needs, found at: [ruralhome.org/storage/documents/fwhousing.pdf](http://ruralhome.org/storage/documents/fwhousing.pdf).

<sup>22</sup>7 C.F.R. § 3560.152(a)(1) (definition of "qualified alien" is found at 8 U.S.C. § 1641(b)).

- The Departments of Health and Labor & Industries are currently revising the joint rules for licensing, operation and inspection of temporary worker and cherry harvest housing. After stakeholder discussions, both agencies filed proposed rules on December 2, 2014. The Departments of Health and Labor & Industries are in the process of reviewing all comments received on the proposed rules and deciding on the final rule language.
- The Employment Security Department has responsibilities under the H-2A program, as described more fully above. When Employment Security receives an H-2A application, it coordinates with the Departments of Health and Labor & Industries for inspection and review of the farmworker housing that will be offered to an H-2A applicant.
- The U.S. Department of Labor also regulates temporary worker housing for migrant farmworkers.<sup>23</sup>

## Summary of Work Group discussions

Farmworker housing was the subject on which the Worker Advocates and Grower Advocates had the most agreement. Both groups viewed farmworker housing as critically important to the industry, to individual farmworkers and their family members, and to the state economy.

The Work Group recognized many challenges posed by farmworker housing. Substantial numbers of farmworkers migrate and require housing in Washington for only short periods of time, often in different areas throughout the state over the harvest season as they follow the crops. Thus, the number of housing units needed to meet workforce demand in agricultural communities ebbs and flows throughout the growing season and may decline dramatically when the harvest season ends, making it difficult to fill the vacant housing during the off-season.

The low to modest income made by most farmworkers also is a factor. In some cases, such as under H-2A job orders, growers must supply free housing or cover housing expenses for certain domestic and H-2A workers. But not all programs require growers to cover housing expenses, and many medium or small farms may not be able to offer it. Work Group members described cases where farmworkers illegally camped or resided in unregulated or over-crowded housing not provided by growers, particularly when the community lacks sufficient affordable housing units, or when workers desire to minimize their living expenses. Work Group members were concerned about the health and safety impacts this can have on workers, their families and the community.

<sup>23</sup>19 U.S.C. § 1823 (MSPA); 29 C.F.R. § 1910.142 (OSHA standards); 20 C.F.R. § 655.122 (H-2A).

Some Work Group members, particularly the Worker Advocates, also discussed housing in terms of exposure to pesticide drift, noting that housing with adequate shower and laundry facilities can help reduce any exposure to workers and their family members or roommates.

Grower Advocates noted that licensed farmworker housing facilities are required to have a certain number of showers, sinks and laundry facilities. Also, Grower Advocates say the agricultural industry remains committed to additional employee training related to pesticides, and to continued efforts to improve pesticide training and application methods.

Grower Advocates expressed concern about the expense, confusion, and potential legal exposure they face in complying with two different sets of standards when federal and state regulators have concurrent jurisdiction over worker housing. They recommend that state standards not exceed federal standards. They are concerned that draft rules prepared by the Department of Health exceed or differ from federal standards in a number of areas and, if adopted in present form, could render a substantial number of existing licensed housing units in Washington non-compliant.<sup>24</sup>

Worker Advocates were sympathetic to the notion of complying with two different standards, but point out that current state standards already exceed federal standards in many instances. Worker Advocates are in favor of state standards that are higher than federal standards and recommend that all growers build to the higher standard, as many growers have already done. Grower Advocates said it's unfortunate that state "temporary farmworker housing standards" have exceeded state standards that apply to motels and other rental units available to the general public, making it illegal for the agricultural employer to use them for their employees' housing needs. Worker Advocates stress the need for community-based housing over on-farm housing, and they favor restrictions on the use of government money to build housing for H-2A employers.

Both Grower Advocates and Worker Advocates believe further efforts should be made to understand Washington's present housing needs for the agricultural labor workforce, as well as forecast, plan for, and construct additional housing to meet future demands. They unanimously agree that additional local, state, public and private collaboration and funding is required.

<sup>24</sup> See Department of Health Website. [doh.wa.gov/Portals/1/Documents/4300/Pesticide-UW-OP-Report-AppB.pdf](http://doh.wa.gov/Portals/1/Documents/4300/Pesticide-UW-OP-Report-AppB.pdf)

## Administrative solutions proposed by the Work Group

Both Grower Advocates and Worker Advocates agreed to the below administrative solutions on farmworker housing. To arrive at them, the Work Group members listed administrative solutions they decided were worth pursuing given the short proviso timeframe, and then they assigned a rank of either “1” or “2,” defined as follows:

1 = High priority

2 = Not a high priority, but of interest; worthy of further discussion, research, review

Seek ways to support development of new, permanent and seasonal farmworker housing. <sup>25</sup>	1
Recommend that the Washington State Housing Trust's previous Infrastructure Loan Program be re-authorized and funded by the Legislature. <sup>26</sup>	1
Recommend that the priority points for applications for farmworker housing construction under the Washington State Housing Trust be reinstated to 35 points (increase from the present 10 points awarded).	1
Encourage/develop partnerships across agencies to identify new trends in agriculture production to anticipate future needs for farmworker housing. For instance, areas of new production, increased density (such as trees) per acre, and/or areas of crop diversification which may result in a shift from seasonal/migrant to more year-round needs.	1
Work with community partners to identify all affordable housing in underserved areas.	1
Department of Commerce revise the timelines/deadlines developers are required to meet when developing projects to allow diverse and smaller developers to compete for funding opportunities.	2
Department of Health receive additional resources to hire additional inspectors; currently there are only 2 full-time employee equivalents.	Worker Advocates – 1  Grower Advocates – 2 (with the caveat that they do not support if additional funding will be placed on industry)
Department of Health and Labor & Industries collaborate on tracking number of licensed and unlicensed temporary worker housing facilities, penalties imposed, number and types of violations, repeat violations.	Worker Advocates – 1 Grower Advocates - 2
Department of Health should increase penalties on unlicensed temporary worker housing.	Worker Advocates – 1 Grower Advocates – 2

<sup>25</sup> Worker advocates support the development of community-based farmworker housing.

<sup>26</sup> Worker advocates expressed concern that the program be reauthorized with appropriate limitations, such as a prohibition on the use of loan money to develop housing for the H-2A program, as growers are required under federal law to provide such housing.

## Resources

Washington State Housing Finance Commission,  
Tax Credit Compliance Procedures Manual:  
[shfc.org/managers/manualtaxcreditindex.htm](http://shfc.org/managers/manualtaxcreditindex.htm)

Washington State Housing Finance Commission,  
Farm Work Household Certification:  
[youtube.com/watch?v=5TjS0AiGp2E](http://youtube.com/watch?v=5TjS0AiGp2E)

Department of Health:  
[doh.wa.gov/LicensesPermitsandCertificates/Facilities  
NewReneworUpdate/MigrantFarmworkerHousing](http://doh.wa.gov/LicensesPermitsandCertificates/FacilitiesNewReneworUpdate/MigrantFarmworkerHousing)

Labor & Industries:  
[lni.wa.gov/safety/topics/atoz/topic.asp?KWID=300](http://lni.wa.gov/safety/topics/atoz/topic.asp?KWID=300)

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## Farm Work Group - Issues List

### Appendix A

Farmworker housing – sufficient quality and quantity.

Farmworker Housing Trust Fund – status update; clarity on what can be used, where?

Supervisor training.

Labor supply to meet demand at the time and place it is needed – how to provide certainty for both sides.

Communication and coordination among the various agencies.

Farmworker rights and treatment.

Payment of farmworker wages – substance (amount must at the very least comply with the law) and process (open, objective method to establish that workers are paid consistent with the law).

Farmworkers raising issues without retaliation, or fear thereof.

Investigation of complaints – proof and process improvements for agencies; accessibility of the system for workers.

Clarity between federal and state functions; coordination between federal and state agencies and among state agencies.

When can/can't state agencies participate in meetings, forums, legislative days, etc.; not to advocate or take sides, but at least to provide information and build relationships.

Fostering real trust and partnership between workers and growers; ongoing conversations and processes that are open and transparent.

Timely and efficient process to discuss and resolve issues as they arise on the farm during the season.

Health and safety of workers and children.

H-2A guest worker program.

If we don't use H-2A, what is the process to get sufficient domestic workers to the places they are needed, when they are needed?

How H-2A federal law and practices can be used to discourage domestic farmworkers from applying for jobs.

Immigration reform is needed, but is beyond our control – but how can we react within state parameters?

Growers are facing increased scrutiny and enforcement from ICE.

Imposing meaningful and substantive changes; not just talking and producing a report.

Examining systemic issues which fail to promote protections and rights for workers; developing benchmarks and tracking them.

Developing a process to accurately track domestic labor supply and how many H-2A workers (examining how other industries track as examples of what may be possible).

Ensuring that we hear from small family farm perspective.

Use of pesticides and impacts on farmworker health.

Each side being candid about what it wants/needs – if we know, we can all strategize on solutions.

Local and community involvement and partnership on issues, such as housing.

# Expenditure Breakdown

## Appendix B

<b>Farm Work Group</b>			
<b>Expenditures through February 2015</b>			
Item Description	Fiscal Year 2014	YTD (Feb 15)	BTD
FTE	0.01	0.14	0.01
A - salary	578	5621	6199
B - employee benefits	181	1629	1810
EA - supplies and materials	40	3	43
EB - communications	14	129	143
EC - utilities	2	33	36
ED - rentals and leases - land & buildings	23	299	321
EE - repairs, alterations & maintenance	18	90	108
Eg - employee prof dev & training	593	0	593
EH - rental & leases - furn, equip, softw	0	0	0
EJ- subscriptions	0	0	0
EK - facilities and services	25	117	142
EL- data processing services	0	0	0
Er 6535 - contr/purch svc	1	744	745
Er 6575 - interpreter service	0	2607	2607
Er 8615 - itsd rsa	-1	-15	-16
Er 8616 - itsd rsa - olympic	0	-11	-11
ER - other purchased services	0	3325	3325
EY - software license and maintenance	20	21	41
E - goods & services	735	4017	4751
G - travel costs	1679	4138	5817
J - equipment	47	115	162
T - intra-agency	253	1729	1983
Object total	3473	17249	20722

Source: Labor & Industries Employment Standards Program

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# Administrative Solutions

## Appendix C

The work group members proposed administrative solutions are listed below. They assigned a rank of either “1” or “2,” defined as follows:

1 = High priority

2 = Not a high priority, but of interest; worthy of further discussion, research, review

### Administrative solutions proposed by Worker Advocates (not agreed to by Grower Advocates)

Pesticides	
Study options for a pesticide application notification system, with names of pesticides being applied. Evaluate lessons learned from pilot study.	1
Crews within 100 feet of an orchard border put up a flag.	1
Add the Department of Health pesticide investigators to increase ability to conduct in-person interviews in cases of human exposure.* <ul style="list-style-type: none"><li>• Increase the preservation of evidence.</li><li>• Require the Department of Health to collect onsite environmental samples (when the Washington State Department of Agriculture is not involved), clothing, etc.</li><li>• Require face-to-face interviews of those with symptoms; one-on-one interviews.</li></ul>	2
The Departments of Health and Labor & Industries investigators should have a Licensed Pesticide Consultant and Applicators License issued by the Department of Agriculture as a minimum requirement level of expertise.	1
Increase penalties or revise penalty structure within existing statutory authority to impose greater penalties on applicators who fail to comply with legal standards.	1
Notify clinical facilities, and provide training when a new active ingredient is registered for use in the state.	1

<p>Report pesticide use to the state by growers on a per-application basis.</p> <ul style="list-style-type: none"> <li>This should include monthly reporting of pesticide use to the state, plus create a database like California's that allows the data to be available and searchable.</li> </ul>	1
<p>Explore improving the signs where pesticides are being applied.</p>	2
<p>Notify registrants when a confirmed human illness case is associated with their product.</p>	2
<p>Provide pesticide decontamination facilities for daily use of all field workers who work at sites that use pesticides; decontamination facilities must allow workers to comply with EPA recommendations that work boots be removed before entering the house, that work clothes be washed separately from non-work clothing on long-cycle, and that work clothes be dried separately from non-work clothing, and that workers may bathe before coming in contact with their family members.</p>	1

Wage Retaliation Complaints	
<p>Conduct companywide wage inspections similar to how safety inspections are currently conducted.</p>	1
<p>Recommend a legislative fix to authorize L&amp;I to impose civil enforcement for retaliation under the Wage Payment Act.</p>	1

Farmworker Housing	
<p>The agricultural industry should take a more proactive approach in combating local resistance to farmworker housing because we have a shared goal with ensuring safe and sufficient housing for farmworkers.</p>	1

## Administrative solutions proposed by Grower Advocates (not agreed to by Worker Advocates)

Pesticides	
Regarding investigations and fines, instead of increasing fines, implement progressive discipline for mistakes. Educating the workers to improve the safety and operation of the equipment should be paramount.	1
Labor Supply	
Explore additional efforts by agencies to streamline H-2A approval processes.	1
The Employment Security Department and the Washington State Department of Agriculture should promote the benefits of agriculture having access to a stable, adequate, verifiable workforce.	2
Governor should send a request to the U.S. Department of Agriculture asking for an exemption to allow H-2A workers to stay in Section 514 funded housing (e.g. Gov. Snyder letter).	1
Farmworker Housing	
Ensure that state construction and operational standards are consistent with federal standards.	1





The Employment Security Department is an equal-opportunity employer and provider of programs and services. Auxiliary aids and services are available upon request to people with disabilities. Washington Relay Service 711. Individuals with limited English proficiency may request free interpretive services to conduct business with the department.