

### About Wage and Hour

The Wage and Hour Division (WHD) of the U.S. Department of Labor is responsible for the administration and enforcement of a number of Federal labor laws including the Migrant and Seasonal Worker Protection Act and the Fair Labor Standards Act (FLSA). Section 11(a) of the FLSA authorizes the Secretary of Labor or his designated representative to investigate and gather data regarding wages, hours and other conditions and practices of employment in any industry subject to this Act, to enter and inspect such places, review such records, and question such employees, as necessary.

An investigator from WHD may conduct an investigation to determine whether these laws apply to an employer. If the employer is subject to these laws, the investigator will verify that workers are paid and employed properly according to the laws administered, and that youths under age 18 are employed as provided by the child labor provisions. The WHD does not require an investigator to previously announce the scheduling of an investigation, although in many instances the investigator will advise an employer prior to opening the investigation and his or her visit. The investigator has sufficient latitude to initiate unannounced investigations in many cases in order to directly observe normal business operations and develop factual information quickly.

### Which Agriculture Employees are Covered Under the Fair Labor Standards Act (FLSA)

Virtually all employees engaged in agriculture are covered by the Act in that they produce goods for interstate commerce. There are, however, some exemptions which exempt certain employees from the minimum wage provisions, the overtime pay provisions, or both.

Employees who are employed in agriculture as that term is defined in the Act are exempt from the overtime pay provisions. They do not have to be paid time and one half their regular rates of pay for hours worked in excess of forty per week.

Any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour. See Fact Sheet #12 for additional exemptions.

### Investigative Steps Under the Migrant and Seasonal Worker Protection Act (MSPA)

An investigation of an agricultural employer under the Migrant and Seasonal Worker Protection Act involves the following procedures:

- 1) An introduction by Investigators representing the Wage and Hour Division on the day of visit.
- 2) Request to speak with an owner or person in charge to obtain information about the business operations and firm's pay practices.
- 3) Review firm's payroll/time records, employee work agreements, as well as other business documents.

- 4) Interview employees including field employees, H visa employees, and administrative staff.
- 5) If applicable, conduct inspection of migrant housing and note occupancy permit.
- 6) If applicable, inspect vehicle used to transport farm workers, and review valid insurance policy or workman's compensation coverage.
- 7) Investigators will notify employer of any corrective action to be taken on day of visit with regards to pay practice, housing conditions, or vehicle.
- 8) If necessary, an appointment will be made for follow-up visit with employer.
- 9) Employer will be left with federal labor law publications, posters, and/or fact sheets.

### Links

The following links provide additional information regarding the Migrant and Seasonal Worker Protection Act and Fair Labor Standards Act.

<http://www.dol.gov/whd/regs/compliance/whdfs12.pdf>  
<http://www.dol.gov/whd/regs/compliance/whdfs44.pdf>  
[http://www.dol.gov/whd/forms/form\\_wh-501.pdf](http://www.dol.gov/whd/forms/form_wh-501.pdf)  
[http://www.dol.gov/whd/forms/form\\_wh-501S.PDF](http://www.dol.gov/whd/forms/form_wh-501S.PDF)  
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<https://www.gpo.gov/fdsys/pkg/CFR-2004-title20-vol3/pdf/CFR-2004-title20-vol3-part654-subpartE.pdf>  
<http://www.twc.state.tx.us/files/partners/flc-eta-migrant-housing-inspection-checklist.pdf>  
<http://www.dol.gov/whd/forms/wh516.pdf>  
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[http://www.dol.gov/whd/posters/pdf/WHD1491Span\\_H2A.pdf](http://www.dol.gov/whd/posters/pdf/WHD1491Span_H2A.pdf)

### Contact Information

For additional information, contact your local Wage and Hour office at

*U.S. Department of Labor  
Wage and Hour Division  
Long Island District Office  
1400 Old Country Rd., suite 410  
Westbury, NY 11590-5119  
516-338-1890*

or visit the Wage and Hour Division website: <http://www.dol.gov/whd/>

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