



INVENTORY OF FARMWORKER ISSUES AND PROTECTIONS IN THE UNITED STATES

MARCH 2011

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

**BON APPÉTIT
MANAGEMENT COMPANY
FOUNDATION**





ACKNOWLEDGMENTS

The *Inventory of Farmworker Issues and Protections in the United States* is dedicated with deep appreciation to the farmworkers who tirelessly help plant, grow, pick, and pack the food that we eat as well as to the advocates working to improve farmworker protections and address farmworker issues across the country.

The Inventory was produced collaboratively by the United Farm Workers and the Bon Appétit Management Company Foundation, with support from Oxfam America. Project team members include Erik Nicholson and Anna Reynoso of the United Farm Workers of America, who provided legal expertise and project direction. Guadalupe Gamboa and Laura Inouye of Oxfam America provided technical support and insight into the current status of farmworkers. Through the auspices of Bon Appétit Management Company's Maisie Greenawalt, the Foundation generously provided the services of Fellows Carolina Fojo, Dayna Burtness, and Vera Chang, who were responsible for the majority of data collection and the drafting of the report. Shannon Williams, an independent consultant, put in tremendous work synthesizing data and providing analysis for the Inventory.

In addition to the project team, we recognize the invaluable input from Ed Kissam and Susan Gabbard at JBS International and Adrienne Dervartanian of Farmworker Justice. We are incredibly grateful for their time and expertise in reviewing numerous versions of the Inventory. We also recognize Carol Dansereau of the Farm Worker Pesticide Project and Jeannie Economos of Farmworker Association of Florida for their review of and contributions to Pesticide Safety and Regulations.

Finally, we thank the many individuals from farmworker advocacy organizations and governmental agencies who made key contributions to the Inventory by providing relevant data and background information: Carol Brooke, Immigrants Legal Assistance Project, North Carolina Justice Center; Daniel Carroll, Employment and Training Administration, United States Department of Labor; Brienne Diebolt-Brown, Texas Department of State Health Services; Bubba Grant, North Carolina Employment Security Commission; Mary Lee Hall, Legal Aid North Carolina; Sheila Higgins, Occupational Surveillance, North Carolina Division of Public Health; Marci Hoffman, University of California Berkeley Law Library; Karen Howard, Oregon Department of Consumer and Business Services; Lori Isley, Columbia Legal Services; J. Patrick Jones, North Carolina Department of Agriculture and Consumer Services; Paul Khokhar, State of Oregon Department of Agriculture; Lisa Kresge, California Institute for Rural Studies; Licensing and Registration Unit, Division of Labor Standards Enforcement, California Department of Industrial Relations; Brandon Louie, Children in the Fields Campaign, Association of Farmworker Opportunity Programs; Richard Mandelbaum, Comité de Apoyo a los Trabajadores Agrícolas; David McLellan, Texas Department of State Health Services; Mike Meuter, California Rural Legal Assistance; Ana Duncan Pardo, Toxic Free North Carolina; Stephen Pegula, Bureau of Labor Statistics, Occupational Safety and Health Statistics; Susan Prosperie, Texas Department of State Health Services; Public Information, Office of the Texas Department of Agriculture; Margaret Reeves, Pesticide Action Network North America; Jim Rice, Bureau of Labor Statistics, Occupational Safety and Health Statistics; Giselle Rodriguez, Florida Coalition Against Human Trafficking; Virginia Ruiz, Farmworker Justice; Rodolfo Sanchez, Texas RioGrande Legal Aid; Greg Schell, Migrant Farmworker Justice Project; Amy Smith, Texas RioGrande Legal Aid; Rebecca Smith, National Employment Law Project; Texas Workforce Commission, Labor Law Unit; and Don Villarejo, an independent farmworker consultant.

While these contributions are much appreciated, the Bon Appétit Management Company Foundation and United Farm Workers assume full responsibility for the documentation, conclusions, and any errors found in the report.

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.

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.² 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 under³) 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 AWP). 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.⁴ 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 AWP investigators and investigations conducted. The little regulatory data available fails to provide an accurate picture of the role of FLCs in agriculture today.

Sub-standard Housing and Unsafe Transportation: The AWP regulates 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. AWP's 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 AWP 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 insurance⁵ — 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.⁶

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.⁷ 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.⁸

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.⁹ Between 2005 and 2009, less than one-half of U.S. farmworkers were covered by workers’ compensation insurance by their current employers.¹⁰

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.¹¹

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.

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.”



TABLE OF CONTENTS

No Data, No Problem? Employment Conditions of U.S. Farmworkers.....	1
Sources of Farmworker Data and Their Limitations.....	1
Profile of U.S. Farmworkers	3
Crop Farms in the Context of Farmworker Employment.....	7
Inventory of Farmworker Issues and Protections	9
I. Wage and Hour Standards	11
II. Labor Protections for Children and Youth Farmworkers	16
III. Farm Labor Contractors	19
IV. Housing and Transportation	21
V. Unemployment Insurance.....	25
VI. Collective Bargaining	27
VII. Farmworkers in Forced Labor	29
VIII. Workers' Compensation	32
IX. OSHA Inspections and Violations	36
X. Heat Stress.....	38
XI. Pesticide Safety and Regulations	40
Conclusion	46
APPENDIX I: Technical Notes	53
APPENDIX II: Farmworker Information and Resources.....	64

ABBREVIATIONS

AWPA	<i>Migrant and Seasonal Agricultural Worker Protection Act</i>
CAIS	Childhood Agricultural Injury Surveillance Project (NIOSH)
DOL	Department of Labor
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
ETA	Employment Training Administration
FIFRA	<i>Federal, Insecticide, Fungicide, and Rodenticide Act</i> (of the EPA)
FLC	Farm Labor Contractor
FLSA	<i>Fair Labor Standards Act</i>
FUTA	<i>Federal Unemployment Tax Act</i>
GAO	Government Accountability Office
INA	<i>Immigration and Nationality Act</i>
NAICS	North American Industry Classification System
NASS	National Agriculture Statistics Service
NAWS	National Agricultural Workers Survey
NLRA	<i>National Labor Relations Act</i>
OFLC	Office of Foreign Labor Certification
OSHA	Occupational Safety and Health Administration
PERT	Pesticide Incident Reporting and Tracking Review Panel (Washington State)
SOC	Standard Occupational Classification
USDA	United States Department of Agriculture
WHD	Wage and Hour Division
WPS	Worker Protection Standard for Agricultural Pesticides

TABLES

Table 1	Migrant Status of Farmworkers by Employment Type
Table 2	Top Five Labor Intensive Crops in Terms of Commodity Value by State
Table 3	Crop Farms Reporting Labor Expenses
Table 4	Percentage of Crop Farms Hiring Ten or More Employees
Table 5	Most Common Farmworker Issues Reported by Legal Advocates
Table 6	Minimum Wage and Hour Protections for Farmworkers
Table 7	Proportion of Farmworkers at Hourly Wage Levels by Employment Type
Table 8	Farmworkers' Annual Personal Income Levels by Employment Type
Table 9	Number of Hours Worked per Week by Employment Type
Table 10	Number of Days Worked per Week by Employment Type
Table 11	Average Number of Weeks Spent Last Year in Farm Work, Non-Farm Work, and Non-Work
Table 12	Number of Actual Days in Farm Work by Employment Type
Table 13	Child Labor Laws Applicable to Farmworkers
Table 14	Age When Starting Farm Work
Table 15	Farm Labor Contractor Requirements
Table 16	Federally Licensed Farm Labor Contractors in 2009
Table 17	Protections for Farmworker Housing and Transportation
Table 18	Farmworkers' Living Arrangements with Employer by Employment Type
Table 19	Farmworkers' Transportation Traveling to Work by Employment Type
Table 20	Unemployment Insurance Coverage for Farmworkers
Table 21	Farmworkers Reporting Unemployment Insurance with Current Employer by Employment Type
Table 22	Legal Protections for Farmworker Collective Bargaining
Table 23	Legal Protections against Forced Labor
Table 24	2009 Fatality Rates for Agricultural Workers and Related Occupational Groups
Table 25	Workers' Compensation Coverage for Farmworkers
Table 26	Health Coverage with Current Employer by Employment Type
Table 27	OSHA Inspections and Top Violations on Crop Farms
Table 28	Legal Protections against Heat Stress
Table 29	Regulatory Oversight of Agricultural Pesticides
Table 30	Regulatory Oversight of Agricultural Pesticide Illness and Injury
Table 31	Activity at Time of Pesticide Exposure, All Reported Exposures (2002-2006)

FIGURES

Figure 1	Estimated Population of Farmworkers by State
Figure 2	Comparison of 2009 Illness and Injury Rates on Crop Farms by State

NO DATA, NO PROBLEM?

EMPLOYMENT CONDITIONS OF U.S. FARMWORKERS

Approximately 1.4 million crop farmworkers help plant, harvest, and pack the food grown throughout the United States. However, the characteristics and conditions of agricultural labor are not well understood by the majority of the public or professionals within the food industry. This is due largely to the fact that little data are available to the public about the lives or working conditions of farmworkers. Few people, for example, are aware that farmworkers are not protected by the same basic labor and safety standards firmly established in other employment sectors, such as limits on overtime, restrictions on child labor, and the right to bargain collectively.

This *Inventory of Farmworker Issues and Protections* (hereafter the Inventory) represents a collaboration between the Bon Appétit Management Company Foundation and United Farm Workers, with support from Oxfam America, to catalog federal workplace protections and to summarize the publically available data on U.S. crop-agricultural workers. State laws and regulations affecting farmworkers and their workplaces are also summarized for the six states with the largest farmworker populations: California, Florida, Washington, Texas, Oregon, and North Carolina.

This multi-sector effort is an initial response to a deficit in public awareness about U.S. farmworkers, which can be summarized as “No data, No problem.” In other words, it’s difficult to raise awareness about the current conditions and problems within farm work in the absence of either adequate or public data. Labor law investigations and record keeping of regulatory enforcement are poor and the monitoring efforts at both the federal and state levels are typically untraceable and non-transparent. Much of the available regulatory data are meaningless for determining the rates of employer compliance or the overall effectiveness of existing farmworker protections. By first bringing attention to the scope of employment abuses and safety issues facing farmworkers today, we hope to create incentives within the food system for greater accountability in improving the working conditions of farmworkers.

The first section of this Inventory provides overall context to the scope of agricultural labor today and an introduction to crop farmworkers and farms in the United States. The main section examines 11 workplace issues and available legal protections for farmworkers. Information about the federal regulations and regulations of the six states studied are compared throughout the Inventory. The final section summarizes the main findings of this Inventory and provides recommendations for generating public awareness of farmworker issues. The first step is to make available to the public increased compliance data regarding farmworker protections. Improved research about and analysis of farmworkers’ experiences are also necessary. Much of the text in these tables and throughout the report includes hyperlinks to relevant sources and websites.

SOURCES OF FARMWORKER DATA AND THEIR LIMITATIONS

Understanding the full scope of farm labor issues and conditions in the U.S. is complicated by the fact that farmworkers are difficult to ‘count’ in standard employment statistics. The seasonal and temporary nature of agriculture means that farmworkers may be routinely unemployed and/or working for multiple employers within a season. Many farmworkers are not hired directly by growers but via informal or third-party arrangements (i.e., paying workers under the table, using farm labor contractors) to meet short-term demands for labor. Growers who use contract labor may have no direct contact with the farmworkers who are working on their farms. Second, unauthorized immigrant workers make up from one-half to three-quarters of all farmworkers and are less likely to be included in official data.

Third, the majority of farms are small and tend not to be included in official statistics. For example, farms with fewer than 11 employees are not included in occupational injury data, which translates to an omission of 88 percent of all farms that have hired labor, or roughly one third of the farm labor force in the U.S. Fourth, there are often disincentives for agricultural employers to report accurate labor information through official channels, and employers are less likely to report employee data that will bring attention to illegal employment arrangements or unsafe workplace practices.

Finally, data on farmworker issues may be held from the public by regulatory agencies for confidentiality purposes. As a result of these factors, individual sources of farmworker information are limited and multiple data sources must be used to fully represent the conditions farmworkers face in the U.S.

There are several main sources of farmworker information that are publicly available. The U.S. Department of Labor's **National Agricultural Workers Survey (NAWS)** collects data on both hired and contracted crop farmworkers. NAWS provides detailed demographic information about farmworkers, their employment status, and their households.

This information is reported by farmworkers themselves and is based on a representative sample of farmworkers. Because it is a statistical representation, rather than a comprehensive census, the NAWS data cannot be broken down into state or county level data (although California and Florida are both considered regions). NAWS surveys are collected in three cycles throughout the year and include a large percentage of regular and year-round employed farmworkers as well as seasonal and migrant labor. Field interviewers must gain permission from the farm employer before interviewing his or her workers, so it can be assumed that those farmworkers employed under the worst conditions are not included in the NAWS sample. Farmworkers with H-2A temporary agricultural work visas are not included in the NAWS sample.

The second source of information is the U.S. Department of Agriculture's (USDA) **Census of Agriculture** (hereafter the Census), which surveys growers and includes detailed information about animal and crop farms, farm operations and expenses, and farm owner demographics. The Census is conducted every five years; the latest results available are from 2007. These data include the number of farm employees, including family members who are paid wages, but do not include information about contract labor other than as an annual operating expense. Very small farms, for example those which have sold less than \$1,000 of agricultural products in the last year) are not included, but these typically have few employees.

A third source of information is the USDA's **National Agricultural Statistics Service (NASS)**. The NASS conducts ongoing surveys of farm employment and wage rates in addition to cataloging farm demographics, environmental issues, crop, and cost information. NASS employment and wage data are collected quarterly. These statistics are ultimately biased towards hired employees who are permanent and skilled. In addition to NAWS, Census, and NASS data, some federal agencies collect and make available information regarding regulatory and enforcement practices. In most cases, this information is not easily accessed and can only be obtained through a Freedom of Information Act request.

States also collect and publish information through their regulatory programs and departments. In some cases, the only available compliance information related to farmworkers is found at the state level. This information is often specific to a state's regulations and its unique reporting criteria and definitions.

As a result, it is very difficult to use most state-reported data for making comparisons *between* states. For example, state-reported numbers about the agricultural pesticide violations cited in 2009 (see Table 28) would seem at first glance to indicate that Washington growers have a greater level of pesticide safety compliance (33 violations) compared to those in Florida (161 violations). In reality, these numbers may reflect differences in the states' agricultural sectors (e.g., greater number of farms or stricter regulations) or their regulatory activities (e.g., higher frequency of inspections). Distinctions between category definitions and states' contexts should be kept in mind when reviewing the regulatory data presented below. Further, in some states (e.g. Washington) oversight bodies have been cut for budgetary reasons so compliance data are simply no longer available.

Information about U.S. farmworkers is also produced by farmworker organizations and academics interested in labor and agriculture. While the circulation of these studies is typically limited to farmworker advocates and scholar communities, they represent a significant source for understanding farmworker issues. Links to several examples of these studies are included in the appendices. This Inventory does not attempt to summarize the growing body of farmworker literature but focuses instead on data produced by public and regulatory bodies.

In sum, when considering any source of farmworker data, it is important to recognize that each has unique limitations, and no one source can provide a comprehensive picture of U.S. farmworkers today. It is equally important to recognize the inherent uncertainties and nuanced variations within farm work that most existing data sources are unable to capture.

PROFILE OF U.S. FARMWORKERS

This Inventory uses the terms 'agriculture' and 'farm' specifically in relation to the **North American Industry Classification System's Crop Production Activity** (111), which is distinct from forestry, fishing, or animal breeding activities. Likewise, 'farmworker' is defined in this document by the **Standard Occupational Classification for Farmworkers and Laborers, Crop, Nursery, and Greenhouse** (45-2092).¹ Those laborers who work in animal production, forestry, logging, fishing, hunting, trapping, and other support activities are not specifically addressed in the discussion below, although they do also operate under similar labor regulations and laws. There are approximately three times as many farmworkers on crop farms as compared to those involved in animal production. All data and figures in the Inventory should be assumed to follow these criteria. Those cases in which the only available data include other types of agricultural activities, in addition to crop farms and/or farmworkers, are noted.

1 **SOC 45-2092 definition of farmworker:** "Manually plant, cultivate, and harvest vegetables, fruits, nuts, horticultural specialties, and field crops. Use hand tools, such as shovels, trowels, hoes, tampers, pruning hooks, shears, and knives. Duties may include tilling soil and applying fertilizers; transplanting, weeding, thinning, or pruning crops; applying pesticides; or cleaning, grading, sorting, packing, and loading harvested products. May construct trellises, repair fences and farm buildings, or participate in irrigation activities. Excludes "Graders and Sorters, Agricultural Products" (45-2041) and "Forest, Conservation, and Logging Workers" (45-4011 through 45-4029)."

There are three main types of farmworker employment that directly influence how farmworkers appear in the available data. Farmworkers can be directly hired by growers on a long-term or short-term basis, and workers may be paid an hourly or daily wage, or by piece rate. In these cases, growers are considered the employer, and they are responsible for compliance with labor laws or regulations.

Farmworkers may also be hired through Farm Labor Contractors (FLCs) that act as intermediaries in providing workers to multiple growers. FLCs are also responsible for following appropriate labor laws and regulations. In many cases, the grower negotiates with a FLC to complete an entire job, for example, harvesting 40 acres of almonds. As a result, some growers may attempt to distance themselves from the working conditions of the farmworkers, as they may not know the exact terms or wages under which the farmworkers are working on their land.

Finally, farmworkers may be brought into the country by growers or FLCs through the H-2A guest worker visa program. The H-2A regulations govern this type of farm employment and are very specific. Farmworkers on H-2A visas are required to leave the country once their employment is completed (typically less than a year). Petitioners are considered the employer of H-2A farmworkers and must comply with the specific laws and regulations of the program.

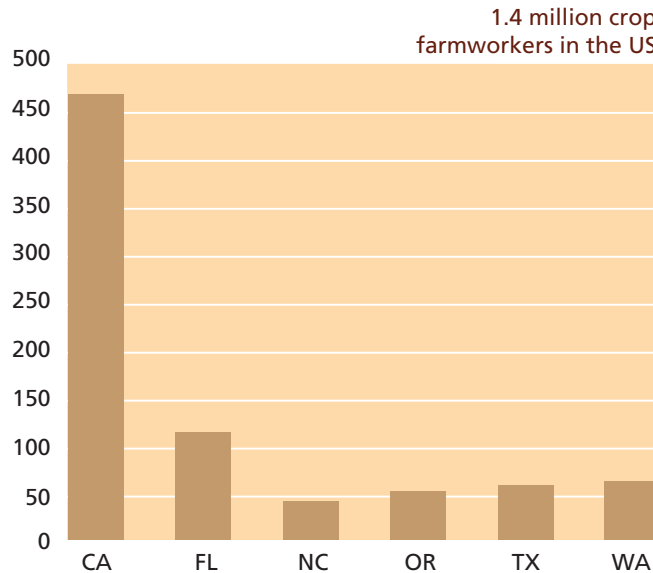
Most of the descriptive data on farmworkers come from the NAWS data, which include both hired and contract labor but exclude H-2A workers. Hired farmworkers are thought to be somewhat overrepresented in the 2005-2009 NAWS data set¹ and make up 87 percent of the interviews. The exact ratio of contract to hired workers is not known, but the 2007 Census data show that of the total labor expenses reported by farms, 21 percent was for contract labor costs. These labor expenses cannot be used as an exact proxy for the actual number of workers because hired workers on average cost employers significantly more than contract workers. However, one way to arrive at a general estimate is to average USDA Farm Labor Survey data over four quarters in 2007, which results in a total of 28 percent of farmworkers who were contracted.²

1 Emails from Daniel Carroll, NAWS, U.S. DOL, to Oxfam consultant, September 7, 2010. Changes are to be introduced to the sampling frame in October to include a larger number of farms that use contract labor.

2 Ibid. This estimate does not include those expenditures for workers employed in NAICS 11511 firms, Support Activities for Crop Production (e.g., Cotton Ginning, Farm Labor Contractors and Crew Leaders, Farm Management Services).

FIGURE 1

*Estimated population of crop farmworkers by state, in thousands
(calculated based upon 2007 Census and NAWS data)*



The ratio of hired to contract workers also varies significantly among different states and crops. For example, FLCs, custom harvesters, and other third-party employers have been estimated to supply 50 to 75 percent of farmworkers for weeding, harvesting, and other seasonal tasks in California. Accordingly, there is no single source of data that includes all types of crop farmworkers currently working in the U.S.

The best estimate for the total number of farmworkers employed in the U.S., based on both the 2007 Census and the NAWS data,¹ is about 1.4 million (see Figure 1).

California has about a third of all farmworkers (estimated 471,000) and more than the total combined farmworker populations in the next five largest farmworker states, Florida (116,000), Washington (69,000), Texas (64,000), Oregon (54,000), and North Carolina (39,000). These state estimates are not entirely exclusive of one another, because a small number of migrant farmworkers who work in more than one state could possibly be counted more than once. These figures also reflect only the number of farmworkers themselves and not the dependents who may accompany them as they migrate for work.

FARMWORKER DEMOGRAPHICS

According to NAWS data (2005-2009), the majority of all farmworkers are male (78%), the average age is 37, over one-half (51%) are parents, and the majority (59%) live with their spouses. There are some variations between hired and contract workers in terms of their characteristics. Fifteen percent of hired workers have a spouse who is also employed in farm work, as compared to the 21 percent of contract farmworkers. The majority of farmworkers are foreign born (70% of hired, 97% of contract) and Hispanic/Latino (75% of hired, 99% of contract). Many of the farmworkers are unauthorized to work in the U.S. However, the proportion of unauthorized contract workers (76%) is significantly higher than that of hired workers (46%).

Farmworkers generally have very low levels of education and minimal English skills. Forty-two percent of hired workers and 70 percent of contract workers have completed six or fewer years of school. The average educational attainment (both in the U.S. and their home countries) is eight years for all hired workers and six years for contract workers. About one third (34%) of the hired and two-thirds (67%) of the contract farmworkers cannot speak any English. An even higher percent of farmworkers do not have the ability to

¹ Emails from Daniel Carroll, NAWS, U.S. DOL, to Oxfam consultant, August 18, 2010. This 'top down' estimate is calculated by dividing the crop and livestock labor expenditures of farmers in each state by the average hourly earnings of farm workers in that state. The full methodology is detailed in Martin, P., "AgJOBS: Provisions, Eligibility," *Rural Migration News* 15:13 (July 2009), last accessed August 26, 2010.

TABLE 1**Migrant Status of Farmworkers
by Employment Type***NAWS (2005–2009)*

MIGRANT TYPE	HIRED	CONTRACT	ALL
Settled	72%	53%	70%
Shuttle	14%	11%	13%
Follow the Crop	4%	11%	5%
Newcomer	10%	25%	12%

read English (44% of hired, 77% of contract).

Most of the farmworkers the farmworkers reported that English or Spanish was their dominant language, but a small percent (2% of hired, 8% of contract) primarily speak other languages such as Mixtec or Zapotec.

NAWS categorizes four different types of farmworkers according to their migration practices. Table 1 shows that between 2005–2009, most farmworkers (72% of hired workers versus 53% of contract workers) were “Settled” and are not migrating. Those workers who are migrants—

defined as traveling at least 75 miles between their work locations and/or residences—are characterized in three different ways: “Shuttle” migrants (14% hired, 11% contract) traveled internationally between their homes and work or had a U.S. home base that was greater than 75 miles from their place of employment. “Newcomers” are individuals in the United States for the first time and had been in the country less than a year when they were interviewed (10% percent of hired workers and 25% of contract workers). Finally, “Follow the Crop” migrants are those who have at least two farm work locations that are greater than 75 miles apart. Only four percent of hired and 11 percent of contract farmworkers fell within this category.

TEMPORARY AGRICULTURAL LABOR: H-2A FOREIGN WORKERS

Each year non-immigrant farmworkers are brought into the country through the **H-2A guest worker visa program** to meet shortages in domestic agricultural labor. The employment of these foreign workers is temporary and/or seasonal and rarely exceeds a calendar year. The U.S. Department of State reports that a total of **60,112 workers were granted admission into the U.S.** in the 2009 fiscal year.¹ This total includes visas to work in both crop and livestock farms, but it may undercount the total number of H-2A workers in the U.S. (see Appendix I).

While these farmworkers’ home countries span the globe, the great majority (94%) came from Mexico. There are also virtually no women or older persons hired under this program, and the young men recruited are not permitted to obtain visas for their families to accompany them.

The H-2A program is authorized by the **Immigration and Nationality Act** (INA) and is administered by the Department of Labor’s **Office of Foreign Labor Certification** (OFLC) of the Employment Training Administration (ETA). The H-2A GuestWorker program allows agricultural employers (both growers and FLCs) to hire temporary foreign workers if they can argue there is not a sufficient supply of U.S.-born workers and that the wages and working conditions they are offering will not adversely impact U.S.-born workers.

These safeguards are in place because foreign workers, out of desperation, may be willing to accept substandard wages and working conditions. U.S. workers cannot effectively compete against foreign workers

1 H-2A Visa Category, **FY2009 NIV Workload by Category**, US Department of State, October 2010, p.1.

willing to work for any wage, under any conditions. Over the years, modest protections were built into the H-2A program to protect the domestic labor force from unfair competition and vulnerable foreign workers from exploitation. Agricultural employers must file an application for temporary foreign labor certification, which involves several conditions for obtaining certification: recruitment requirements, provision of free housing, transportation reimbursement, workers' compensation insurance, and a guarantee to ensure that workers are paid at least three-quarters of the promised contract hours. Employers must also pay these farmworkers a minimum wage—the higher of the federal or state minimum wage, a local prevailing wage, or the **Adverse Effect Wage Rate**, set annually by the Department of Labor. Many of the tax requirements are favorable to H-2A employers and provide an incentive to hire H-2A workers. Employers of H-2A workers are exempt from federal unemployment taxes, although some states require them to pay state unemployment taxes. Also, H-2A employers are not required to pay social security or Medicare taxes.

CROP FARMS IN THE CONTEXT OF FARMWORKER EMPLOYMENT

Both the nature and conditions of agricultural labor and the enforcement of labor protections are dependent on the particular characteristics of a given farm/agricultural site. The type of crop grown determines the amount of labor needed for production, and the season determines the timing. For example, hay farming requires relatively little labor compared to the intensive hand-harvesting needed for strawberries and citrus fruits. Peak seasons also vary from region to region with winter being the busiest in Florida for vegetable and citrus production, early summer for berries in Oregon, and late summer for multiple harvests in California. Table 2 lists the highest value crops by state requiring significant amounts of farm labor.

TABLE 2

Top Five Labor Intensive Crops in Terms of Commodity Value

CALIFORNIA	FLORIDA	N CAROLINA	OREGON	TEXAS	WASHINGTON
grapes	greenhouse/nursery	greenhouse/nursery	greenhouse/nursery	greenhouse/nursery	apples
almonds	oranges	tobacco	pears	onions	greenhouse/nursery
nursery products	tomatoes	blueberries	cherries	pecans	cherries
lettuce	strawberries	tomatoes	grapes	watermelon	grapes
berries	grapefruit	cucumber	hazelnuts	cabbage	pears

The 2007 Census of Agriculture recorded more than 2 million crop farms in the United States; however, only about one-quarter of these farms reported expenses for farm labor. Table 3 shows the estimated number of farms using labor, along with the proportion these farms represent among all farms within the regions.¹ California has a much higher proportion of farms in the state using farmworkers (50%), than is the case for Oregon (33%), Washington (32%) and Florida (30%). Of the six states researched, Texas has the greatest number of farms using farm labor, with over half of the farms using hired labor only. Although Texas has the largest quantity of farms, three-fourths of these grow ‘other crops,’ such as hay and grain, that are machine-harvested and require little human labor.

TABLE 3

Crop Farms Reporting Labor Expenses

2007 Census of Agriculture

REGION	CROP FARMS REPORTING LABOR EXPENSES		TYPE OF LABOR USED ON CROP FARMS WITH LABOR EXPENSES REPORTED		
	FARMS WITH LABOR EXPENSES	% OF ALL FARMS IN STATE WITH LABOR EXPENSES	HIRED ONLY	HIRED & CONTRACT	CONTRACT ONLY
USA	576,000	26%	68%	15%	16%
California	40,000	50%	44%	29%	27%
Florida	14,000	30%	52%	18%	30%
Oregon	14,000	27%	67%	18%	14%
N Carolina	13,000	33%	62%	19%	18%
Texas	62,000	25%	54%	19%	27%
Washington	13,000	32%	74%	15%	12%

*2007 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. 2007 Census of Agriculture special tabulation of crop farms (111) only.

In contrast, the majority of California farms grow fruits, vegetables, and horticulture products, which require extensive hand labor and employ the highest proportion of farmworkers in the U.S. Likewise, there are variations in the types of farm labor reported among regions. A higher percentage of farms in California, Florida, and Texas use contract labor. In contrast, about three-fourths of the farms in Washington reported that they use hired labor exclusively.

¹ 2007 Census of Agriculture, Farm Production Expenses, Hired Farm Labor and Contract Labor. Figures provided by email, Daniel Carroll, NAWS, U.S. DOL to Oxfam consultant, August 30, 2010.

The total size of an agricultural employer's labor force determines the labor regulations that growers and FLCs must follow. According to the available data for hired employees, the Census shows that the majority of farms using hired labor in the U.S. had ten or fewer employees (Table 4).¹ Yet even though a relative minority of farms hires 11 or more employees, these farms employ the majority of hired farmworkers. For example, in Oregon a small proportion of farms hire 11 or more employees (19%) but even so, these farms represent 85 percent of all hired farmworkers within the state. The total number of employees includes family members who receive wages and all types of farm employees (the very small percent of office workers, machine operators, and supervisors) and excludes contract labor used by farms. Thus, a small proportion of the larger farms employ the majority of farmworkers. Conversely, the majority of farms/agricultural sites may be exempt from many of the existing regulations intended to protect farmworkers, due to their small size.

TABLE 4

Crop Farms Hiring 11 or More Employees
2007 Census of Agriculture

REGION	% of all FARMS hiring 11 or more employees	% of all hired EMPLOYEES at farms hiring 11 or more employees
USA	12%	68%
California	27%	87%
Florida	23%	87%
N Carolina	19%	68%
Oregon	19%	19%

This brief profile surveys the scope of U.S. farmworker labor issues and protections and discusses several key characteristics that contribute to both the vulnerability of farmworkers and the difficulty in gathering information about their working conditions. While there are undoubtedly many farmworkers who have secured stable and fair employment with growers, there is also a sizable proportion of farmworkers who remain defenseless against numerous forms of employment exploitation and abuse. Contract employees in particular tend to be mostly unauthorized workers, relative newcomers to the U.S., have very low levels of education and English skills, and are consequently are more frequently victims of abuse. The distribution and types of crop farms are also important in considering the application and enforcement of existing protections. While the majority of farms operating today have less than 11 employees and are exempt from many of the existing employment protections and safety standards, the highest percentage of farmworkers are concentrated on larger farms.

INVENTORY OF FARMWORKER ISSUES AND PROTECTIONS

The sections below are organized by issue and summarize the laws that currently apply to farmworkers as well as the most recent publicly available information about the population. Federal-level protections and those within the six states with the largest farmworker populations are detailed. Those areas in which agricultural employment remains exempt from the same rights and protections given to most other sector employees are highlighted. The following sections also present publicly available regulatory data regarding the enforcement of these legal protections. Finally, limitations to the available data are discussed in terms of how they impact the ability to monitor the progress and results of current legal protections for farmworkers, with additional details and resources included in Appendix I.

¹ 2007 Census of Agriculture special tabulation of crop farms (111) only.

The issues most frequently seen by legal advocates in four of the largest farmworker states¹ include conflicts over wages and hours, substandard farmworker housing, sexual harassment, and health and safety concerns (see Table 5). However, the frequencies of these cases are not tracked at the state or federal level, and many incidents do not result in litigation.

TABLE 5
**Most Common Farmworker Issues Reported
 by Legal Advocates**
2007 Census of Agriculture

	TYPES OF CASES REPORTED (not necessarily in order of priority)	CONSULTING ORGANIZATION
California	<ul style="list-style-type: none"> • Sexual harassment • Unpaid overtime and minimum wages • Denial of rest and meal periods • Retaliation and wrongful termination • Occupational safety and heat stress protections 	California Rural Legal Assistance <i>Michael Meuter</i>
Florida	<ul style="list-style-type: none"> • Unpaid minimum wages • Substandard housing • Non-compliance with employment contracts • Unsafe transportation of workers • Occupational safety and health problems 	Florida Legal Services, Inc. <i>Greg Schell</i>
N Carolina	<ul style="list-style-type: none"> • Unpaid minimum wages • Labor trafficking • Substandard housing • Field sanitation violations • Non-compliance with employment contracts 	Legal Aid of North Carolina <i>Mary Lee Hall</i>
Washington	<ul style="list-style-type: none"> • Unpaid wages • H-2A program violations and abuses • Occupational safety and health, pesticides • Sexual harassment and abuse • Substandard housing 	Columbia Legal Services <i>Lori Jordan Isley</i>

One indication that farmworkers rarely seek legal assistance is through a question on the NAW's survey that asks farmworkers if they or anyone in their household have used legal services within the last two years. Over the last ten years (2000-2009), only a few individuals (21 out of 22,499 surveys) responded that they or any persons in their households had a recent experience with legal services. One issue of particular concern mentioned by advocates is the sexual harassment of farmworkers on the job. Sexual harassment is a pervasive problem in farm work and, **in some cases**, submitting to it has been **a condition of employment**. Examples of the most recent cases prosecuted by the

¹ Legal services representatives in Oregon and Texas were contacted but did not respond to our inquiries.

Equal Employment Opportunity Commission (EEOC) are listed in the footnote below.¹ Title VII of the *Civil Rights Act* of 1964 covers sexual harassment and several other types of discrimination including those based on gender, race, or national origin. It is important to consider how issues of gender and employment discrimination are of concern throughout all of the specific protections inventoried, even though enforcement and compliance data rarely reflect the reality that a quarter of farmworkers are women.

For example, field sanitation and the lack of available toilets are especially problematic for women farmworkers. Likewise, substandard and overcrowded farmworker housing may force women to live with multiple strangers and in insecure places where they can be vulnerable to physical assaults. Although the available legal protections do not specifically address gender issues within agricultural labor, substandard and abusive working conditions have distinctive and often more severe consequences for the female members of farmworker households.

I. WAGE AND HOUR STANDARDS

The *Fair Labor Standards Act* (FLSA) is the primary federal law that guarantees minimum wage and overtime pay for most workers. However this and most state wage and hour standards laws have specific exemptions for the agriculture sector. Federal and some state laws further exempt small farms, (any farm that employs roughly seven or fewer full-time employees working five days a week)² from meeting minimum wage requirements. Under FLSA, farmworkers are not entitled to overtime pay or periods for rest and meals during the workday. California, Oregon, and Washington stand out among the states (see Table 6, next page) for including farmworkers in all state wage and hour protections as well as mandatory rest and meal periods. States without their own wage and hour regulations (e.g., Florida) need to comply with the minimum standards set in FLSA. For details on the specific exemption criteria see the Table 6 notes in Appendix I.

Although wage and income information for farm employment is collected regularly by the NASS, the numbers do not fully capture the actual conditions and payment of farmworker wages. The NASS-reported average hourly wage for hired agricultural workers was \$10.07 in 2009³; however, the reality is that these numbers represent mostly skilled and permanent employees and mask the fact that many farmworkers simply do not get paid what they are owed. Additionally, these averaged wages exclude many workers who are undocumented and paid through farm labor contractors. For example, a recent survey in Oregon's Marion County reported minimum wage violations were rampant, with 90 percent of workers consistently earning below the state's minimum wage of \$8.25, instead earning an average hourly wage of \$5.30.⁴ In comparison, the average wage reported in 2008-2009 NAWS data was 60 cents less than the NASS data for hired workers (\$9.47), and contract farmworkers reported about a dollar less (\$8.45).⁵

1 Examples of recent cases of sexual harassment pursued by the EEOC include: **Giumarra Vineyards** in California; Evans Fruit, a large apple grower in Washington; **Willamette Tree Wholesale** in Oregon; and **Knouse Foods Cooperative, Inc** in Pennsylvania.

2 The FLSA defines "small" farm as any farm that did not use more than 500 "man-days" of agricultural labor in any calendar quarter (3-month period) during the preceding calendar year. "Man-day" means any day during which an employee works at least one hour.

3 "Hired Workers Down 2 Percent, Wage Rates up 2 Percent from a Year Ago," National Agricultural Statistics Service (NASS), Agricultural Statistics Board, U.S. Department of Agriculture, released November 20, 2009.

4 Results from PCUN Survey, "PCUN survey indicates that minimum wage violations are rampant in Marion County berry harvests," February 2010.

5 Farmworkers are paid in a variety of ways other than an hourly rate (e.g., piece rate, NAWS converts monthly or bi-monthly wages). NAWS converts these other types of wages and piece rate income into an hourly rate by using the farmworkers' reported average hours worked in the previous week.

TABLE 6

Minimum Wage and Hour Protections for Farmworkers

CURRENT MINIMUM WAGE	MINIMUM WAGE	OVERTIME	REQUIRED REST PERIOD	REQUIRED MEAL PERIOD	LAWS / CODES & REGULATING DEPT
Federal	\$7.25 With Exemptions: • Small farms • Grower family members • Piece rate workers • Some minors	—	—	—	Fair Labor Standards Act (FLSA) <i>DOL Wage and Hour Division</i>
California	\$8.00	1.5x pay for: • >8 hours per day up to 12 hours • First 8 hours on 7th day 2x pay for: • >12 hours per day • >8 hours on 7th day	10 minute paid rest period for every 4 hours of work	30 minute unpaid meal period for every working 5 hours of work. Second meal period required.	California Labor Code Industrial Welfare Commission Wage Orders <i>Department of Industrial Relations</i>
Florida	—	—	—	—	Florida State Consitution Agency for Workforce Innovation
N Carolina	—	—	—	—	North Carolina General Statutes Standards and Inspections Division
Oregon	\$8.25 With Exemptions: • Small farms • Short-term piece workers	—	10 minute paid rest period when working 4 hours or more	30 minute unpaid meal period when working 6 hours or more	Administrative Rules Bureau of Labor and Industries
Texas	—	—	—	—	Texas Minimum Wage Act <i>Texas Workforce Commission</i>
Washington	\$8.67 With Exemptions: • Short-term piece workers • Workers less than 16 yrs	—	10 minute paid rest period when working 4 hours or more	30 minute unpaid meal period when working 5 hours or more	Minimum Wage Laws and Rules Agricultural Employment Standards <i>Department of Labor and Industries</i>

Further, looking exclusively at only the average wages in both sets of data erases the huge variation that occurs among farmworkers. Table 7 breaks down the proportion of farmworkers earning different hourly wage levels from 2005-2009. Thirty percent of all farmworkers made below \$7.25 during this period. It is important to note that the current federal minimum wage has moved incrementally from \$5.85 to \$7.25 during this same time period. The table also illustrates the difference of income between the types of workers, as contract workers are often short-term employees and generally receive lower wages.

TABLE 7

Proportion of Farmworkers at Average Wage Levels by Employment Type

NAWS 2005-2009

AVERAGE WAGE	HIRED	CONTRACT	ALL
Below \$7.25	29%	35%	30%
\$7.25 – \$9.24	42%	48%	43%
\$9.25 – \$11.24	15%	10%	14%
\$11.25 – \$13.24	7%	3%	7%
\$13.25 or more	7%	4%	7%

Regardless of their hourly wages, farmworkers rarely work year-round. The median annual personal income for farmworkers reported in NAWs 2005-2009 (including all farm and non-farm employment) was between \$15,000 and \$17,499. The median household income of farmworkers during this same period was between \$17,500 and \$19,999, which was less than half of the **median income for all U.S. households** in 2008 (\$52,000). One quarter (25%) of all farmworkers (23% for hired; 37% for contract) had a family income that was below the federal poverty line at the time of the survey.¹

Table 8 shows the distribution of personal annual incomes (of both farm and nonfarm work) of farmworkers during 2005-2009. Contract workers in general made less than their hired counterparts in terms of family income. More than half of all farmworkers earned an annual household income below \$20,000. Nevertheless, these data should be considered elevated because those farmworkers who had not worked in the U.S. for an entire year were excluded from this sample. As a result, 20 percent of all hired and 32 percent of contract workers during this period were not represented in the income levels above. For example, a study in Washington (which is the state with the highest minimum wage in the country) reported that in 2006, the average personal income of farmworkers was \$12,327, with fewer than 7 percent reporting earnings of more than \$20,000.²

TABLE 8

Farmworkers' Annual Personal Income Levels by Employment Type
NAWS 2005-2009

INCOME LEVEL*	HIRED	CONTRACT	ALL
Up to \$9,999	20%	33%	22%
\$10,000 - \$19,999	46%	58%	47%
\$20,000 - \$39,999	23%	9%	21%
\$30,000 or more	12%	0%	10%

(*) Percentages are from the total number of farmworkers with reported income data. Farmworkers who had not worked in the US for a full year were excluded from this question.

1 The 2009 **federal poverty guidelines** were \$22,050 for a family of four and \$10,830 for a single person.

2 “**A Sustainable Bounty: Investing in Our Agricultural Future**,” Washington State Farmworker Housing Trust (July 2008), last accessed September 24, 2010.

In the agriculture sector, the seasons often determine the number of hours and days farmworkers are needed. NAWS tracks both the hours per week and days per week that farmworkers were working at the time of their interviews (which occur year-round). The average number of total hours worked per week for farmworkers was 45 hours. Table 9 shows that 42 percent of all farmworkers worked 40 hours or less; over half (59%) worked more than 40 hours a week. Table 10 breaks down the number of days farmworkers were employed. More than half (58%) of all farmworkers reported working more than the standard five days a week, while very few (only 6%) reported working less than five days a week.

The average number of weeks spent last year in farm work, for all farmworkers surveyed in NAWS (Table 11), was 34.4 weeks, or roughly eight months out of the previous year. Contract workers averaged a month less spent in farm work than hired workers (an average of seven months). Likewise, hired workers were employed on average for 4.6 weeks in non-farm work, compared to 1.6 weeks by contract workers. All farmworkers reported an average of about eight weeks of no work, with contract farmworkers being unemployed an average of two weeks longer. When looking at the actual number of days of farm work reported in NAWS (Table 12), the average for all farmworkers was 192 days, with contract farmworkers working an average of 25 fewer days than hired workers.

TABLE 9

**Number of Hours Worked per Week
By Employment Type**

NAWS 2005-2009

HOURS / WEEK	HIRED	CONTRACT	ALL
Up to 20 hours	3%	8%	4%
21-40 hours	38%	34%	38%
41-60 hours	50%	53%	51%
61-80 hours	8%	5%	7%
+ 80 hours	1%	–	1%

TABLE 10

**Number of Days Worked per Week
By Employment Type**

NAWS 2005-2009

DAYS / WEEK	HIRED	CONTRACT	ALL
1-4 days	6%	9%	6%
5 days	37%	39%	37%
6 days	51%	49%	51%
7 days	6%	4%	6%

TABLE 11

**Average Number of Weeks Spent Last Year
in Farm Work, Non-Farm Work
and Non-Work By Employment Type**

NAWS 2005-2009

ACTIVITY	HIRED	CONTRACT	ALL
Farm Work	34.9	30.8	34.4
Non-farm Work	4.6	1.9	4.2
Not Working	7.6	9.1	7.8

However, when breaking down the percentages over a range of days, much more variation within the population is visible. For example, 40 percent of all farmworkers worked less than 180 days and 26 percent worked 270 days or more.

Wage and hour protections for farmworkers are widely considered to be weakly, if at all, regulated. Likewise, enforcement data regarding wage and hour standards are not readily available.¹ One study found that in 2008, there were only 110 investigations of labor violations under FLSA involving agricultural employers (representing 0.5% of all their investigations that year) nationwide. The rate of investigations was also found to have dropped by 19 percent between 2002 and 2008.²

Investigations into wage and hour complaints are often complicated because employers tend to record the amount farmworkers are paid but not the actual number of hours worked. A 2008 study by the U.S. Government Accountability Office (GAO) found that the DOL's Wage and Hour Division has not leveraged its existing enforcement tools to promote compliance.³ Yet another GAO study (2009) indicated that federal wage and hour investigations were lax, and the "complaint and intake and investigative processes leave low wage workers vulnerable to wage theft."⁴ Specifically, the study identified significant delays in investigating complaints, infrequent cases in which employers were compelled to pay conciliations, and incidences in which complaints and investigations were not recorded in the division's database. They also found that investigators did not record many unsuccessful complaints, which gives the impression that the Wage and Hour Division was "better at resolving conciliation than it actually is."

TABLE 12

**Actual Days Employed in Farm Work
By Employment Type**

NAWS 2005-2009

ACTIVITY	HIRED	CONTRACT	ALL
89 days or less	21%	26%	21%
90-179 days	19%	21%	19%
180-269 days	35%	37%	35%
270-365 days	26%	16%	24%
Average	195	170	192

1 The Department of Labor made available raw enforcement data on its [Enforcement Data website](#) during the finalization of this report.

2 *Weeding Out Abuses: Recommendations for a law-abiding farm labor system* (PDF), Farmworker Justice and Oxfam America (2010), p. 4, last accessed August 30, 2010.

3 "Better Use of Available Resources and Consistent Reporting Could Improve Compliance (PDF)," Government Accountability Office, no. GAO-08-962T, July 15, 2008.

4 *Wage and Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft* (PDF), Government Accountability Office, No. GAO-09-458T March 25, 2009.

II. LABOR PROTECTIONS FOR CHILDREN AND YOUTH FARMWORKERS

Children and youth working in agriculture are excluded from many of the regulations that protect minors in other sectors. While most workers must be at least 18 years old to conduct tasks designated within other industries as “hazardous,” the minimum age for farmworkers to conduct the same tasks is 16 years. A 16-year-old farmworker may legally be employed in such **hazardous activities** as: operating heavy farm equipment (e.g., tractors, harvesters, combines, and forklifts), pruning or picking fruit at a height of 20 feet, applying toxic agricultural chemicals (including anhydrous ammonia), and working inside “a fruit, forage, or grain storage designed to retain an oxygen-deficient or toxic atmosphere.”¹

While the minimum age to be employed in most sectors is 16 (with a few exceptions), the standard minimum age for agriculture is 14 (with several exceptions). On small farms there is no minimum age for children to work outside of school hours if they have their parents’ permission. Also, children 12 or 13 years of age may work outside of school hours with parental consent or on a farm where a parent is employed.

Moreover, there are fewer restrictions in agriculture compared to other sectors regarding the number of hours that children are permitted to work. For example, there are no restrictions in agriculture forbidding children from working early in the morning or late at night. The FLSA restricts children and youth in agriculture from working during school hours but does not include restrictions on the number of hours worked per day or per week.² Some state child-labor laws, such as those in California and Washington, include stricter limits than the federal laws; other states allow children younger than 12 years old to work with limitations. Full summaries of state child labor laws can be found in **Appendix I**.

Obtaining an accurate picture of the number of children and youth engaged in agricultural work is also very difficult. Estimates range widely from 300,000 to 800,000.³ The **NIOSH Childhood Agricultural Injury Surveillance Project** (CAIS) estimated that in 2006, there were 1,120,000 youth of less than 20 years of age working and living on farms in the U.S. CAIS estimated an additional 307,000 youth who did not live on a farm but were directly hired by farm operators to work. These estimates include both crop and livestock farms but exclude youth working for farm labor contractors or ‘off the books.’

Several of the key findings of the CAIS project highlighted the hazards for youth and children working on farms. For example, between 1992-1996 and 1997-2002, the rate of work-related deaths of youth 15-19 years old increased 14 percent on crop and livestock farms.

1 *Fact Sheet #40: Federal Youth Employment Laws in Farm Jobs (PDF)*, U.S. Department of Labor, Wage and Hour Division, revised July 2008, last accessed September 14, 2010.

2 FLSA child labor requirements (*Id.* § 213(c)(1)).

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

TABLE 13

Child Labor Laws Applicable to Farmworkers

	Minimum age for employment DURING & OUTSIDE School Hours		Maximum Hours and Days for minors under 16 unless other age indicated		Laws/Codes & Regulating Agencies
	During	Outside	Daily/Weekly	Days per Week	
FED	16	14,*12 and under with limitations, under 12 with written parental consent on farms exempt from Federal minimum wage provisions.	—	—	<ul style="list-style-type: none"> • Fair Labor Standards Act (FLSA) • DOL Wage and Hour Division
CA	18, 16 if not required to attend school	12	8/40, only on non-school day, 12 and 13 8/40 schoolday/week: 3/18 8/48, 16 and 17 4 schoolday, (8 on a school-day that precedes a non schoolday) 16 and 17 if required to attend school	6 days	<ul style="list-style-type: none"> • California Labor Code • CA Division of Labor Standards Enforcement (DLSE)
FL	—	14	8/40 schoolday or week: 3 when followed by schoolday /15. 8/30 when school is in session, 16 and 17. Minors under 16 can work 8/40 during non-school day or week.	6 days	<ul style="list-style-type: none"> • Chapter 450, Florida Statutes • Chapters 61L-2, Florida Administrative Code • Child Labor Program
NC	Children working in agriculture in NC are exempt from the state child labor protections and follow federal law.				<ul style="list-style-type: none"> • NC Wage and Hour Act and Administrative Code
OR	16	12, 9 with limitations	10/40 (more than 10 hours a day with special permit) schoolday/week: 3/18	6 days	<ul style="list-style-type: none"> • Oregon Child Labor Laws & Rules • Bureau of Labor & Industries, Wage & Hour Division
TX	Children working in agriculture are exempt from the state child labor protections that prohibit children from working outside of school hours.				<ul style="list-style-type: none"> • Texas Child Labor Law
WA	18	14, 12 with limitations	8/40, 12 and 13 during non-school week. 8/40 when school not in session, 14 and 15. 10/50 (60 for wheat, hay and pea harvest) when school not in session; 4/28 when school in session, 16 and 17	6 days, 7 in dairy, livestock, hay and irrigation, with one day off every two weeks, under 18	<ul style="list-style-type: none"> • WA Agricultural Employment Standards • Department of Labor and Industries

Table adapted from DOL's [Federal and State Child Labor Laws Applicable to Agricultural Employment](#)

Only 3 percent of all farmworkers surveyed by NAWS (2005-2009) were between the ages of 14 to 17 years old. Children younger than 14 years old are not included in the NAWS surveys. One-third of the farmworker households surveyed included at least one child younger than 18, but only 1 percent of those households included a child or youth employed in farm work. While these numbers suggest that few children/youth are engaged in farm work, they appear to be a gross underestimate when compared to the reported age in which many adult farmworkers reported first working in the fields.¹ Table 14 shows that about 30 percent of the farmworkers surveyed in NAWS started working in the fields when they were younger than 18 years old.

TABLE 14

Age When Starting Farm Work
NAWS (2005–2009)

AGE OF FARMWORKER	PERCENT
12 years or younger	4%
13-17 years	26%
18-20 years	23%
21 years or older	48%

This discrepancy between the current number of youth farmworkers interviewed in the NAWS data and the age in which all farmworkers reported starting farm work has been partly attributed to solo youth who came to the U.S. to work unaccompanied by their immediate families (and therefore were less likely to be captured in the NAWS sample).² Moreover, many child laborers are undocumented and are routinely hired under “adult” names and documents.



Enforcement of child labor laws in agriculture is also very weak, and consequently there are very little data available regarding employer compliance. A study by Human Rights Watch reported that in 2009, the DOL Wage and Hour Division had confirmed only 36 cases of child labor violations involving 109 children in agriculture.³ These violations constituted 4 percent of all child labor cases in the country that year. The study concluded that the numbers represented an overall decline in DOL’s enforcement in comparison with the 104 cases of child labor violations found in agriculture in 1998. They also found that there are no designated WHD staff for the inspection or enforcement of child labor laws, and only a very few investigations in 2007 were initiated with agricultural employers.

¹ Age at first farmworker was calculated by using the NAWS data for the farmworkers’ reported age (variable AGE) and subtracting the number of years reported in ‘Years since First Did Farmwork’ (variable NUMYRSFW).

² Kissam, Ed., *No Longer Children: Case Studies of the Living and Working Conditions of the Youth who Harvest America’s Crops*, 2000 report submitted to The Office of the Assistant Secretary for Policy, Department of Labor. San Mateo: Aguirre International.

³ *Fields of Peril: Child Labor in US Agriculture*, Human Rights Watch, May 2010, page 74, last accessed September 11, 2010.

III. FARM LABOR CONTRACTORS

All agricultural employers, including Farm Labor Contractors (FLCs), must adhere to the federal Migrant and Seasonal Agricultural Worker Protection Act (AWPA), which is the principal employment law for farmworkers. The AWPA requires that FLCs apply for certification and demonstrate that they are in compliance with the provisions in the Act. AWPA further requires that where growers use FLCs to recruit, supervise, or transport farmworkers, they must confirm that FLCs are licensed by the Department of Labor.

The AWPA is intended to protect farmworkers by requiring employers to provide migrant workers written disclosure of their terms of employment upon recruitment, including place of employment, wages to be paid, cost and benefits of housing, transportation, or other services to be provided, availability of unemployment insurance, etc. Although migrant workers must be given the terms of employment at the time of recruitment, non-migrant seasonal workers only receive their employment terms upon request.

TABLE 15

Farm Labor Contractor Requirements

	KEY REQUIREMENTS					Laws/Codes	Regulating Department
	Certification/ License	Surety Bond	Workers Comp Insurance	Exam	Continuing Education		
FED	✓					<ul style="list-style-type: none"> • Migrant and Seasonal Workers Protection Act (AWPA) 	<ul style="list-style-type: none"> • Wage and Hour Division, Employment Standards Administration, DOL
CA	✓	✓		✓	✓	<ul style="list-style-type: none"> • California Labor Code: Sections 1682-1699 	<ul style="list-style-type: none"> • California Labor Commissioner
FL	✓			✓		<ul style="list-style-type: none"> • Chapter 450, Part III, Florida Statutes 	<ul style="list-style-type: none"> • Department of Business and Professional Regulation
NC	No state FLC laws/codes.						
OR	✓	✓	✓	✓		<ul style="list-style-type: none"> • Oregon Administrative Rules, Division 15: Rules Regulating Farm and Forest Labor Contractors 	<ul style="list-style-type: none"> • Oregon Bureau of Labor and Industries
TX	No state FLC laws/codes.						
WA	✓	✓		✓		<ul style="list-style-type: none"> • Chapter 19.30 RCW, Farm Labor Contractors, Chapter 296-310 WAC, Farm Labor Contracting Rules 	<ul style="list-style-type: none"> • Washington State Department of Labor and Industries

TABLE 16**Federally Licensed Farm Labor Contractors in 2009**

REGION	TOTAL LICENSED FLCs	% OF ALL LICENSED FLCs
CA	988	18%
FL	1,587	30%
NC	96	2%
OR	75	1%
TX	160	3%
WA	35	<1%
All other	2,143	45%
TOTAL	5,354	100%

Reported by the DOL through FIA

Agricultural employers must also maintain records for up to three years regarding the wages and hours worked for each contracted worker and any fees or expenses (e.g., for food, transportation, or housing) deducted from their wages. Employers are required to provide each worker with an itemized written statement with the above information for each pay period. Like FLSA, AWPAs do not apply to smaller agricultural employers. Additional requirements such as surety bonds (to ensure the payment of farmworker wages), mandatory examinations, and continuing education for certification are found in states which operate their own FLC licensing programs, such as California, Florida,

and Washington (Table 15). North Carolina and Texas do not have state FLC requirements but they also have relatively few federally registered FLCs in comparison to the other states.

The total number of federally licensed farm labor contractors in 2009 was 5,354 (Table 16).¹ Thirty percent of all licenses issued in 2009 were to FLCs in Florida; 18 percent were issued in California. The remaining four states had comparatively fewer registered FLCs. However, the mere number of federally registered FLCs does not fully represent the extent to which growers rely on contract labor. For example, FLCs, custom harvesters, and other third-party employers have been estimated to supply 50 to 75 percent of farmworkers for weeding, harvesting, and other seasonal tasks in California.² Likewise, the number of federally registered FLCs does not reflect the total number of farmworkers employed by these individuals and firms. The largest FLC in the country is in Castroville, California, and has \$22 million in annual sales and 400 employees.³

Further, there are many unregistered FLCs operating illegally in the U.S. with little threat of interference. In 2008, there were a total of 1,499 investigations under AWPAs, but it is unknown how many of these involved FLC compliance.⁴ The low number of AWPAs investigations conducted is partially explained by a severe shortage of investigators that limited the enforcement capacity to what is comparable to 22 full-time investigators for all the agricultural employers throughout the U.S. (both farms and FLCs included).

1 Data for the total FLCs registered in 2009 were provided by the DOL through a Freedom of Information Act Request (615373) by Bon Appétit Management Company Foundation. Data were provided by William A. Nardo, Wage and Hour FOIA Officer and Records Manager via email.

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

3 “Farm Labor Contractors and Crew Leaders,” *Highbeam Business*, last accessed September 20, 2010.

4 *Weeding Out Abuses: Recommendations for a law-abiding farm labor system* (PDF), Farmworker Justice and Oxfam America (2010), p. 4, last accessed August 30, 2010.

IV. HOUSING AND TRANSPORTATION

The *Migrant and Seasonal Agricultural Worker Protection Act* also includes key regulations for the minority of employers who provide housing or transportation to farmworkers. Farmworker housing is subject to a pre-occupancy inspection and must meet minimum safety standards. Farm labor housing is governed by one of two standards, depending upon when it was built: the OSHA federal safety and health standards or the Employment Training Administration (ETA) standards for farmworker housing.¹ The majority of farmworker housing was constructed post-1980 and is therefore governed by the OSHA standards.²



1 29 CFR 500.132. The ETA standards are found at 20 CFR § 654.404 et seq and the OSHA standards are found at 29 CFR § 1910.142.

2 The ETA Standards apply to housing constructed prior to 1980 but also continue to govern labor camps that house H-2A workers in states that have not adopted a state migrant housing code that is equivalent to or better than the OSHA standards.

Although some states have additional codes addressing farmworker housing that are enforceable at the local level, about half of the states (particularly in the south) have never had state or local licensing programs for migrant housing (Table 17). It should be noted that neither the OSHA nor ETA standards provide farmworkers with tenants' rights while residing in labor camps. With the exception of Florida and Oregon, farmworkers in the profiled states of this Inventory do not have explicit rights regarding invited guests, eviction notices, or protection against retaliation when reporting substandard housing conditions.

TABLE 17

Protections for Farmworker Housing and Transportation

	FARMWORKER HOUSING	FARMWORKER TRANSPORTATION
FED	<ul style="list-style-type: none"> • Migrant and Seasonal Agricultural Workers Protection Act (AWPA): Section 203 • Houses constructed before 1980 must comply with either OSHA regulations or 20 CFR § 654.404 et seq • Houses constructed after 1980 must comply with 29 CFR § 1910.142 Wage and Hour Division, DOL 	<ul style="list-style-type: none"> • Migrant and Seasonal Agricultural Workers Protection Act (AWPA): Section 401, 29 CFR 500.104 and 29 CFR 500.105
CA	<ul style="list-style-type: none"> • State Codes Regarding Employee/Migrant Housing • Department of Housing and Community Development 	<ul style="list-style-type: none"> • V C Section 31401 Farm Labor Vehicles Regulations Inspections • CA Department of Motor Vehicles
FL	<ul style="list-style-type: none"> • Florida Statutes 381.008 • Migrant Labor Camps 64E-14 • Florida Department of Health 	<ul style="list-style-type: none"> • Fla. Stat. 316.622(2)
NC	<ul style="list-style-type: none"> • Migrant Housing Act, Chapter 95, Article 19 • Senate Bill 1466 • Agricultural Safety & Health Bureau, Commissioner of Labor 	—
OR	<ul style="list-style-type: none"> • Provisions for Farmworker Camps: ORS 658.705 to 658.850. • Oregon OSHA, Department of Consumer & Business Services 	<ul style="list-style-type: none"> • OR Occupational Safety and Health Division, Section U-5 Vehicles
TX	<ul style="list-style-type: none"> • Texas Health and Safety Code • Department of Housing and Community Affairs 	<ul style="list-style-type: none"> • Texas Transportation Code, Chapter 647 Motor Transportation of Migrant Agricultural Workers
WA	<ul style="list-style-type: none"> • Migrant Farmworker Housing Rules and Codes • Migrant Farmworker Housing Program, Washington State Department of Health 	—

Vehicles used to transport farmworkers are also covered by AWPAs and **must meet minimum operational requirements** as well as be insured for liability. Every agricultural employer, agricultural association, and farm labor contractor who provides transportation to migrant and seasonal farmworkers must adhere to certain standards relating to vehicle safety, use licensed drivers, and carry an insurance policy, liability bond or workers' compensation coverage.

The vast majority of farmworkers (83%) reported in NAWS that they did not rent or live in a home under the ownership or control of their employer. Consequently, the AWPAs housing standards by and large cover only a small percentage of farmworker residences. Table 18 shows that over half (52%) of all farmworkers rented from an independent third party and a little under one-third (30%) owned their own homes. Far fewer contract workers owned their homes (12%) or lived in free or paid employer provided housing (8%). Similarly, 62 percent of all farmworkers reported in NAWS that they lived in a single-family home with almost all of the remaining farmworkers living in multi-unit structures such as an apartment or duplex (19%) or a mobile home (17%).

TABLE 18

**Farmworkers' Living Arrangements
By Employment Type**
NAWS 2005-2009

HOUSING	HIRED	CONTRACT	ALL
Rent (not from family/grower)	48%	76%	52%
Home Owner	33%	12%	30%
Free Employer Provided	14%	6%	13%
Paid Employer Provided	3%	2%	3%
Other	1%	3%	1%

The above statistics do not take into account temporary homelessness or the overcrowding that occurs as a result of shortages in designated farmworker housing and low farmworker wages. As migrant farmworkers travel seasonally from harvest to harvest, their rapid influx into agricultural communities often overwhelms local housing resources. The lack of housing, coupled with the inability to maintain two homes, forces many farmworkers to sleep in garages, tool sheds, caves, fields, parking lots, vehicles, tents, or other similar makeshift structures.

Permanent farmworker housing is often not much better than temporary living arrangements and high market-rate rents force many farmworkers to live in overcrowded conditions in shared rentals. Lack of safe, affordable housing is worrisome not only because it affects individual farmworkers' health and safety but it can also result in agricultural labor shortages in some regions.

The distances between farmworkers' worksites and residences are also relevant to their transportation needs and safety. NAWS reports that only 12 percent of all farmworkers lived on-site at their workplace; 41 percent live within ten miles of their workplace. The remaining farmworkers (47%) traveled 10 miles or more, and only 3 percent of these workers traveled more than 50 miles.

TABLE 19

**Farmworkers' Transportation Traveling to Work
By Employment Type**
NAWS 2005-2009

TRANSPORTATION	HIRED	CONTRACT	ALL
Car	57%	30%	53%
<i>Raitero</i>	16%	40%	20%
Ride with Other	10%	17%	11%
Walk	10%	3%	9%
Labor Bus	5%	9%	6%
Other	2%	1%	2%

Table 19 breaks down the types of transportation used by farmworkers traveling to work by employment type. A relatively small percent of hired workers used private van operators called *raiteros*¹ (16%) and labor buses (5%), in contrast to contract workers (40% used *raiteros*, 9% used labor buses). The majority of all farmworkers traveled by modes of transportation not under regulation: private car (53%), riding with others (11%), or walking (9%).

As discussed above, there are very few investigations into AWP compliance in relation to the number of farmworkers and agricultural employers in the U.S. In addition, many of the AWP regulations are particularly difficult to monitor. For example, an acceptable preoccupancy inspection for farmworker labor camps does not necessarily mean that the unit will continue to meet functional and safety standards once occupied. "Many of the most hazardous violations, such as overcrowding, gas leaks, inadequate waste disposal and problems with water and toilet facilities are not apparent until after the camps are occupied," says one report.² Any real enforcement of these standards requires consistent ongoing inspections. One review of farmworker housing in Texas found widespread unsanitary conditions, exposed plumbing and electrical wiring, holes in the roof, open wells, and pesticide contamination.³

¹ *Raiteros* are private van operators who charge farmworkers daily for rides to work. These private vans operate in agricultural areas and are relatively expensive when compared to public transit in urban areas. Responsibility for transporting farmworkers "has bounced from growers to farm-labor contractors to *raiteros*": "[California: Pesticides, Transportation, Wages](#)," *Rural Migration News* 6:1 (January 2000), last accessed September 23, 2010.

² *A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan* (PDF), Michigan Civil Rights Commission. (March, 2010), accessed September 17, 2010.

³ *Migrant Labor Housing Facilities in Texas: A Report on the Quantity, Availability, Need, and Quality of Migrant Labor Housing in the State* (PDF), Texas Department of Housing and Community Affairs (September 2009), last accessed September 12, 2010.

V. UNEMPLOYMENT INSURANCE

Unemployment Insurance (UI) is mandated and funded through the federal Social Security Act; however states are responsible for administering funds and defining eligibility. **Agricultural labor has distinct criteria** that determine coverage provisions. Federal regulations and most of the states below exempt small farms from providing UI to their workers, but the criteria for determining the qualifying size vary significantly. For example, California limits small farm exemptions to those farms that pay less than \$100 in wages over a calendar quarter. This, in effect, mandates that virtually all California agricultural employers provide UI coverage to farmworkers. Washington is the only state below to include all farms that have at least one employee.

Unemployment regulations apply equally to farm labor contractors and growers (see [Appendix I](#)). States also have the option of excluding non-immigrant temporary workers (H-2A) from coverage; however, these workers are still counted when calculating the size-exemption status of agricultural employers. Unemployment Insurance protections do not apply to unauthorized workers in any state. Farmworkers must demonstrate they are “available” for new employment as a requirement for receiving unemployment payments, but this is a legally impossibility for those farmworkers unauthorized to work in the U.S.

TABLE 20

Unemployment Insurance Coverage for Farmworkers

	MANDATES FARMWORKER COVERAGE	COVERAGE CRITERIA FOR FARMWORKER EMPLOYERS	LAWS / CODES & REGULATING DEPARTMENT
FED	✓ with employer size exemptions	Have at least 10 or more workers in each of at least 20 calendar weeks in the current or preceding calendar year or a cash payroll of at least \$20,000 during any calendar quarter in either such year are subject to the tax	Social Security Act [Title III, Title IX, and Title XII] and Federal Unemployment Insurance Act , States administer UI benefits
CA	✓ with employer size exemptions	1 employee at anytime AND wages in excess of \$100 in a calendar quarter	CA Unemployment Insurance Code , Employment Development Department
FL	✓ with employer size exemptions	5 employees in 20 weeks OR \$10,000 payroll in a calendar quarter	Florida Statutes and Codes Florida Agency for Workforce Innovation
NC	—	No state coverage guidelines. Follows federal criteria.	Employment Security Commission of North Carolina
OR	—	No state coverage guidelines. Follows federal criteria.	The Employment Department
TX	✓ with employer size exemptions	3 employees in at least 20 different calendar weeks of the calendar year OR wages in cash of \$6,250 during a calendar quarter	Texas Unemployment Compensation Act , Texas Workforce Commission
WA	✓ with employer size exemptions	1 or more workers at any time; excluding workers attending or between terms in school; on corporate farms does not include services performed by spouses or unmarried children under 18 years.	Washington Laws & Regulations Employment Security Department

Less than half of hired farmworkers (48%) and only about a quarter of contract farmworkers (23%) reported in NAWS that they were covered by unemployment insurance if they lost their current job (Table 21). Likewise, farmworkers were asked if they or anyone in their household had received unemployment payments during the previous two years. Only 18 percent of the farmworkers reported that their household had benefited from unemployment insurance.

TABLE 21

Farmworkers Reporting Unemployment Insurance with Current Employer by Employment Type

NAWS 2005-2009

STATUS	HIRED	CONTRACT	ALL
Unemployment Insurance	48%	23%	45%
Not Insured	48%	76%	52%
Don't Know	4%	1%	4%



VI. COLLECTIVE BARGAINING

The *National Labor Relations Act* (NLRA) gives most employees the right to engage in concerted activities for the purpose of mutual aid and protection but explicitly excludes agricultural workers from coverage. A farmworker may be fired for joining a labor union under federal law, and a farm labor union has no legal method to compel a company to sit down at the bargaining table to negotiate employment terms. The majority of state laws do not include any such protections for farmworkers.

A **2002 GAO study** estimated that about one-half of all agricultural workers were without federal or state bargaining rights.¹ However, the study cautions that this figure may overestimate the total number of farmworkers with collective bargaining rights due to its methodology and the inclusion of skilled employees in addition to agricultural laborers. One indication that this is the case can be found in the data from the last 10 years of NAWS (2000-2009); only 1 percent of the farmworkers interviewed indicated they had worked under a union contract at anytime during the previous two years.



¹ *Collective Bargaining Rights: Information on the Number of Workers with and without Bargaining Rights* (PDF), Government Accountability Office, GAO-02-835 (September 2002) p.13, last accessed August 30, 2010.

TABLE 22

Legal Protections for Farmworker Collective Bargaining

	PROTECTIONS	LAWS / CODES	REGULATING / ENFORCEMENT AGENCIES
FED	—	National Labor Relations Act (NLRA)	National Labor Relations Board
CA	<ul style="list-style-type: none"> • Employer retaliation • Secret-ballot elections • Good-faith bargaining • Secondary boycotts • Investigation and judicial review 	California Agricultural Labor Relations Act	California Agricultural Labor Relations Board
FL	<p>The Florida constitution gives a general right to collective bargaining and states only that this right shall not be “denied or abridged.”</p> <p>There is no Florida law establishing any collective bargaining rights. The denial of this right is only enforceable through a lawsuit and there is no labor board. Private court enforcement is tantamount to not having the right to organize.</p>	Florida State Constitution, Section 6	Florida Court System
NC	—	No state protections	
OR	—	No state protections	
TX	The general right to organize and bargain is only enforceable through private lawsuit. There is no comprehensive organizing law, and no labor board or other agency entrusted to protect the right to collectively bargain. In addition, a trade union is prohibited from entering the premises of an employer under Texas law. There is no practical right to organize.	Texas Labor Code: Sections 101.001; 101.003; 101.052; 101.053	Texas Court System
WA	Through case law (Krystad v. Lau, 65 Wn.2d 827) farmworkers have freedom of association. However, there is not duty on the employer to engage in collective bargaining.	Revised Washington Code 41.80	Washington Court System

VII. FARMWORKERS IN FORCED LABOR

Farmworkers, whether authorized or unauthorized, are especially vulnerable to forced labor when they have an exclusive contract with their employer. For example, many trafficking victims are H-2A workers who arrive in the United States desperate for work. These workers may be faced with horrible working and living conditions, owe debt to their employers or to recruiters in their home countries (“debt peonage”), have had their passports confiscated by their employer or recruiter, and/or be working under threats of violence directed toward them and/or their families.¹ The largest case of forced labor recently uncovered involved more than 400 Thai farmers who were brought into the U.S. through the H-2A program to work on farms and orchards. The recruiters were accused of charging the farmworkers up to \$21,000 to obtain their U.S. visas, in addition to housing them in shoddy conditions and impounding their passports so they could not flee.²

Forced labor has been illegal since the passage of the Thirteenth Amendment of the United States Constitution but only recently has federal legislation addressed the modern manifestations of this crime. The **Trafficking Victims Protection Act** (2000) includes definitions for severe forms of trafficking and heavy punishments (including life in prison) for offenders.³ Subsequent legal protections at both the federal and state levels⁴ have focused on providing assistance programs for victims and increasing the capability to coordinate anti-trafficking efforts between agencies.

Labor trafficking, **which is the umbrella term used by the U.S. government to describe different forms of forced labor**, is prosecuted almost exclusively as a federal crime. There has been little coordination in the past between federal and state law enforcement agencies in investigating abuses. The Bureau of Justice Statistics established the **Human Trafficking Reporting System (HTRS)** in 2007 to collect information about trafficking incidences from 38 federally funded state and local task forces. These data provide **numbers for those incidents and victims** involved in the general category of labor trafficking (as opposed to sex-trafficking). The total number of labor trafficking incidents reported in 2007-2008 was 146, approximately 12 percent of all the trafficking cases reported, and involved a total of 343 victims.⁵ It is important to emphasize that these numbers represent only those incidents that were reported through the federally funded Task Forces. It has been estimated that the total number of

1 The 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.

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

3 In the Act, the term “severe forms of trafficking in persons” means (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. §103(8).

4 Two websites currently track pending state legislation that related to human trafficking: **Human Trafficking Data Collection and Reporting Project** and the **Polaris Project**.

5 “Characteristics of Suspected Human Trafficking Incidents, 2007-2008” (**PDF**), Bureau of Justice Statistics Special Report, NCJ 224526 (January 2009), last accessed September 18, 2010.

TABLE 23

Legal Protections against Forced Labor

	SAMPLE PROTECTIONS COVERED	LEGAL CODES	ADMINISTRATING DEPT
FED	<ul style="list-style-type: none"> Debt Servitude (Peonage) Compulsory service/labor (Slavery) Obtaining labor through physical threats, schemes or plans, threats of legal process Seizing of passport or immigration documents 	<ul style="list-style-type: none"> 13th Amendment, U.S. Constitution Chapter 77 of Title 18 The Trafficking Victims Protection Act (TVPAA) 	U.S. DOJ, Civil Rights Division
CA	<ul style="list-style-type: none"> Allows for civil damages Victim-caseworker confidentiality 	<ul style="list-style-type: none"> California Legislation California Trafficking Victims Protection Act 	CA Emergency Management Agency
FL	—	Federal only. No state-based legal protections.	Florida Statewide Task Force on Human Trafficking
NC	—	Federal only. No state-based legal protections.	
OR	—	Federal only. No state-based legal protections.	Oregon Human Trafficking Task Force
TX	<ul style="list-style-type: none"> Program to assist victims of trafficking Fund for the investigation and prosecution of trafficking Education and training programs on trafficking of persons Human trafficking a criminal offense Allows for civil liability 	Texas H.B. 4009 from 2009, The Trafficking Victim Assistance Act: Tex. Gov't Code 402.035; Tex. Gov't Code 531.381-.385; Tex. Gov't Code 772.006(d)-(f); Tex. Hum. Res. Code 141.056; Tex. Occ. Code 1701.258, .402(h); Tex. Penal Code 20A.02, 43.02(d), 43.05. Texas H.B. 533 from 2009: Tex. Civ. Prac. & Rem. Code 48.008(c)(17), 98.001-.006.	Texas Human Trafficking Prevention Task Force
WA	<ul style="list-style-type: none"> Makes human trafficking a class A felony Makes recruiting, harboring, or transporting, or any way obtaining a person known to be under coercion /involuntary servitude a class A felony 	<ul style="list-style-type: none"> RCW 9A.40.100 Trafficking 	Office of Crime Victims Advocacy, Department of Commerce

foreign nationals trafficked in the U.S. annually for forced labor is between 14,500 to 17,500¹ and that the agriculture sector makes up 10 percent² of all the forced labor in the U.S. If these estimates are accurate, a crude calculation of those victims trafficked into the U.S. for the purpose of forced agricultural labor is 1,450 to 1,750 people a year. UC Berkeley's Human Rights Center's data suggest that forced labor operations are concentrated in California, Florida, New York, and Texas.³

There are several reasons why it is extremely difficult to calculate the exact number of farmworkers forced into labor in the U.S. First, incidences of farmworkers forced into labor are generally underreported. Due to fear of reprisal, victims are often reluctant to seek help through official mechanisms and don't know where to access help. Much of the forced labor in agriculture takes place in rural and remote locations where surveillance is lacking and assistance is far away. A second reason it is difficult to calculate numbers of farmworkers forced into labor is that the public data comes from disparate sources and databases. There are 93 U.S. attorney offices charged with conducting investigations into forced agricultural labor but little coordination between them. Therefore, a farmworker trafficking case may, for example, be categorized as an alien smuggling case. The third reason is the need for secrecy around trafficking victim's identities. Grand jury courts cases and witness interviews are not accessible to the public, and there is a general shroud of legal secrecy around forced labor cases. The **William Wilberforce Trafficking Victims Protection Reauthorization Act**⁴ protects the identities of victims and prevents the release of information that could give away a particular person's identity.⁴ These protections make tracking forced labor difficult.

1 Human Trafficking Statistics ([PDF](#)), Polaris Project, last accessed September 1, 2010.

2 *Hidden Slaves: Forced Labor in the US*, Human Rights Center, UC Berkeley, and Free the Slaves, September 2004, last accessed August 23, 2010.

3 Ibid, see p.10.

4 Rule 6 of **William Wilberforce Trafficking Victims Protection Reauthorization Act** is the grand jury secret statute under criminal federal procedure.

VIII. WORKERS' COMPENSATION

Agriculture is consistently ranked among the five most hazardous occupations by the U.S. DOL and is the most hazardous industry in the nation, according to the [National Safety Council](#). Farmworkers are regularly exposed to multiple hazards, such as equipment accidents, tractor/truck roll-overs, pesticide exposures, falls, highway accidents, heat exhaustion, and repetitive musculoskeletal injuries.

Accordingly, the [occupational fatality rate](#) for farmworkers in 2009 was five times the rate of the average worker.¹ Table 24 shows the fatality rate (one death per 100,000 full-time equivalent employees) for farmworkers was 16.7 compared to the average of 3.3 for the entire private sector. There were 314 occupational fatalities on crop farms in 2008 and the total fatalities for the top farmworker states were: California (24); Florida (11); North Carolina (10); Oregon (4 in 2007); Texas (3); and Washington (5).² The injury and illness incidence rates for farm work are also much higher than for other types of work. NIOSH reports that 243 agricultural workers (including animal and other types of agriculture) suffer a lost-work/time injury every day and 5 percent of these injuries result in permanent impairment.³

TABLE 24

2009 Fatality Rates for Agricultural Workers and Related Occupational Groups

OCCUPATIONAL GROUP	FATALITY RATE
All occupations	3.3
Laborers and freight, stock, and material movers, by hand	7.4
Grounds maintenance workers	15.0
Miscellaneous agriculture workers (crop, ranch, equip. operators, etc.)	16.7
Construction laborers	18.3

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.

2 [Injuries, Illnesses, and Fatalities Database](#), Occupational Injuries/Illnesses and Fatal Injuries Profiles, Bureau of Labor Statistics, 2008. Search criterion Industry NAISC 111, last accessed September 18, 2010.

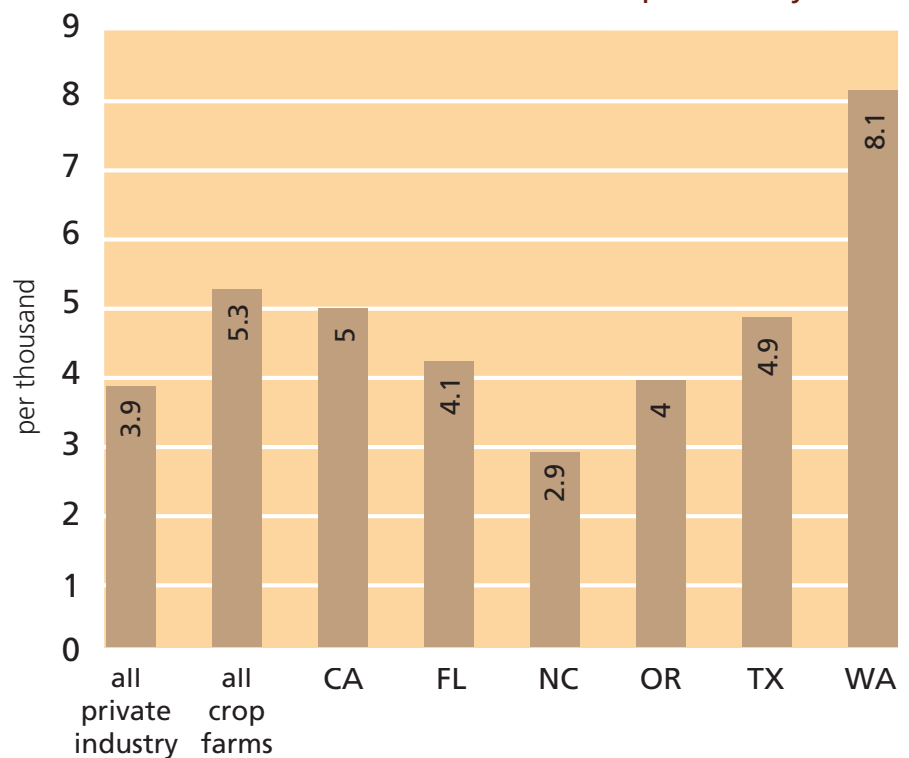
3 [NIOSH Agricultural Safety website](#), last accessed September 17, 2010.

In considering the particular types of illness, workers on crop farms have four times the rate of skin disorders and poisoning compared to all other workers.¹ Figure 2 compares the illness and injury rates for all occupational categories on crop farms. The average injury and illness rate for all crop farms is 5.3 per 1,000 workers (compared with a rate of 3.9 for all private industry). North Carolina stands out as having the lowest rate of 2.9; Washington has by far the highest rate at 8.1.

Farmworker fatalities and injuries are generally underreported for several reasons. For example, the Bureau of Labor Statistics holds certain fatality information as confidential (i.e., there must be 5 or more fatalities per incident, or 3 or more distinct incidents to publish). It is also not always possible to link the cause of death with the original injury (e.g., a 1996 farmworker injury may not be recorded as linked with a 2009 death) or the injury with a worksite (e.g., watery eye). Fatalities and injuries generally remain underreported by farmworkers and employers. It is also not apparent whether the variation in injury rates among states is related to the states' different levels of monitoring and reporting activity or if farm work is actually more hazardous in some states. It is also important to note that official injury rates exclude incidents that occurred on farms with 10 or fewer employees.

FIGURE 2

Comparison of 2009 Illness and Injury Rates on Crop Farms by State



¹ Injuries, Illnesses, and Fatalities Database, BLS. 2008 incidence rates for skin disorders were 3.8 for private industry and 15.9 for crop production. Poisoning rates were 0.3 for private industry and 1.2 for crop production.

The high incidence of occupational injury and illness for farmworkers makes access to workers' compensation insurance particularly important. Workers' compensation coverage provides farmworkers with necessary medical care when they become ill or injured, as well compensation for lost wages and rehabilitation services. Workers' compensation coverage and benefits are determined at the state level as there are no federal regulations for employers regarding eligibility (Table 25).

Despite the hazardous nature of farm work, many states do not require agricultural employers to provide workers' compensation coverage for migrant and seasonal farmworkers. Only 13 states, the District of Columbia, Puerto Rico, and the Virgin Islands require employers to cover seasonal agricultural workers to the same extent as all other workers. In an additional 13 states small farmers are exempt from providing coverage to migrant and seasonal farmworkers. By contrast, 16 states do not require employers to provide any workers compensation insurance for migrant or seasonal farmworkers, and in an additional eight states, coverage is limited to full-time workers, workers in specialty jobs, or those employed on large farms. Florida and North Carolina make exemptions for small farms. Texas employers are not mandated to carry workers' compensation insurance for farmworkers.

TABLE 25

Workers' Compensation Coverage for Farmworkers

	EXEMPTIONS	LAWS / CODES	REGULATING AGENCIES
CA	—	California Codes	CA Department of Industrial Relations
FL	<ul style="list-style-type: none"> • 5 or fewer regular employees • Less than 12 seasonal laborers 	Florida Statutes & Rules	FL Department of Financial Services
NC	<ul style="list-style-type: none"> • 3 or fewer employees • Less than 10 full time farm laborers 	North Carolina Industrial Commission Rules	North Carolina Industrial Commission
OR	—	Oregon Administrative Rules	Oregon Consumer and Business Services Department
TX	<ul style="list-style-type: none"> • coverage is optional 	Administrative and Insurance Code Workers' Compensation Act	Texas Department of Insurance
WA	—	Chapter 296-17 WAC	Department of Labor and Industries

Table adapted from [State Workers' Compensation Coverage for Agricultural Workers](#), Farmworker Justice

A little over one-half of all farmworkers (55%) reported in NAWS that they had workers' compensation insurance with their current employers (Table 26). Farmworkers in NAWS were also asked about additional types of health coverage available. Seventy-three percent of all farmworkers said that their employer would pay if they became ill or injured on the job, but only 16 percent of employers would pay if workers became sick or injured off the job. Less than one-third (31%) of all farmworkers were covered by a traditional health care insurance policy paid by themselves, their spouse, or their employer.

TABLE 26

**Health Coverage with Current Employer
By Employment Type**
NAWS 2005-2009

COVERAGE	HIRED	CONTRACT	ALL
Workers Compensation	58%	38%	55%
Employer pays if sick or injured ON JOB	74%	64%	73%
Employer pays if sick or injured OFF JOB	18%	2%	16%
Farmworker, employer, spouse	33%	16%	31%

Looking at the rate of coverage by employment type, contract farmworkers had much lower rates of coverage for workers compensation (38%), employer-paid health care (64% for on-, and 2% for off-the-job health care), and traditional health insurance policies (16%).

IX. OSHA INSPECTIONS AND VIOLATIONS

The federal Occupational Safety and Health Administration (OSHA) issues workplace safety and health standards and conducts inspections of work sites. OSHA excludes agricultural workplaces from the majority of the standards protecting workers, including standards addressing electrocution and unguarded machinery, requirements for ladder safety, and whistle-blower protections. OSHA has included agriculture in seven of the general standards, and there are several standards issued specifically for agriculture, such as the field sanitation standard. However, farms with fewer than 11 employees are also exempt from OSHA enforcement. This means that approximately a third of all farm employees in the U.S. work for employers (88 percent of all farms) whose operations are exempt from basic safety and health standards (see Table 3).

California, Oregon, North Carolina, and Washington each have OSHA-approved state-based health and safety programs, while Florida and Texas deal directly with federal OSHA program and inspections (Table 27). The total number of inspections in each state during 2009 varied significantly across agency and region. Federal OSHA conducted a total of 26 inspections nationally on crop farms (five were in Texas) while the California OSHA conducted 477. Those states with inspections reported that the most common violations cited were regarding written hazard communication, housing/living conditions, and field sanitation.

TABLE 27

OSHA Inspections and Top Violations on Crop Farms

	Total Number of Inspections in 2009 ⁴⁹	Top 5 Violations Cited between Oct 2008 - Sept 2009 ⁵⁰	Regulating Dept
FED	26	<ul style="list-style-type: none"> • OSH Act General Duty Paragraph • Hazard communication • Respiratory protection • The control of hazardous energy (lockout/tagout) • Wiring methods, components, and equipment for general use 	Occupational Safety and Health Administration (OSHA)
CA	477	<ul style="list-style-type: none"> • Heat illness prevention • Field sanitation • Injury and illness prevention program. • First aid kit • Safe operation of agricultural equipment 	CA Department of Industrial Relations (Cal/OSHA)
FL	5 (included in Federal total above)	not available	Federal OSHA
NC	49	<ul style="list-style-type: none"> • Temporary labor camps • Migrant Housing Act, Adoption of standards and interpretations • Migrant Housing Act, Application for inspection • OSHA, rights and duties of employers • Field Sanitation 	North Carolina Safety and Health Act NC Department of Labor
OR	283	<ul style="list-style-type: none"> • Living areas for agricultural labor housing • Respiratory protection program • Written hazard communication program • Toilet and hand washing facilities for hand labor work • Providing specific information about (pesticide) applications 	Oregon Safe Employee Act Department of Consumer and Business Services (NC OSH)
TX	none	not available	Federal OSHA
WA	316	<ul style="list-style-type: none"> • Accident prevention program* • Develop, implement, maintain, and make available a written Chemical Hazard Communication Program • Decontamination supplies for washing off pesticides and pesticide residues • Monthly safety meetings* • Develop a complete worksite-specific written respiratory protection program 	Washington Industrial Safety and Health Act (WISHA) Washington Department of Labor and Industries

49 The number of OSHA inspections were found through the [DOL/OSHA website](#) query “Search Inspections by SIC” using the search criteria [SIC = 01], [Dates 1/1/09 – 12/31/09], Includes both partial and complete inspections, Number of inspections by Standard Industrial Classification (SIC) Code = 01 (Agricultural Production Crops). Last accessed August 25, 2010.

50 The top five violations were found through [DOL/OSHA website](#) query for [Frequently Cited OSHA Standards](#) using the search criteria [number of employees = all]; [SIC CODE = 01]; [OSHA Offices = All]; [Other Options = Private and Comprehensive or Partial], last accessed August 25, 2010. The two codes with an asterisk (*) appeared to be inaccurately recorded (30700030 and 30700033) on the Federal site and assumed that these are likely standards given the number sequences.

X. HEAT STRESS

Heat stress has become a key health and safety issue for farmworkers. While heat stress is not explicitly covered in the federal OSHA general duty clause Section 5(a)(1), which requires that employers “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” Providing adequate shade and encouraging employees to drink plenty of water and take rest breaks are important precautionary measures in avoiding serious illness or death from overexposure to environmental heat (hyperthermia).

Among the states in Table 28, only California, Oregon, and Washington include heat stress in their occupational safety standards and regulations; however, the federal OSHA and all of the states (with the exception of Florida) provide heat stress guidance and educational materials on their websites. Despite the efforts to provide agricultural employers and farmworkers with informative materials, the reality is that guidance alone cannot serve as an enforcement mechanism or an obligation by employers to take precautionary measures. This is also the case with the OSHA general duty clause because there are no enforceable mechanisms in which to pursue violations. Thus, the majority of farmworkers outside of California, Oregon, and Washington do not have enforced protection from heat stress.

TABLE 28

Legal Protections against Heat Stress

	REGULATED	STATE GUIDANCE AVAILABLE	LAWS / CODES	REGULATING DEPTS
FED	✓	✓ site	Section 5(a)(1) and Section 5(a)(2) of the OSH Act	Occupational Safety and Health Administration (OSHA)
CA	✓	✓ site	Title 8 - 3395	CA Department of Industrial Relations
FL	—	—	No State Laws/Codes	—
NC	—	✓ site	No State Laws/Codes	Occupational Safety and Health Division, NC Department of Labor
OR	✓	✓ site	Oregon Administrative Rules	Oregon OSHA, OR Department of Consumer and Business Services
TX	—	✓ site	No State Laws/Codes	—
WA	✓	✓ site	Washington Administrative Code	WA Department of Labor and Industries

The BLS reports that over a five-year period from 2003 to 2008, there were a total of 38 fatal occupational injuries due to exposure to environmental heat incurred by workers in farming occupations; 23 of these occurred on crop farms. These incidents occurred in California (14), Florida (6), and North Carolina (7).¹ OSHA **Fatality and Catastrophe Investigation Summaries** searched with the term “heat” using the SIC Code for crop farming (01) resulted in 28 cases between 2002 – 2007 of heat injury in crop farmworkers, 21 of which resulted in a fatality.

However, there is reason to believe the number of total heat fatalities on farms is unreported (see Section VIII: Workers Compensation). Heat stress often goes undiagnosed and undocumented because, unlike a direct injury by equipment, the symptoms can accumulate over several hours and interfere with existing medical conditions. Thus, heat stress is often not associated with a workplace hazard or injury even though it is brought on by working in unhealthy temperature conditions (and without access to shade). See Appendix I for a description of a heat-related occupational fatality.

¹ Special tabulation request to the Bureau of Labor Statistics Injuries, Illnesses, and Fatalities (IIF) program by Bon Appétit Management Company Foundation, August 5, 2010. OSHA **Fatality and Catastrophe Investigation Summaries** searched with the term “heat” using the SIC Code for crop farming (01) resulted in 28 cases between Aug 2002 –August 2007 of heat injury in crop farmworkers, (21 which resulted in a fatality).



XI. PESTICIDE SAFETY AND REGULATIONS

The Worker Protection Standard (WPS) Rule under the Environmental Protection Agency's *Federal, Insecticide, Fungicide, and Rodenticide Act* (FIFRA) details basic safety standards and regulations with which employers must comply. Key provisions to reduce the risk of pesticide exposure include providing pesticide health and safety training to all agricultural workers, central posting of pesticide application information for farmworkers, restricting entry to treated areas, providing personal protective equipment to pesticide applicators and early re-entry workers, and providing decontamination materials and emergency assistance when needed.

KEY PROVISIONS OF WORKER PROTECTION STANDARD

- Pesticide health and safety training for workers
- Central posting and information for workers
- Exclude workers from treated areas /restricted-entry interval (REI)
- Protect early-entry workers
- Notify workers about treated areas
- Protect handlers during handling tasks
- Decontamination site availability
- Emergency assistance availability

FIFRA delegates to federal EPA and state agencies enforcement and inspection duties to ensure compliance with the WPS. These agencies also conduct “for cause” inspections initiated by complaint, damage report, referral or tip following a pesticide application. OSHA will not conduct inspections on farms with fewer than 11 employees, unless states have memos of understandings with federal offices to create their own rules.

Of the states researched for this report, all but Texas posted information about pesticide inspections and/or violations (Table 29). Most inspections and violations distinguish between agricultural and ‘structural’ pesticide

inspections, but none distinguish crop farms from other types of agricultural activity. According to a Florida farmworker advocate, nursery and horticultural activities are correlated with greater pesticide exposure than fruit and vegetable crop activities because of the often closed workplace environments. Each of the six states also has mandatory pesticide applicator certificate/license procedures for individuals who use restricted chemicals for private agricultural use (as opposed to a person who applies pesticides as their sole business). All of the licenses require an exam and continuing credits to renew. Licenses are valid for one to five years, depending on the state.

In addition to monitoring compliance with the WPS, some states also monitor and track pesticide exposures and accidents in multiple sectors and locations (e.g., private homes, schools, industry, etc.). The National Institute for Occupational Safety and Health has recommended that states improve their surveillance in these areas; however, “despite these recommendations, most states do not conduct acute pesticide-related illness and injury surveillance,” the Institute writes.¹ Physician reporting of pesticide exposure and illness is in place for 30 states, yet the majority of the states cannot act on these reports because they are without a surveillance program. Nine states (including California, Florida, Oregon, Texas, and Washington) have more comprehensive case investigation and surveillance activities.

¹ **A How-To Guide For State-Based Programs, Pesticide-Related Illness and Injury Surveillance:** NIOSH Publication No. 2006-102, last accessed September 20, 2010.

TABLE 29

Regulatory Oversight of Agricultural Pesticides

	MOST RECENT VIOLATION DATA (Totals) Criteria vary significantly - See Table Notes	LAWS / CODES	REGULATING DEPTS	MANDATORY PESTICIDE APPLICATOR CERTIFICATION
FED	2005 <ul style="list-style-type: none"> Routine inspections (3231) For cause inspections (266) Total violations (1987) Most common violation: <i>Central Posting</i>	<ul style="list-style-type: none"> Worker Protection Standard for Agricultural Pesticides (WPS) <i>Federal Insecticide, Fungicide and Rodenticide Act</i> 	<ul style="list-style-type: none"> Environmental Protection Agency 	<ul style="list-style-type: none"> No federal certification, standards only
CA	2008 <ul style="list-style-type: none"> Field Worker Safety Insp. (1303) Inspections w/a violation (144) Items in noncompliance (208) Most common violation: <i>Personal Protective Equipment</i>	<ul style="list-style-type: none"> California Pesticide Use Laws and Regulations 	<ul style="list-style-type: none"> CA Department of Pesticide Monitoring 	Yes <ul style="list-style-type: none"> Exam Continuing Education 2 yr renewal
FL	FY2008 <ul style="list-style-type: none"> Firms Inspected (1188) Inspections w/a violation (161) Total violations (276) Most common violation: <i>Central Posting</i>	<ul style="list-style-type: none"> Florida Agricultural Worker Safety Act Florida Pesticide Law, Chapter 487, Florida Statutes 	<ul style="list-style-type: none"> FL Department of Agriculture and Consumer Services 	Yes <ul style="list-style-type: none"> Exam Continuing Education 4 yr renewal
NC	2008 <ul style="list-style-type: none"> Worker Protection Insp. (389) Investigations (119) Citizen's Inquiries (102) Notices of noncompliance (280) Notices of warning (28) Totals do not distinguish between agricultural and other pesticide activities	<ul style="list-style-type: none"> North Carolina Pesticide Law of 1971 Hazardous Chemicals Right to Know Act 	<ul style="list-style-type: none"> NC Department of Agriculture and Consumer Affairs Occupational Safety and Health Division, NC Department of Labor 	Yes <ul style="list-style-type: none"> Exam Continuing Education 3 yr renewal
OR	2009 <ul style="list-style-type: none"> Required pesticide application info (32) Written hazard communication program (32) Respiratory protection program (29) Top agricultural violations only – inspection info not available	<ul style="list-style-type: none"> Oregon Pesticide Codes and Regulations Oregon Safe Employee Act Oregon Workers Protection Standard 	<ul style="list-style-type: none"> Oregon Department of Agriculture, Pesticide Division Oregon Occupational Safety and Health Division 	Yes <ul style="list-style-type: none"> Exam Continuing Education 5 yr renewal
TX	<ul style="list-style-type: none"> 2009 (54) 2008 (92) 2007 (98) 	<ul style="list-style-type: none"> Texas Administrative Code Texas Agricultural Hazard Communication Law Pesticide Texas Worker Protection Law 	<ul style="list-style-type: none"> Texas Department of Agriculture 	Yes <ul style="list-style-type: none"> Exam Continuing Education 5 yr renewal
WA	2008 Agricultural Activity Violations (33)	<ul style="list-style-type: none"> Washington Worker Protection Standards 	<ul style="list-style-type: none"> WA Department of Agriculture & WA Department of Labor and Industries 	Yes <ul style="list-style-type: none"> Exam Continuing Education 1 yr renewal

Table 30 shows the total numbers of pesticide exposure incidents and accidents reported through these programs. They vary significantly by state: California had 126 compared with Florida's 2. These huge differences seem to reflect the variation in regulating/tracking programs as opposed to the actual number of pesticide events occurring within the states. Two states, California and Washington, monitor the exposure levels of pesticides (i.e., cholinesterase levels) in those who mix/load/apply organophosphate and carbamate pesticides. Employers must arrange for periodic testing of employee blood and provide training and documentation regarding testing and pesticide exposure.

TABLE 30

Regulatory Oversight of Agricultural Pesticide Illness & Injury

	EXPOSURES / ACCIDENTS MONITORED & POSTED <small>Criteria vary significantly – See Table Notes</small>	MONITORING DEPTS	CHOLINESTERASE MONITORING FOR APPLICATORS
FED	2006 • 117 (11 States)	Pesticide Illness & Injury Surveillance, NIOSH	—
CA	2007 • 126	Pesticide Illness Surveillance Program, California Department of Pesticide Regulation, CA EPA	Yes (since 1974)
FL	2006 • 2	Chemical Disease Surveillance Program, Bureau of Environmental Public Health Medicine, FL Department of Health	—
NC	2007–2009 • 34	Pesticide-Related Illness and Injury Surveillance Program, Occupational and Environmental Epidemiology Branch (OEEB), Division of Public Health	—
OR	FY06 • 7 Farm/Nursery, Occupational cases	Pesticide Analytical Response Center, Department of Agriculture	—
TX	2008 • 22	Pesticide Exposure Surveillance in Texas (PEST) Program, Texas Depart- ment of State Health Services (DSHS)	—
WA	2008 • 123	Pesticide Program, Department of Health	Yes (since 2006)

Pesticide exposure is an ever-present issue for farmworkers and their families, regardless if they are actively involved in pesticide applications. Responses from NAWs showed that only 16 percent of farmworkers (2005-2009) had mixed, loaded, or applied pesticides in the last 12 months. However, all farmworkers have a risk of exposure to pesticides directly and/or to pesticide residues, sometimes days after pesticides have been applied in their work areas. Table 31 demonstrates this and shows the activity the workers were engaged in at the time of pesticide exposure reported under the SENSOR program during 2002-2006. (Not all states have implemented the SENSOR program, and as a result, the numbers reported do not include the total number of agricultural exposures nationwide.) Over half (52%) of the exposures listed did not involve direct pesticide preparations or applications but occurred during routine work activities.

There is also the constant risk of indirect exposure for farmworkers and others who work or live near farms. This exposure can occur through residue deposits or pesticide drift (i.e., pesticides can be carried by the wind to unintended locations when applied aerially). Farmworkers may also unknowingly expose their families and homes to toxic residues by carrying pesticides home on their bodies, clothing, or shoes.

TABLE 31

Activity at Time of Pesticide Exposure¹

ACTIVITY	PERCENT	TOTAL #
Applying	28%	493
Mixing-Loading	6%	103
Transport-Disposal	1%	19
Repair-Maintenance of Equipment	2%	29
Any Combination Above	3%	61
Routine Work: Not Applying Pesticide	52%	912
Other or Unknown	8%	139

¹All reported agricultural exposures (2002-2006), SENSOR-Pesticides Database, last accessed September 20, 2010

As a result, pesticide exposures are often difficult to track: it is only the most acute cases that are typically reported. Farmworkers may not be able to seek medical attention because of the lack of funds or transportation. Even when medical attention is sought, pesticide illness is often misdiagnosed or overlooked, especially if farmworkers become ill without being aware they were directly exposed to harmful chemicals (i.e., cause of illness could be misconstrued as food poisoning or heat stress).

In addition, there is a pervasive fear among farmworkers of not only job loss and retaliation but also deportation and family separation based on immigration status. Farmworkers' fear of employer intimidation and reluctance to seek help for exposure issues are serious factors that directly impact farmworker health.¹ Pesticide exposure over time is being increasingly linked to chronic health effects such as cancer, infertility, birth defects, Parkinson's disease, and neurological damage. For example, elevated rates of certain cancers have been found in farmworkers compared with workers of other professions, including other Latinos.²

In addition to the often undetected and/or unreported incidents of pesticide hazards and illness, the systems in place for reporting pesticide exposures also contribute to severe underreporting. In many states, there are multiple agencies that deal with pesticides (e.g., agriculture, health, environment, etc.) and there is often no central department that is responsible for collecting, standardizing, and reporting state-level data. Washington's Pesticide Incident Reporting and Tracking Review Panel (PERT) was a notable exception for analyzing and reporting pesticide events across all state agencies. However, due to recent budget cuts, PERT was defunded in 2010 and is no longer operating. Another obstacle to pesticide incident reporting and tracking is that health care providers are generally not trained in occupational and/or environmental health, much less in pesticide health symptoms. Medical histories rarely ask questions about occupational exposure, which could lead to a successful diagnosis and tracking of pesticide risk in agriculture.

1 Health Outreach Partners. *Breaking Down Barriers: A National Needs Assessment on Farmworker Health Outreach* (PDF), April 2010, last accessed November 22, 2010.

2 Mills, P. "Cancer Incidence in the United Farmworkers of America 1987-1997," *Am J. of Ind. Med.* 40:596-603, cited in Farmworker Justice, "[The dangers of pesticides for farmworkers – Chronic effects of pesticide Exposure](#)," last accessed November 8, 2010.

CONCLUSION

This Inventory catalogs key issues facing U.S. crop farmworkers and presents information relevant to understanding their plight. It provides summaries of relevant federal and state legal protections alongside publicly available information about enforcement of these protections. It summarizes data from National Agricultural Workers Survey (NAWS) and the Census of Agriculture that delineate characteristics of the current farmworker population and their employment conditions.

The challenges of missing data and the difficulty in assessing the reliability of available data became immediately evident to the project team as it attempted to locate relevant sources of information. The available syntheses of farmworker data are often inadequate to definitively answer key questions regarding farmworker status. Accurate and comprehensive sources of information on farmworker issues are spotty. For example, farmworker legal protections and exemptions are posted on federal and state websites but understanding how these regulations are applied to farmworkers requires an understanding of the complex web of legal rules. Moreover, it is challenging to locate compliance data on state and federal websites. Many statistics are available only through direct contact with regulatory agencies or through a Freedom of Information Act request. Also, data collection about the farmworker population and their worksites requires significant resources and expertise. While some public sources of farmworker demographic data (e.g., NAWS, Census) are posted online, they are available only in database rather than narrative or summary formats, requiring further analytic work to obtain usable Inventory data.

Based on existing data, we can confidently draw three conclusions regarding the current challenges faced in the arena of social policy vis-à-vis farmworkers:

- 1) U.S. farmworkers enjoy far fewer legal protections than do employees in other sectors of the U.S. economy;
- 2) Compliance data are inconsistent and spotty, which suggest that existing farmworker protections are rarely regulated or enforced; and
- 3) Socioeconomic data on farmworkers show them to be a largely marginalized population vulnerable to employment abuses and exploitation.

FEWER PROTECTIONS IN RISKIER EMPLOYMENT

Agriculture is consistently ranked one of the top most hazardous occupations in the nation, but farmworkers have fewer employment protections as compared to employees in other sectors of the U.S. economy. Agricultural workers are excluded from the protections of the *National Labor Relations Act* (NLRA) and are exempted from many protections under the *Fair Labor Standards Act* (FLSA). Children and youth working in agriculture, for example, are excluded from many of the FLSA regulations that would be in place if they worked in other sectors. In addition, employment regulations fluctuate depending on farm size, with small farms entirely exempt from many federal protections (e.g. OSHA pesticide inspections, minimum wage, minimum age). As a result, one-third of all crop farmworkers are working for employers that are not held accountable for complying with basic safety and health standards.

Employment protections vary greatly from state to state. The six states highlighted in this Inventory account for nearly 60 percent of farmworkers employed in the United States. Of these states, California, Oregon, and Washington stand out as having stronger legal standards for agricultural workers, while North Carolina, Florida, and Texas have fewer legal protections. Only California grants farmworkers the right to self-organize and the right to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. California and Washington have implemented stricter child labor protections, cholinesterase-monitoring programs for pesticide applicators, and state laws against forced labor. California, Washington, and Oregon have state-based farm labor contractor programs, enhanced wage and hour protections along with mandatory rest and break periods, and include heat stress prevention in occupational safety standards and regulations. Also, only these three states require workers' compensation coverage for all farm employees. Texas is the one state that makes provision of workers' compensation coverage for farmworkers optional. Still, compliance data suggest that existing farmworker protections are inconsistently or spottily regulated and enforced.

COMPLIANCE AND EFFECTIVENESS OF FARMWORKER PROTECTIONS UNKNOWN

Enacting legal standards and regulations alone do not guarantee fair employment practices and workplace safety for farmworkers. Proper investigation and monitoring systems for farm labor and accompanying compliance data are necessary to determine whether farmworker protections are effective or adequate in keeping workers healthy and safe. Given the lack of regulatory data available, it would appear that most federal and state regulations that protect farmworkers are rarely monitored or enforced (e.g., child labor regulations, minimum wage provisions).

Because farmworker protections are not systematically monitored, most unfair and unsafe employment practices remain unreported and undocumented. This is confirmed by the many regulatory and oversight agency employees who emphasize that farm labor and safety violations are rampant. Farmworkers, growers, and third-party employers likely do not report incidents because there is no incentive to do so. Farmworkers may be fearful of retaliation, lack awareness about how to pursue a complaint, face language and literacy barriers in pursuing a complaint, and/or lack information on the scope of their rights. Growers and contractors are deterred from self-reporting workplace violations and accidents since they would likely draw increased regulatory oversight and/or fines.

Regulatory agencies and bodies may be constrained in monitoring and reporting known farmworker problems because of limited agency resources and the level of documentation required to definitively demonstrate violations have occurred. Studies¹ also reveal that in order to improve perceptions of enforcement and departmental effectiveness, some investigators (e.g., DOL Wage and Hour Division) do not record every complaint. It is likely that farmworker data are skewed toward farms with the best conditions (i.e., those with documented, skilled, permanent, directly hired employees) and may underrepresent farms with less favorable conditions (i.e., those with unauthorized, less skilled, seasonal, contract employees).

¹ Government Accountability Office, [“Wage and Hour Division’s Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft.”](#) No. GAO-09-458T March 25, 2009.

There is also a lack of coordination among regulatory bodies charged with preventing and investigating farm labor abuses. Existing state and federal farmworker statutes are subject to specialized and often inconsistent monitoring, reporting, and record keeping practices. In the area of pesticide oversight, some states have multiple departments that handle application and exposure issues (e.g., Washington State Department of Health, Washington State Department of Agriculture, Washington State Department of Ecology, etc.) and are without a central agency responsible for collecting, standardizing, and reporting state-level data. Thus, data on pesticide exposures and accidents (e.g., California had 126, Florida had 2) may better describe the success of regulatory and tracking criteria and procedures than the actual number of pesticide events within the states.

Some state oversight bodies (e.g., in Washington) have been eliminated for budgetary reasons, leaving agencies charged with enforcing compliance no longer reporting on regulatory outcomes. This also means that it is nearly impossible to compare enforcement and compliance rates of farmworker protections across states, which, in many cases, have not only different applicable state regulations but also different monitoring and record-keeping standards. As a result, analyses of existing regulatory data are not useful for tracking the extent of compliance with existing agricultural protections or employment abuses.

Effective enforcement of standards requires frequent, ongoing oversight, and greater commitment by regulatory agencies to monitor and remedy farmworker-related violations. Monitoring farmworker employment sites and the enforcement of fair and safe employment practices is certainly no simple task for the regulatory agencies charged. As a point of comparison, there are the same number of crop farmworkers in the U.S. as Walmart employees (1.4 million). While crop farmworkers are employed on about 576,000 crop farms (which includes the 70,000 farms with 11 or more hired employees), Walmart employees work in only about 4,300 facilities.¹ In addition to taking place in many geographic locations, farm work is generally located in rural, less accessible areas, both of which pose further challenges in monitoring and enforcement. With little regulatory oversight and almost no data that indicates compliance rates, agricultural employers remain unaccountable to basic health and safety standards.

A POPULATION VULNERABLE TO ABUSES AND EXPLOITATION

The lack of regulatory oversight and enforcement not only leaves employers unaccountable to basic health and safety standards but also leaves farmworkers vulnerable and invisible to the public eye. Recent reviews of the Department of Labor and other regulatory agencies by the U.S. Government Accountability Office confirm the links between lack of inspections, low enforcement, and poor compliance when it comes to farmworker protections.² Without employer accountability,

¹ [Corporate Facts: Walmart by the Numbers](#), last accessed November 25, 2010.

² Government Accountability Office, [“Better Use of Available Resources and Consistent Reporting Could Improve Compliance,”](#) no. GAO-08-962T, July 15, 2008.

Government Accountability Office, [“Wage and Hour Division’s Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft.”](#) No. GAO-09-458T March 25, 2009.

farmworkers may be subject to exploitation and substandard working conditions while, at the same time, employers who are non-compliant secure economic advantages over those who do comply. Further, the absence of information about prevailing farm employment practices may give the false perception that there exist no issues in need of public attention.

Despite the lack of regulatory data on farmworker conditions and employer compliance, other sources of information make clear that employment-related problems are widespread for farmworkers. While, as in any industry, employment conditions vary greatly from employer to employer, NAWs data suggest that U.S. farmworkers are on the whole a marginalized population. Almost all farmworkers are unemployed at least part of the year, few are fluent in English, and about half of all farmworkers lack legal status. Farmworkers subsist on very small incomes and have little — if any — leverage to demand improved terms and conditions with their employers.

Further, legal advocates report wage and hour issues, low quality of farmworker housing, sexual harassment, and low health and safety standards as common concerns. Recent studies also confirm a frequency and severity of farmworker abuses and unsafe working conditions almost unheard of in other employment sectors.¹ In some situations, substandard farmworker conditions have escalated into human rights abuses such as labor trafficking that are severe enough to be considered modern-day slavery. Recently, with help from the Coalition of Immokalee Workers, there have been six Department of Justice prosecutions.²

Analyses of available data also show differences between hired and contract farmworkers, suggesting that contract workers are more susceptible to abuse. Demographically, nearly all contract workers are unauthorized employees, relative newcomers to the United States, and have very low levels of education and English skills. In terms of employment characteristics, contract workers are more likely than hired workers to be follow-the-crop migrants and unemployed for more days during each year. Contract workers also consistently receive lower wages, have lower overall family income, and are more likely to use *raiteros* (people who transport farmworkers to the fields for a fee) to get to work (and thus pay more for transportation in potentially unsafe vehicles). Contract workers are also more likely to have spouses employed in farm work (indicating that the family lacks alternative incomes to farm work) than hired farmworkers. While non-compliance with employment contracts (e.g., unpaid proper wages, forced labor) may be experienced by any farmworker, according to state advocates, it is most commonly experienced by contract workers. There are large numbers of unregistered farm labor contractors operating illegally in the United States and relatively few resources or investigations dedicated to uncovering these operations.

1 e.g., [Injustice on Our Plates: Immigrant Women in the U.S. Food Industry; Like Machines in the Fields; Weeding out Abuses](#)

2 “Slavery in the Fields” ([PDF](#)), Coalition of Immokalee Workers website.

HELPING FARMWORKERS THROUGH GREATER PUBLIC AWARENESS: CREATING A DEMAND FOR ACCOUNTABILITY IN THE FOOD SYSTEM

This Inventory makes evident that farmworkers face marginal earnings, economic uncertainty, and harsh and sometimes exploitative working conditions. Ignoring the conditions of farmworkers within the food system under the mistaken assumption that “no data means no problem” is unacceptable. Clearly, farmworker conditions may be improved via stronger legal protections, increased monitoring, greater enforcement activity, and more compliant employers. However, incentives for these types of top-down reforms do not currently exist.

The goal of this document’s sponsors is to create incentives throughout the food system to improve farmworker conditions. The first steps are to increase public and industry awareness of the problem, and to encourage interest among consumers in buying food that has been produced through fair and safe farmworker labor.

Demand from well-informed consumers and socially responsible businesses for food grown under safe and fair practices requires transparency. Increasing transparency in the food system can promote evenhanded and effective monitoring of relevant laws and regulations, increase employer accountability, level the playing field among businesses, and ultimately improve farm workplace conditions.

This Inventory is a first step toward building awareness of the working conditions of U.S. farmworkers, as well as a broad, empirical foundation for making information more accessible to the general public and food industry stakeholders. We recognize that simply collecting more data will not by itself directly translate into greater protections for farmworkers. However, we consider it a useful starting point for the layperson who wants to better understand the U.S. food production system. Also, consistent with previous analyses (e.g., federal post-IRCA Commission on Agricultural Workers report to Congress, 1992; Truman report, 1950), Inventory survey findings increase fact-based evidence and public and industry awareness about farm work in the U.S. and can initiate change in consumer and business behavior. As a contribution toward subsequent dialog and systematic exploration of key issues, we broadly outline our future vision for greater public awareness about farm work in the U.S.

1. Highlight the role of farmworkers in the U.S. food system through existing data

The important role of farmworkers in the U.S. agricultural production system is little known to the general public, including consumers and other food-industry stakeholders. It is important to make this information more accessible while at the same time underscoring ways in which the working environment of farmworkers differs from that of mainstream America (i.e., farmworkers have unequal protections, earn very little, are vulnerable to abuses and exploitation, work under little oversight and regulation).

2. Translate existing farmworker data into accessible and meaningful formats

The information presented in this Inventory can be translated into accessible and useful formats for the public. For example, visual graphs or interactive websites explaining farmworker demographic data would be one way to make data more easily accessible and understandable. Charts and tables with farmworker protections across states could also be visually presented to illustrate variations across states. Likewise, compiling regulatory and enforcement data could highlight differences among states as well as the general lack of available compliance data.

3. Provide greater consumer choice through local-level data

The overall lack of disaggregated compliance data keeps both bad and good practices hidden: the exploitative, abusive, and non-compliant farms, as well as fair, respectful, and compliant operations. Currently, there is a data deficit that reflects a low demand for farmworker employment accountability within the U.S. food system. Much of the regulatory data are reported in aggregated totals or at the state level. Generating more locally relevant farmworker demographic and regulatory data presents both technical and political challenges but could also be effective. NAWs data, for example, are based on a representative sample that could yield information on conditions down to sub-regions of states, if the sample size were large enough. However, cost was an issue in obtaining larger sample sizes.

Generating information about conditions at the ‘point of purchase’ is a longer-term goal that will require creative solutions. It is sometimes argued that industry practices reflect the realities of consumer demand, and there is evidence that fair treatment of workers working in labor-intensive sectors of agriculture would have a negligible impact on the food costs of the typical American family. At any rate, consumers are increasingly willing to pay for overall better “quality” in the production and distribution of food.

4. Promote greater accountability in the food-system through consumer choice

Linking the current conditions of U.S. farm labor with data on food and products purchased by consumers can generate greater public interest that will have the potential to foster the fair and safe treatment of farmworkers. Consumers are becoming increasingly concerned about where their food comes from, how it is produced, and the moral consequences of current system functioning. Consumer demand can encourage the entire food supply chain – growers, regulatory agencies, produce distributors, food service outlets, and commercial vendors – to demonstrate a greater degree of accountability. 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 with “organic,” “locally grown,” “animal-welfare,” “food safety,” and “fair trade.”

5. Foster cross-sector collaboration

Since the sources of current farmworker issues cross sectors, so does the responsibility for change. Change will require significant cross-sector cooperation to ensure that food is produced with fair and safe labor practices. Collaborative efforts across sectors have proven successful in recent fair labor agreements between tomato employers (i.e., growers), purchasers (i.e., restaurant companies), and farmworker advocates (i.e., Coalition of Immokalee Workers). This Inventory represents a collaborative effort between the United Farm Workers and the Bon Appétit Management Company Foundation, with the support of Oxfam America, and has relied on resources drawn

from diverse and nontraditional sectors of the food system to bring information on farmworker protections and issues to the public and food industry stakeholders. It is our intention to continue this collaborative approach and invite other organizations, businesses, advocates, growers, and other agricultural employers, regulatory agencies, academics, and food enthusiasts to join our efforts to promote greater public and industry awareness, food system transparency, and ultimately, accountability for safe and fair employment conditions for U.S. farmworkers.

APPENDIX I: TECHNICAL NOTES

“NO DATA, NO PROBLEM”

There is no official estimate of the total number of U.S. crop farmworkers; however 1.4 million is the accepted number by DOL. The estimate was provided by Daniel Carroll, of NAWS and calculated using data from the 2007 Agricultural Census and NAWS and the methodology as detailed in [Martin, P. \(2009\). AgJOBS: Provisions, Eligibility. Rural Migration News, July 2009, Vol. 15, No. 3](#). This estimate includes farmworkers directly hired by growers and farmworkers who work on crop farms but are employed by farm labor contractors. This total does not include farmworkers who were granted H-2A Visas.

The USDA defines a **FARM** as “A place that sells, or would normally sell, at least \$1,000 worth of agricultural products during the year. A **HIRED WORKER** is considered “Anyone, other than an agricultural service worker, who was paid for at least one hour of agricultural work on a farm. Hired farm labor can include regular workers, part-time workers, and members of the operator’s family if they received payments for labor. Contract labor is tracked through farm expense (as opposed to the number of individuals who actually work on the farm) and a **CONTRACT WORKER** is defined as “paid by a crew leader, contractor, buyer, processor, cooperative, or other person who has an oral or written agreement with a farmer.”

H-2A FOREIGN WORKERS: Three separate agencies track H-2A visas and workers, but each of them count workers in the H-2A program using different methods, and each have deficiencies when it comes to providing an accurate count of H-2A workers. With regard to the [DOL OFLC](#) data, the number of workers certified does not actually represent the number of workers brought into the country, because some employers may choose not to bring in all of the workers certified, or may bring in more than the number of workers certified if some workers leave before the season is over. The [State Department](#) also tracks H-2A visas and counts the number of visas issued; however, the State Department numbers seem to undercount the number of H-2A visas due to several reasons, including that consulates in some countries do not issue formal H-2A visas. Finally, **U.S. Citizenship and Immigration Services** also independently count H-2A visas by counting visa holders entering the country, though that number is typically an over-count because it includes the same person’s multiple entries in a season (common for H-2A holders along the southern border) as multiple H-2A “entries” and this is often misunderstood as additional “people” or “visas.”

I. Minimum Wage and Hour Standards

FEDERAL: FLSA exempts agricultural employees from the overtime requirement. [Small farms](#) are also exempt from minimum wage and overtime when they employ fewer than the equivalent of approximately seven full-time workers. Additional farmworkers who are exempt from minimum wage and overtime include: those who are immediate family members of the grower; local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations, and were engaged in agriculture fewer than 13 weeks during the preceding calendar year; and non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent, and paid the same piece rate as those over 16. FLSA does not address mandatory rest or meal periods. The Wage and Hour Division of the DOL provides a comparison between state wage and hour requirements for **minimum wage**, **paid rest periods**, and **meal periods**.

CALIFORNIA: State minimum wage laws cover agricultural workers, and also require time-and-one-half premium pay for overtime work, defined in agriculture as working more than 10 hours in a day or 60 hours per week [CAL. CODE REGS. Tit. 8, § 11140(3) 2010]. Mandatory double-time pay is required for more than 12 hours of work in a day or over eight hours on 7th day. Paid 10-minute rest periods for each four hours worked or major fraction thereof, as practicable, in the middle of each work period are also required. (However, they are not required for employees whose total daily work time is less than three and a half hours). Mandatory meal periods also apply to agricultural workers after five hours, except when the workday will be completed in six hours or less and there is mutual employer/employee consent to waive the meal period.

FLORIDA: FLSA requirements and exceptions apply only to agricultural workers in Florida. Florida's minimum wage is currently the same rate as federal law, but this may change. The Florida minimum wage is adjusted annually based on inflation and was higher than the federal level for several years until the recent federal increase to \$7.25 per hour. Further, the Florida state minimum wage law has more effective collection mechanisms than the FLSA [FLA. Const. Art. X, §Section 24(e)].

NORTH CAROLINA: With respect to minimum wage and overtime, the FLSA requirements and exceptions apply to agricultural workers in North Carolina.

OREGON: In Oregon, only workers engaged in agricultural employment for 100 percent of the workweek are exempt from overtime. There are also **exceptions to the minimum wage** for small farms and certain types of farmworkers. Small farms are exempt if they did not employ more than 500 piece rate work days in any calendar quarter of the preceding calendar year, and hand harvesters and prune harvesters who are paid on a piece rate basis are exempt from minimum wage for the entire following year. Hand harvesters who commute daily from their permanent residence, regardless of age, are exempt from minimum wage if they are paid on a piece rate basis and if they have been employed in agriculture fewer than 13 weeks in the previous calendar year. Oregon has both **mandatory rest and meal periods** for farmworkers.

TEXAS: The Texas Minimum Wage Act is intended to guarantee at least minimum wage through piece rates “for harvesters of average ability and diligence while allowing harvesters to earn more by producing more.” **Piece rates for agricultural commodities can be established by the Commissioner of Agriculture.** A procedure for contesting an established piece rate is also established through the Act. The federal minimum wage requirements still apply regardless of the piece rate.

WASHINGTON: The Washington Minimum Wage Act is adjusted annually based on increases in the cost of living. Some agricultural employees are exempt from the minimum wage requirement in Washington: these include individuals who are employed as hand harvest pieceworkers in the region of employment, and who commute daily from their permanent residence to the farm upon which they are employed and who have been employed in agriculture less than 13 weeks during the preceding calendar year. Agricultural employees are exempt from overtime pay. All of the elements must be met in order for the exemption to apply. Washington also has **mandatory 30-minute meal breaks** for farmworkers employed more than five hours (those working 11 or more hours should be allowed at least one additional 30-minute meal period). Farmworkers are entitled to **paid rest periods** of at least 10 minutes in each four-hour period of employment. The WA Department of Labor and Industries issues this **publication** to agricultural employers regarding applicable labor laws and regulations.

WAGES: Farmworker wages are typically paid through three different methods that can influence the total weekly income a farmworker earns. Hired farmworkers can be paid an hourly wage directly by the growers. While this method is the most recognized, this type of wage does not always include the total amount of time spent traveling to the work sites or waiting at the worksite while crops are sprayed, or fields dry, or access is restricted for any reason. Farmworkers can also be paid a piece rate, by being paid a set amount of money for one unit of work – for example, picking a set quantity of fruit (a box of oranges or a bucket of tomatoes). An hourly rate of pay for a farmworker can be calculated by dividing the total weekly earnings by the total number of hours worked in that week. The amount of money earned for piece rate work is variable and not only dependent upon the skill and motivation of the farmworker, but also can be dramatically affected by weather and the type of crop being harvested. The final method of payment is through a set weekly or monthly wage, which is usually paid by farm labor contractors and may include deductions for the cost of transportation and housing or other expenses.

II. Labor Protections for Children and Youth Farmworkers

The [New York Times](#) reported in June 2010 that the Obama administration has opened a broad campaign to crackdown on growers who hire children and underpay workers. This initiative, which is intended to enforce existing wage and hour laws for children in agriculture includes hiring more investigators and raising fines for violations. Another development in child labor protections is the proposed Roybal-Allard bill, the Children’s Act for Responsible Employment (CARE) (HR 3564) which attempts to repeal agricultural exemptions in existing child labor laws so that protections for child workers in agriculture are aligned with other employment sectors. Proposed modifications include prohibiting the employment of children ages 13 and younger in agriculture, raising the minimum age for particularly hazardous jobs in agriculture from 16 to 18, and increasing the maximum amount of civil money penalties. The latest status of the bill [can be tracked here](#).

FEDERAL: (*) Children outside of school who have reached the age of 12 can work with written parental consent or on a farm where a parent is employed. Children under 12 can work with written parental consent on farms exempt from Federal minimum wage provisions. Further detail about federal child labor laws can be found in DOL’s [Child Labor Requirements In Agricultural Occupations Under the Fair Labor Standards Act](#) (Child Labor Bulletin 102). Agricultural exceptions to the Fair Labor Standards Act (Id. § 213(c)(1)) [can be found here](#).

CALIFORNIA: A full summary of California child labor laws can be found [here](#).

FLORIDA: A full summary of Florida child labor laws can be found [here](#).

OREGON: A full summary of Oregon child labor laws can be found [here](#).

WASHINGTON: A full summary of Washington child labor laws can be found [here](#).

III. Farm Labor Contractors

FEDERAL: The DOL publishes a [current listing of all registered farm labor contractors](#) in addition to a list of those FLCs who have been debarred. Based upon the listing updated May 2010, the estimated number of licensed farm labor contractors was 8,180. The listing includes all active certifications, and in some cases the same contractor has overlapping certifications. Duplicate contractors were filtered out as thoroughly as possible based upon address and similar name. (In some cases individual FLCs with the same address (e.g., spouses) may have been filtered.) However, when compared with the official 2009 total of 5354 provided by the DOL, these numbers seem to be elevated and an unreliable source to use to track the total number of FLCs.

CALIFORNIA: California Department of Industrial Relations publishes a listing of current FLCs in their [Farm Labor Contractor License Database](#).

FLORIDA: The Florida Department of Business and Professional Regulation allows for web users to [search for a licensed FLC based on various criteria](#).

OREGON: The Oregon Bureau of Labor and Industries [publishes a list of licensed FLCs on their website](#).

WASHINGTON: The Washington State Department Labor and Industries [publishes a list of licensed FLCs on their website](#).

IV. Housing & Transportation

FEDERAL: [DOL Factsheet on Transportation under the Agricultural Worker Protection Act](#).

NORTH CAROLINA: Relevant notes from NC Legal Aid, Mary Hall: “There is no statute which specifically gives farm workers tenancy rights in NC. Our state landlord-tenant act doesn’t either say they are covered or not. However, there is a line of cases and an attorney general’s opinion, which, essentially, make this the law in NC... This issue always arises for us in the context of the workers’ right to have visitors of their choosing (i.e., NC Legal Aid) in their labor camp homes. Pre-occupancy inspections for housing for migrant farm workers are required, both under federal law (29 U.S.C 1823(b)(1) and state law NCGS 95-226(a).”

OREGON: Oregon publishes their [state-based OSHA regulation statistics for farmworker housing](#). The top three violations were ‘living areas for agricultural labor housing’ (68), ‘requirements for labor housing’ (32) and ‘laundry of labor housing’ (27). Penalties charged for these three categories of violations were \$3,170. A summary of [Oregon farmworker housing regulations can be found here](#).

WASHINGTON: Lori Jordan Isley of Columbia Legal Services provides a summary of farm housing requirements in Washington: “In *State v. Fox*, 82 Wn.2d 289, 510 P.2d 230 (1973), the Washington Supreme Court found that residents of labor camps are tenants and therefore had the right to invite visitors onto the premises, including labor organizers and attorneys. Even farm workers who do not pay rent are likely tenants at will. See *Turner v. White*, 20 Wn. App. 290, 292 (1978) (individual employed by landlord and allowed to live rent-free on the landlord’s property as part of his compensation was a tenant at will); *Najewitz v. Seattle*, 21 Wn.2d 656 (1944) (watchman and caretaker of a gravel pit who did not pay rent and who resided on the property for an indefinite term was a tenant at will); *State v. Brumfield*, No. 22169-1-II, 1998 WL 839035 (Wash. Ct. App., December 4, 1998) (unpublished) (a person who was allowed to live rent-free in a friend’s trailer was considered a tenant at will); see also *Bedolla v. Lyons*, E.D. Wash. No. CS-99-0148-FVS (1999) (settlement agreement stipulated that the county sheriff adopt a policy recognizing farm workers living in employer-provided housing who did not pay rent as tenants at will). In all tenancies in Washington there is an implied covenant of quiet enjoyment of the leased premises. *Wash. Chocolate Co. v. Kent*, 28 Wn.2d 448, 452 (1947). As part of the right of quiet enjoyment, all tenants in Washington have the right to invite visitors onto the leased premises. *City of Bremerton v. Widell*, 146 Wn.2d 561, 570-71 (2002) (reaffirmed *Fox* and found “a tenant’s invitation to a guest will overcome an objection by a public or private landlord that the same guest is prohibited from entering the common areas of the leased premises”). Residents of labor camps are not covered by the Residential Landlord-Tenant Act. RCW 59.18.040 (occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises are exempt).

V. Unemployment Insurance

FEDERAL: The DOL publication [Comparison of State Unemployment Insurance Laws](#) (p. 1-4) details how UI requirements relate to contract labor. “FUTA’s agricultural labor provisions apply to employers who paid wages in cash of \$20,000 or more for agricultural labor in any calendar quarter in the current or preceding calendar year, or who employed 10 or more workers on at least one day in each of 20 different weeks in the current or immediately preceding calendar year. Most states have followed the FUTA provision and, therefore, have limited coverage to service performed on large farms. A few states cover services on smaller farms. The FUTA established a special rule for determining who will be treated as the employer, and therefore, liable for the FUTA tax, in the case of agricultural workers who are members of a crew furnished by a crew leader to perform services in agricultural labor for a farm operator. Workers who are members of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator are treated as employees of the crew leader if the leader is registered under the Migrant and Seasonal Agricultural Protection Act, or if substantially all of the members of the crew operate or maintain mechanized equipment furnished by a crew leader. A member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator will not be treated as an employee of the crew leader if the individual is an employee of the farm operator within the meaning of the state law. Conversely, any worker who is furnished by a crew leader to perform service in agricultural labor for a farm operator but who is not treated as an employee of the crew leader is treated as an employee of the farm operator. This special rule is intended to resolve any question as to whether an individual’s employer is the farm operator or crew leader. The same size-of-firm coverage provisions (10 in 20 weeks or \$20,000 in a calendar quarter) apply to a crew leader as to a farm operator.”

VI. Collective Bargaining

FEDERAL: The National Labor Relations Act (NLRA) protects the collective bargaining rights of American workers but expressly excludes agricultural workers.

CALIFORNIA: The California Agricultural Labor Relations Act was the first law put in place to protect the right of farmworkers to collectively bargain. The Act is administered by the California Agricultural Labor Relations Board (ALRB) and requires growers to enter into good faith negotiations with a union of workers’ choosing. The California code differs from the NLRA in that agricultural workers may use secondary boycotts (organized refusal to purchase the products of, but do business with, or perform services (such as deliver goods) for a company that is doing business with another company where the employees are on strike or a labor dispute).

FLORIDA: Greg Schell, Managing Attorney of the Migrant Farmworker Justice Project, commented: “The Florida State Constitution, through its Right to Work Section, appears to guarantee a right to collectively bargain. The big legal question is whether a private party (including agricultural workers) may invoke and enforce this provision.”

NORTH CAROLINA & OREGON: There are no collective bargaining protections for farmworkers in these states.

TEXAS: Agricultural workers, like all employees in Texas, have a right to organize and bargain collectively. Employers are required to collectively bargain with a union representing the majority of workers. However, Texas is a right-to-work state, which means that workers are not required to

join a union and growers cannot require union membership as a condition of employment. A grower is not obligated to bargain with a union representing a minority of the workers where a majority of the workers are not unionized.

WASHINGTON: In *Kystad v Lau* (65 Wn.2nd, 827) the Washington Supreme Court held that workers excluded from the National Labor Relations Act had a right to organize free from employer restraint, interference or coercion under the state's little Norris-LaGuardia Act (RCW 49.32.020). Later cases held that farmworkers were included under the *Krystad* decision. However, the employer does not have to recognize a union chosen by employees or engage in collective bargaining.

VII. Farmworkers in Forced Labor

FLORIDA: [The Coalition of Immokalee Workers](#) reported that there were eight cases of forced labor in Florida between 1997-2010.

NORTH CAROLINA: "There were no cases reported in North Carolina during the past five years. There were 8-10 in the early 1980s as prosecuted by the U.S. DOJ" (Mary Lee Hall, Managing Attorney of Farmworker Unit, Legal Aid North Carolina, via email July 6, 2010).

TEXAS: "In Texas, counties are constitutionally charged with venue over misdemeanor and felony conviction records. We have 254 of them and because of the constitutional mandate, no centralized repository for that exists." (K. Nicolas, Texas Office of the Governor, Dept of Public Safety via email.)

WASHINGTON: [Columbia Legal Aid](#) noted recent cases of forced labor in Washington: "There have been at least three individual cases arising from forced labor situations in Eastern Washington which have led to the individuals seeking T-Visas based on their employment situation. Two of the visas have been approved; one is pending. Both cases involved multiple other workers being subjected to the same conditions by the employer or contractor. There was another situation involving a different employer where the ongoing pattern of failure to pay wages and seriously sub-standard housing also presented a likely forced labor situation involving another group of farm workers. A task force has recently formed in the Yakima Valley to improve and coordinate resources for victims of human trafficking, including forced labor."

VIII. Worker's Compensation

FEDERAL: There are no workers' compensation protections at the federal level and each state sets its own standards and rules. When a covered worker suffers a job-related injury or illness, she can receive medical benefits and/or a portion of her lost wages, if she files a workers' compensation claim and that claim is approved.

FLORIDA: Employers do not have to provide [workers' compensation](#) if they have five or fewer regular employees and fewer than 12 other employees at one time for seasonal agricultural labor that is completed in less than 30 days, as long as such seasonal employment does not exceed 45 days in the same calendar year. Databases related to workers compensation coverage and claims are accessible through [the Division of Workers' Compensation website](#).

NORTH CAROLINA: Employers are exempt from the [workers' compensation requirements](#) if they have less than 10 full-time nonseasonal farm laborers or three or fewer employees. Searchable

databases related to workers' compensation can be found on the [North Carolina Industrial Commission's website](#).

OREGON: All employers must have workers' compensation coverage for employees. Information regarding workers' compensation in Oregon can be found on the [Workers' Compensation Division website](#).

TEXAS: Employers who choose not to maintain coverage must notify the Texas Department of Insurance's Division of Workers' Compensation and their employees that they do not intend to maintain workers' compensation insurance. The Texas Workers' Compensation Act created more insurance options for employers, including self-insurance for large employers who meet established criteria and are certified by the Division.

WASHINGTON: Washington provides a [list of self-insured employers](#) on its website. Data regarding worker's compensation claims and injuries in Washington can be [found here](#).

IX. OSHA Inspections and Violations

The number of OSHA inspections were found through the [DOL/OSHA website](#) query "Search Inspections by SIC," using the search criteria [SIC = 01], [Dates 1/1/09 – 12/31/09], Includes both partial and complete inspections, Number of inspections by Standard Industrial Classification (SIC) Code = 01 (Agricultural Production Crops). Last accessed August 25, 2010.

The top five violations were found through [DOL/OSHA website query](#) for **Frequently Cited OSHA Standards** using the search criteria "[number of employees = all]; [SIC CODE = 01]; [OSHA Offices = All]; [Other Options = Private and Comprehensive or Partial]," last accessed August 25, 2010. The two codes with an asterisk (*) appeared to be inaccurately recorded (30700030 and 30700033) on the Federal site; it was assumed that these are likely standards given the number sequences.



X. Heat Stress

Additional occupational heat illness and fatality information can be found on the OSHA website. A search on the OSHA websites [Fatality and Catastrophe Investigation Summaries](#) with the term “heat” using the SIC Code for crop farming (01) resulted in 28 cases of heat injury in crop farmworkers between Aug 2002–August 2007 (21 of which resulted in a fatality). An example of a heat-related accident ([306359100](#)) that occurred is the following:

On July 13, 2005, Employee #1 was manually harvesting bell peppers from an open field and placing them onto a conveyer belt system. He felt ill and walked away from the field before the end of his shift. A coworker driving by saw Employee #1 sitting at the roadside crouched down and physically shaking. He stopped to help, and he moved Employee #1 nearer to an area with more shade and the portable toilets. Then, he contacted the foreman. The foreman contacted another coworker, who then called for emergency medical services. An ambulance arrived to transport Employee #1, but he died on the way to the hospital. At the time of the incident, the temperature was above 104 degrees F. It is not specified whether this is the air temperature or not. The coroner determined that Employee #1 died from hyperthermia.

FEDERAL: OSHA does not have a specific regulation covering heat stress standards, but their website identifies the general protections of: **Section 5(a)(1)** of the OSH act, often referred to as the General Duty Clause, requiring requiring employers to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” **Section 5(a)(2)** requires employers to “comply with occupational safety and health standards promulgated under this Act.”

CALIFORNIA: California employers are required to train all employees and supervisors about heat illness prevention; provide and encourage each employee to drink at least one quart per hour of fresh water; provide shade access for at least five minutes of rest when an employee believes he or she needs a preventative recovery period; develop written procedures for complying with the Cal/OSHA Heat Illness Prevention Standard.

FLORIDA & TEXAS: These states do not have any laws or regulations that specifically address heat stress.

NORTH CAROLINA: There are no OSHA or North Carolina occupational safety and health standards for heat stress. Heat stress hazards are cited using N.C. General Statute 95-129(1) commonly referred to as the “General Duty Clause.”

OREGON: Employers with hand-labor operations in the field are required to notify each employee of the location of the sanitation facilities and water and allow each employee reasonable opportunities during the workday to use them. The employer must also inform each employee of the importance of good hygiene practices to minimize exposure to the hazards in the field including heat.

WASHINGTON: Washington’s Department of Labor and Industries (L&I) issued a rule in 2007 requiring employers with employees who work outdoors to: 1. Train employees and supervisors to recognize heat-related illness and what to do if someone has symptoms. 2. On days when temperatures require preventative measures, increase the volume of water available to employees. 3. Have the ability to appropriately respond to any employee with symptoms of illness.

XI. Pesticide Safety and Regulations

FEDERAL: Inspection totals include all agriculture and are not limited to crop farms. Inspections must meet the EPA's criteria for a WPS inspection. Totals include both Title I inspections (time period between pesticide applications until 30 days after expiration of the REI) and Title II inspections (beyond 30 days after expiration of the REI). Full criteria for WPS inspection and violations can be found in the [EPA WPS Agricultural Inspection Guidance](#). The Guidance also makes a relevant point that potential language barriers between inspectors and workers/handlers may serve as the sole explanation for not conducting interviews during routine inspections. However, "Language barrier is not acceptable as a reason for not conducting an employee interview during For-Cause inspections when the employee is the complainant." This is significant when considering that two-thirds of farmworkers speak no or only a little English. (FY2005 [WPS Inspection and Enforcement Accomplishment Report](#), Office of Compliance (March 2006), last accessed August 23, 2010).

Pesticide Exposure data is aggregated and tracked by NIOSH and reported in the [SENSOR-Pesticides Database](#), last accessed September 20, 2010. The website notes: "Survey data from 1998-2006 were obtained from the 11 states (AZ, CA, FL, IA, LA, MI, NM, NY, OR, TX, and WA) that conducted acute occupational pesticide-related illness surveillance as part of the SENSOR program during those years." The database uses standardized case definitions among the 11 states.

CALIFORNIA: California Department of Pesticide Monitoring makes a distinction between Field Worker Safety and other types of agriculture-related violations such as pesticide application violations. See the [full report](#) for specific break-downs. California requires a Qualified Applicator Certificate for those who "apply or supervise the application of federally restricted use pesticides or state restricted materials for any purpose or on any property other than that provided by the definition of private applicator." (Title 3 of California Code of Regulations [3 CCR], Code section 6000). (Pesticide Use Enforcement Statewide Statistical Profile ([PDF](#)); August 2009), last accessed August 22, 2010).

Exposure total includes agricultural field workers only. "Fifty-eight of them (46%) involved exposure to pesticide residue in 33 separate episodes, and 66 (52%) involved exposure in eight drift episodes. One field worker became ill after drinking potentially contaminated water. A greenhouse worker's exposure could not be characterized with confidence." (Summary of Results from the California Pesticide Illness Surveillance Program - 2007 ([PDF](#)), CA EPA, Department of Pesticide Regulation, Worker Health and Safety Branch, HS-1876, p. 11, last accessed September 20, 2010).

FLORIDA: Totals include all agricultural inspections and are not limited to crop farms. "WPS Activities Summary - Total July 1, 2008 Thru June 30, 2009" document provided by Pesticide Compliance Section, FL Bureau of Compliance Monitoring, Bruce Nicely to Bon Appétit Management Company Foundation. The greatest number of violations was in the categories of Central Posting (42%), Safety Training (33%) and Safety Equipment (10%). Total includes all farms, forestry, greenhouse and other categories. Totals from previous years include: FY07, 478; FY06, 509; and FY05, 358.

Data include category of "Farmworker" in Cases of Harmful Pesticide Exposures by Occupation and Classification. (Florida Department of Health, Pesticide Exposure Surveillance Program, ([PDF](#)) last accessed September 20, 2010).

NORTH CAROLINA: Totals include all pesticide-related inspections and are not limited to crop farms or other agricultural applications. Summary report also notes that there were 16,567 Certified Private Pesticide Applicators. Pesticide exposure data were obtained through a request to NC Occupational Surveillance Department, DPH for the Farming, Fishing, and Forestry occupations. Representative noted that these numbers were most likely an underestimate of the total number of exposures. (Pesticide Report for 2008, North Carolina Department of Agriculture and Consumer Services ([PDF](#)), last accessed August 24, 2010).

Injuries are from 2007-2009 and include cases from the following agricultural occupations within the category of Agriculture, Forestry, Fishing & Hunting: farm supervisor (1), farm operators (7), and farm laborers (26). Data were provided via email by Sheila Higgins, Occupational Surveillance, North Carolina Department of Health to Bon Appétit Management Company Foundation, July 30, 2010.

OREGON: Oregon's Workers Protection Standards are managed through the OSHA department. Posted compliance data are limited to top violations related to OSHA inspections and are not limited to pesticide violations (e.g., include housing and other health and safety violations). Agriculture is classified as NAICS 111*, 112*, 1151*, and 1152* in these statistics. Top 25 Standards Violated: Standards Cited During Oregon OSHA Inspections Opened in Calendar Year 2009, Report PF8060 ([PDF](#)), last accessed August 23, 2008.

Total cases are from farm/nursery occupational exposures; crop and livestock farms are not distinguished. Pesticide Analytical and Response Center, July 2006-June 2007 Legislative Report ([PDF](#)), p. 13, last accessed September 18, 2010.

TEXAS: Data were provided via email by the Public Information Office of the Texas Department of Agriculture to Bon Appétit Management Company Foundation (August 5, 2010). Data are from the department's agricultural pesticide program exclusively and include all types of farms. Other notations regarding the provided data include: "Violations of the agricultural pesticide laws are not official until an order is issued by the agency finding that a violation occurred. Furthermore, we do not track date of violation occurrence in a manner that would readily allow for counting on that basis. Therefore, counts are based on the order date for agricultural violations - e.g., a complaint filed in 2008 concerning an event in that same year and for which a 2010 order is issued would be a part of the 2010 violation count, even though the violation actually occurred in 2008." Violations for previous years include: 2007, 98; 2006, 105; and 2005, 92.

The lack of available data regarding the regulatory activities of the Texas Department of Agricultural was addressed in a recent [Sunset Commissions review of the Department](#) and it concluded that "key elements of TDA's licensing and regulatory functions do not conform to commonly applied licensing practices." It specifically noted that "TDA currently does not perform trend analysis of complaints or violations, and cannot track a complaint through to its disposition. As a result, TDA misses out on a tool for identifying regulatory problem areas, and for better understanding areas."

Total cases in 2009 include the categories Farm Event (8) and Nursery (14). Previous years totals from these same categories are 2008 (35); 2007 (26 including one from Greenhouse); and 2006 (27). Totals do not include the category Livestock Production; however, type of farm in the "Farm Event" category is not specified. Data were provided via email by the Environmental & Injury Epidemiology & Toxicology Unit, Occupational Health Surveillance/Pesticide Exposure Surveillance Programs,

Texas Department of State Health Services to Bon Appétit Management Company Foundation (August 12, 2010).

WASHINGTON: Washington has released its pesticide regulatory and incident data in a multi-agency publication: **Pesticide Incident Reporting and Tracking Review Panel: 2009 Annual Report (PDF)**, Pesticide Incident Reporting and Tracking Review Panel (April 2010), last accessed August 20, 2010. However, the website notes that one of the outcomes of the 2010 legislative session was the elimination of the Pesticide Incident Reporting and Tracking Review Panel that produced this report but does not identify how or if this information will be released in the future.

Total number of exposures in 2009 are all Agricultural DPP cases (Definite, Probable, Possible as defined by NIOSH) but does not distinguish between crop and livestock farms. Agricultural cases made up 49 percent of all reported cases in 2009. Totals from previous years include: 2007 (60); 2006 (44); and 2005 (77). (Pesticide Incident Reporting and Tracking Review Panel: 2009 Annual Report (**PDF**), Pesticide Incident Reporting and Tracking Review Panel, p. 46. (April 2010), last accessed August 20, 2010.

EPA AND THE PESTICIDE REGISTRATION PROCESS: Under federal law, no pesticide can be legally used in the United States unless EPA has registered it. In the registration process EPA must examine the risks posed to workers, communities, and the environment by each pesticide to determine if its use will lead to “unreasonable adverse effects on the environment,” which is defined to include people. EPA can and does approve pesticides for which there are known health risks for workers and their families, even when all precautions are taken. Precautions include the proper use of well-maintained personal protective equipment or restricting field re-entry after applications for a period of time. Moreover, its calculations are based on assumptions about safe exposure levels, which are rooted in data provided by pesticide manufacturers. Farmworker advocates and other public interest organizations maintain that designated acceptable exposure levels are not adequately protective and that EPA is unduly influenced by those it regulates. In 2006, EPA’s own staff sent a letter to management objecting to its decisions that year regarding organophosphate pesticides. The **letter** expressed concern about the influence of regulated parties on the agency and its decision-making processes.

CHOLINESTERASE TESTING: Cholinesterase is a nervous system enzyme, which is depressed by organophosphates and carbamates. Monitoring programs attempt to prevent acute poisonings by addressing practices that lead to exposures and if necessary, removing workers from handling these pesticides until their cholinesterase levels rebound. During **the first year of the Washington State program**, one in five workers had cholinesterase depressions significant enough to trigger workplace audits and/or worker removals. Numbers of significant depressions have declined since then as the result of reducing workers’ handling hours, switching to alternatives, and/or other factors. Attempts to establish medical monitoring as a federal requirement have not yet been successful.

APPENDIX II: Farmworker Information and Resources

GENERAL INFORMATION ON FARMWORKERS

Profile of Hired Farmworkers: A 2008 Update. William Kandel, Economic Research Report No. (ERR-60) 65 pp, July 2008
Rural Labor and Education: Farm Labor
Injustice on Our Plates: Immigrant Women in the U.S. Food Industry

FARMWORKER HEALTH

Technical Report - Occupational Heat Illness in Washington State, 2000-2009
Occupational Fatalities in Agriculture: Assessing the Impact of OSHA Enforcement and Education, Don Villarejo, (February 2010)
Breaking Down Barriers: A National Needs Assessment on Farmworker Health Outreach Health Outreach Partners. (April 2010)
National Center for Farmworker Health

CHILD LABOR

Fields of Peril: Child Labor in U.S. Agriculture. Human Rights Watch (2010)
The Childhood Agricultural Safety Network (CASN)
NIOSH Childhood Agricultural Injury Surveillance Project

FORCED LABOR/TRAFFICKING

Hidden Slaves: Forced Labor in the United States, Free the Slaves and Human Rights Center. (2004)
Report on Activities to Combat Human Trafficking, Fiscal Years 2001-2005
Close to Slavery: Guestworker Programs in the United States, Southern Poverty Law Center.

STATE RESOURCES

California

Farm Labor in California: Then and Now, Phillip Martin (2001).

North Carolina

North Carolina Agricultural Statistics

Oregon

Oregon Agripedia

Farmworkers in Oregon: A Study of the League of Women Voters of Oregon Education Fund, Fall 2000

Washington

Washington Farmworker Services

Texas

Migrant labor Housing Facilities in Texas: A Report on the Quantity, Availability, Need, and Quality of Migrant labor Housing in the State

Other States

A Report on the Conditions of Migrant and Seasonal Farmworkers in Michigan, Michigan Civil Rights Commission, March 2010

Ohio State, Agricultural, Environmental, and Development Economics: Farm Labor Laws and Regulations

ENDNOTES

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

²Data 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.

³*Fingers to the Bone: United States Failure to Protect Child Farmworkers*, Human Rights Watch, 2000, last accessed September 11, 2010.

⁴Martin, 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.

⁵Ibid.

⁶NAWS 1999-2009

⁷The 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.

⁸“*Indictment Accuses Firm of Exploiting Thai Workers*,” *New York Times*, September 2, 2010, last accessed September 16, 2010.

⁹Fatal occupational injuries, total hours worked, and rates of worker characteristics, occupations, and industries, 2009” ([PDF](#)) Bureau of Labor Statistics, last accessed September 18, 2010.

¹⁰NAWS 2005-2009

¹¹2007 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.