



INVENTORY OF FARMWORKER ISSUES AND PROTECTIONS IN THE UNITED STATES

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**BON APPÉTIT MANAGEMENT COMPANY FOUNDATION
UNITED FARM WORKERS**

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EXECUTIVE SUMMARY

More Americans than ever are interested in knowing where their food comes from, but even the most conscientious eaters and food industry professionals are usually in the dark about who picked it. Approximately 1.4 million crop farmworkers help plant, harvest, and pack the food grown throughout the United States; however, the conditions under which they work remain invisible. For the public, farmworker issues fall into a black hole that could be labeled “No data, no problem.”

In other words, the current lack of accessible data and documentation about farmworkers’ employment—and their ultimate role in the food system—has in effect kept farmworkers hidden from public attention. Few people, for example, are aware that farmworkers are excluded from the basic labor and safety standards firmly established in other employment sectors. Likewise, many people would be shocked to learn that farm work has little or no overtime limits, child labor restrictions, collective bargaining rights, or workers’ compensation insurance, although agriculture is considered to be one of the most hazardous industries in the U.S.¹ Most Americans would also be surprised to find that even the few rules that do exist for farmworkers are rarely enforced. The absence of regulatory oversight, enforcement, and data about this sector leaves employers unaccountable to basic health and safety standards while leaving farmworkers vulnerable to abuse.

This *Inventory of Farmworker Issues and Protections* reveals the scope of employment abuses and safety issues facing U.S. crop farmworkers today. A collaborative effort between the Bon Appétit Management Company Foundation and United Farm Workers with support from Oxfam America, the Inventory catalogs current federal workplace protections, publicly available data about safety and enforcement, and key laws and regulations for the six states with the largest farmworker populations (California, Florida, Washington, Texas, Oregon, and North Carolina). The cross-sector partnership seeks to create incentives within the food system for greater accountability by employers, awareness on the part of public and industry, and transparency in the food system—and ultimately to promote safe and fair employment conditions for U.S. farmworkers.

KEY FINDINGS FROM THE INVENTORY

U.S. farmworkers have fewer legal protections compared with employees in other sectors of the U.S. economy and work in riskier conditions. Agricultural workers are excluded from the protections of the *National Labor Relations Act* (NLRA) and are exempt from many protections under the *Fair Labor Standards Act* (FLSA) as well as many state protections. Regulations also fluctuate depending on such factors as farm size. While crop farmworkers are at high risk for injuries and chronic health effects, one-third of all crop farmworkers work for employers that are not held accountable for complying with basic safety and health standards.

Rampant, unfair, and unsafe employment practices remain unreported and undocumented.

Compliance data are inconsistent and spotty, suggesting that existing farmworker protections are rarely regulated or enforced. Analyses of existing regulatory data are thus not useful for tracking the extent of compliance with existing agricultural protections or employment abuses.

¹OSHA Fact Sheet: Farm Safety ([PDF](#)).

Farmworkers are a largely marginalized population, both socially and economically, with limited availability of legal recourse to fight employment abuses and exploitation. Low fluency in English, lack of legal papers, poor hourly wages, little continuous employment, and high rates of sexual harassment mean that farmworkers have little—if any—leverage to demand improved terms and conditions from their employers. Available data also suggest that contract workers are most susceptible to abuse.

PRIMARY ISSUES AFFECTING US FARMWORKERS TODAY

Lack of Wage and Hour Standards: Farmworkers are exempt from most minimum wage and hour guarantees found in the federal *Fair Labor Standards Act (FLSA)* and state employment laws. Farmworkers are not entitled to overtime pay or mandatory breaks for rest or meals, and small farms have further exemptions from wage and hour requirements. California, Oregon, and Washington stand out for including farmworkers in all state wage and hour protections as well as mandatory rest and meal periods. However, wage and hour protections in agriculture are rarely monitored or enforced. Farmworkers generally earn very little and are seldom employed year-round. Between 2005 and 2009, about a third of farmworkers earned less than \$7.25/hour and only a quarter of all farmworkers reported working more than nine months in the previous year.¹ One-quarter of all farmworkers had family incomes below the federal poverty line.

Few Labor Protections for Children and Youth Farmworkers: Children and youth working in agriculture (an estimated 300,000 to 800,000 are 18 or under²) are excluded from many legal protections mandated in other employment sectors. For example, federal laws permit children as young as 12 to be hired to do farm work (with some limitations) and youth as young as 16 are permitted to do hazardous tasks restricted in other sectors. Some state child labor laws, such as those in California and Washington, have stronger protections and stricter limits on age and the number of hours minors can work per day/week, but again, enforcement of child labor laws is nearly nonexistent and there is little data available regarding employer compliance at either the federal or state levels.

Lack of Transparency by Farm Labor Contractors: Farm Labor Contractors (FLCs) act as intermediaries between growers and laborers and are licensed by the U.S. Department of Labor and regulated by the *Migrant and Seasonal Agricultural Worker Protection Act* (known as AWPA). States such as California, Florida, and Washington have additional requirements for FLCs and operate their own licensing programs. The use of FLCs varies by state, and it is estimated that FLCs supply 50 to 75 percent of farmworkers in California alone.³ Farmers employing FLCs can plead ignorance of the working conditions and wages on their farm, as these are set by the FLC. There are also many unregistered FLCs operating illegally in the U.S. with little threat of interference, as there is a severe shortage of AWPA investigators and investigations conducted. The little regulatory data available fails to provide an accurate picture of the role of FLCs in agriculture today.

¹Data from **2005-2009 National Agricultural Workers Survey** (NAWS). The reality is that income data largely reflect skilled and permanent employees and mask the fact that many farmworker are hired informally (and are not reported) or through farm labor contractors.

²*Fingers to the Bone: United States Failure to Protect Child Farmworkers*, Human Rights Watch, 2000, last accessed September 11, 2010.

³Martin, Davis. 2001. *Farm Labor in California: Then and Now (PDF)*, Working Paper 27, Center for Comparative Immigration Studies: University of California, San Diego, last accessed August 30, 2010.

Sub-standard Housing and Unsafe Transportation: The AWPAs regulate housing and transportation for the small minority of employers who provide these to farmworkers. All other farmworker housing is subject to a pre-occupancy inspection and must meet minimum safety standards. The six states with the largest farmworker populations each have additional housing requirements but do not give farmworkers (with the exception of those in Florida and Oregon) explicit rights regarding invited guests, eviction notices, or protection against retaliation. AWPAs' stipulation of basic safety standards for farmworker transportation includes operational criteria and insurance requirements. Despite the legal and regulatory safety requirements, unsafe transportation and substandard housing are both reported by legal advocates as common. Further, as noted, there are very few investigations of AWPAs' compliance in relation to the number of farmworkers and agricultural employers in the U.S.

Exclusion from Unemployment Insurance: Unemployment insurance is mandated and funded through the federal *Social Security Act*; states are responsible for administering funds and defining eligibility criteria. But the agricultural sector has special regulations, and most of the six states studied exempt small farms from providing unemployment insurance for their workers. States also have the option of excluding non-immigrant temporary H-2A workers from coverage, and unemployment insurance requirements do not apply to unauthorized workers in any state. Less than half of hired farmworkers and only about a quarter of contract farmworkers reported that they were covered by unemployment insurance¹ — a serious gap in the social safety net for a low-paid, seasonal industry.

Prevention of Collective Bargaining: Agricultural workers are explicitly excluded from the protections of the *National Labor Relations Act* (NLRA), which gives most employees the right to engage in concerted activities for the purpose of mutual aid and protection. Consequently, under federal law, a farmworker may be fired for joining a labor union, and farm labor unions have no legal recourse to compel a company or agricultural employer to negotiate employment terms. The majority of state laws do not include any collective bargaining provisions for farmworkers. A mere 1 percent of farmworkers interviewed reported that they worked under a union contract.²

Forced Labor Abuses: Farmworkers are frequently vulnerable to abuse, especially when they have exclusive contracts with their employers or can be coerced to work through threats of deportation.³ It is nearly impossible to calculate the incidence of farmworkers forced into labor within the U.S., not only because it is a 'hidden crime' but also because victims frequently are reluctant or unable to seek help through official mechanisms. Forced labor (or "labor trafficking") is prosecuted almost exclusively as a federal crime, but recently federal and state law enforcement agencies have coordinated to investigate abuses. The largest case of forced labor in the U.S. was uncovered in 2010, involving more than 400 Thai farmers who were brought into the country to work on farms and orchards.⁴

¹Ibid.

²NAWS 1999-2009.

³The H-2A program and contract labor arrangements make immigrants particularly vulnerable to forced labor. See "*Bound for America*," *Mother Jones* (May/June 2010), last accessed September 12, 2010.

⁴"*Indictment Accuses Firm of Exploiting Thai Workers*," *New York Times*, September 2, 2010, last accessed September 16, 2010.

Lack of Workers' Compensation Protections: Workers' compensation insurance provides medical care when employees become ill or injured on the job as well as remuneration for lost wages and rehabilitation services. Coverage and benefits are determined at the state level, and sadly, many states do not require agricultural employers to provide coverage for migrant and seasonal farmworkers, despite the high incidence of occupational injury and illness for farmworkers. In 2009 the occupational fatality rate for farmworkers was five times the rate of the average worker.¹ Between 2005 and 2009, less than one-half of U.S. farmworkers were covered by workers' compensation insurance by their current employers.²

Loopholes for Occupational Safety and Health Standards: The Occupational Safety and Health Administration (OSHA) issues standards for employers and inspects workplaces. Although OSHA has specific safety and health standards for the agricultural sector, agricultural workplaces are excluded from the majority of the standards protecting workers, including those addressing electrocution and unguarded machinery, requirements for ladder safety, and whistle-blower protections. Farms with fewer than 11 employees are further exempt, which means that 88 percent of all farms in the U.S. are not inspected for basic safety and health regulations and that one-third of all farm employees are not protected by OSHA standards.³

Heat Stress: Although occupational heat stress is a key health and safety issue for farmworkers, agricultural employers are not required to take such basic preventive measures as providing adequate shade and providing employees with rest breaks. California, Oregon, and Washington are notable exceptions and explicitly include heat stress in their occupational safety regulations. However, farmworker injury and fatality rates due to heat stress remain severely under-reported and often go undiagnosed.

Pesticide Exposure: Employers must comply with certain basic safety standards and regulations dictated by the *Federal Insecticide, Fungicide, and Rodenticide Act*. However, OSHA will not conduct inspections on farms with fewer than 11 employees unless states have memos of understanding with federal offices to create their own rules. Pesticide exposure thus often goes undetected and/or unreported. Of the six states studied, only California and Washington monitor the levels of cholinesterase (a family of enzymes that aid brain function and are vulnerable to neurotoxins) in workers who have contact with organophosphate and carbamate pesticides. The varying state rates of pesticide exposure and accidents reported suggest that official pesticide data may reflect variations in regulating/tracking programs, as opposed to the actual number of pesticide events occurring within the states. Official pesticide data is inadequate for determining the actual extent to which farmworkers are exposed to these dangerous and often carcinogenic chemicals.

¹"Fatal occupational injuries, total hours worked, and rates of worker characteristics, occupations, and industries, 2009" ([PDF](#)), Bureau of Labor Statistics, last accessed September 18, 2010.

²NAWS 2005-2009.

³2007 Census of Agriculture, Farm Production Expenses, Hired Farm Labor and Contract Labor. Figures provided by email, Daniel Carroll, NAWS, US DOL to Oxfam consultant, August 30, 2010.

FUTURE STEPS

This Inventory is an initial step in an ongoing effort to make the working conditions of U.S. farmworkers more visible to the public and to the food industry. Although farmworker conditions could undoubtedly be improved with stronger legal protections, increased monitoring and enforcement activity, and more compliant employers, incentives for these types of top-down reforms do not currently exist. This partnership's goal is to create incentives throughout the food system by increasing awareness of and interest in food that has been produced through fair and safe farmworker labor. Consumer and business demand for food grown under such practices requires greater transparency, which in turn can drive regulatory change, increase accountability, and ultimately improve conditions for U.S. agricultural labor.

Our vision for increasing public and industry awareness of and interest in safe and fair farm work begins with these actions:

- Making the role of farmworkers in the U.S. food system visible through existing data
- Translating this data into easily accessible and meaningful formats for the public
- Providing greater consumer choice through local-level data
- Leveraging increased consumer choice to drive greater accountability in the food system
- Fostering cross-sector collaboration among employers, industry, and farmworker advocates to work towards safe and fair employment conditions for U.S. farmworkers.

We envision a day when the U.S. public will relate to “fair and safe farm labor” with the same familiarity as they now do to the phrases “organic,” “locally grown,” “animal welfare,” “food safety,” and “fair trade.”