

## **Fact Sheet #63: Application of Federal Labor Laws to Reforestation**

This fact sheet provides general information concerning the laws administered and enforced by the Wage and Hour Division that apply to reforestation workers. A reforestation employer covered by any one law is not necessarily covered by all the laws listed below; similarly, an employer exempt from the requirements of any one law is not necessarily exempt from the requirements of all the laws.

### **Summary of Laws**

**The Fair Labor Standards Act (FLSA)** contains Federal minimum wage, overtime, recordkeeping, and child labor requirements for covered employers.

**The McNamara-O'Hara Service Contract Act (SCA)** contains prevailing wage, fringe benefit, and recordkeeping requirements for work performed on covered contracts with the Federal government.

**The Contract Work Hours and Safety Standards Act (CWHSSA)**, a companion law to the SCA, requires overtime pay for laborers and mechanics for all hours worked in excess of 40 in a workweek on SCA-covered contracts in excess of \$100,000.

**The Migrant and Seasonal Agricultural Worker Protection Act (MSPA)** protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures, and recordkeeping. The MSPA also requires farm labor contractors (FLCs) and farm labor contractor employees (FLCEs) to register with the U.S. Department of Labor and to obtain special authorization before housing, transporting, or driving covered workers.

**The Field Sanitation Provisions of the Occupational Safety and Health Act of 1970 (OSHAct)** establish minimum standards for covered agricultural settings for toilets, potable drinking water, hand-washing facilities, and information regarding good hygiene practices.

### **Coverage**

Generally, the FLSA applies to any employee who engages in interstate commerce or the production of goods for interstate commerce, or all employees of an enterprise engaging in interstate commerce or the production of goods for interstate commerce and grossing \$500,000 or more per year.

The SCA applies generally to any contract with the U.S. Government the principal purpose of which is to furnish services (e.g., tree planting, brush clearing, pre-commercial thinning, and forest fire-fighting) in the U.S. through the use of service employees. The CWHSSA applies to service contracts in excess of \$100,000.

The MSPA applies to any person who solicits, recruits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker. The MSPA applies to reforestation workers engaged in predominately manual work (e.g., tree-planting, brush-clearing, pre-commercial thinning, forest fire-fighting) if they otherwise meet the definition of a migrant or seasonal agricultural worker.

The field sanitation standards of the OSHAct apply to any agricultural establishment that employed 11 or more workers on any one day during the previous 12 months to perform "hand labor" field work. "Hand

labor” includes hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops. Except for hand-labor reforestation work, the term “hand labor” does not include forestry operations such as logging.

## Exemptions

The FLSA exempts certain forestry managers, wildfire fire-fighters, and motor vehicle operators from the minimum wage and/or overtime requirements. The FLSA also contains an overtime exemption for forestry or lumbering operations employing eight or fewer workers in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal.

If the contract is for less than \$2500, the SCA does not require payment of prevailing wages and fringe benefits, but does require payment of the FLSA minimum wage. Managers or supervisors exempt under the FLSA do not qualify as “service employees” under the SCA, and so are excluded from its provisions.

Contractors are exempt from MSPA if they operate solely within a 25-mile intrastate radius of their permanent residence and for not more than 13 weeks per year. The MSPA housing requirements do not apply to bona fide innkeepers, and the transportation requirements do not apply to bona fide common carriers or car pools.

The above exemptions are those most often applicable to reforestation employers, but other exemptions may apply in certain circumstances. Contact the nearest Wage and Hour Division office for more information.

## Wages

FLSA-covered non-exempt employees must receive not less than the Federal minimum wage (currently \$5.15 per hour) for all hours worked in the workweek. Such employees must also receive overtime pay at the rate of time and one-half their regular rate of pay for all hours worked in excess of 40 in a workweek. The overtime and minimum wage requirements under the FLSA (as well as minimum wage requirements under other statutes) apply even if an employee is paid on a piece rate.

SCA-covered employees must receive no less than the prevailing wage and fringe benefits specified for their occupation in the wage determination applicable to the contract. CWHSSA-covered workers must receive time and one-half their regular rate of pay for all hours worked in excess of 40 in a workweek on the covered contract.

MSPA requires that employers properly disclose to workers all terms and conditions of employment, including wages to be paid, and pay all wages owed when due, but no less frequently than semi-monthly. A worker’s wage cannot be less than the highest of the applicable state or Federal minimum wage, the wage promised to a non-immigrant worker on an H-2B visa, or the prevailing wage required by an SCA-covered government contract.

## Deductions

Deductions, whether direct or indirect, for facilities that are primarily for the benefit of the *employer* are only permissible under the FLSA to the extent that they do not reduce the hourly wage for the first 40 hours of any week below the statutorily required FLSA minimum wage (or SCA prevailing wage, if applicable), and do not reduce the time and one-half premium for all hours worked over 40 in an overtime workweek. Tools required to perform the employee’s job (e.g., rain suits, chaps, leathers, other protective gear, chain-saws, and OSHA-required safety equipment) are primarily for the benefit of the employer.

Deductions, other than those required by law, are only permissible under MSPA if properly disclosed to the worker in advance. In addition, deductions for housing are only permissible under MSPA if the housing complies with the applicable substantive safety and health standards.

Employers shall provide field sanitation facilities and water required under the OSHAct at no cost to the employees.

## **Recordkeeping**

The FLSA and SCA require the employer to record daily and weekly hours worked, rates of pay, additions to or deductions from wages, and total wages paid, although no particular format is required. A complete listing of the required items can be found at 29 CFR Part 516.

The MSPA contains similar recordkeeping requirements and in addition requires that employees be furnished pay statements each pay period. FLCs must provide each person to whom they furnish workers a copy of the payroll records covering the period for which they furnished the workers.

## **Youth Employment**

The FLSA prohibits employment of workers under the age of 18 in forestry or reforestation activities deemed "hazardous" by the Department of Labor. For instance, workers under 18 may not drive (except in limited circumstances) or use chainsaws. See regulations at 29 CFR Part 570 for more information.

## **Housing**

The FLSA and SCA contain no housing safety and health standards. The cost of providing housing may be creditable towards meeting the employer's minimum or prevailing wage payment obligation.

Housing subject to MSPA must comply with all applicable substantive Federal and state safety and health requirements prior to and throughout occupancy by covered workers. Each agricultural employer, agricultural association, or FLC that provides housing must post at each housing site a written statement of the terms and conditions of occupancy as well as an occupancy permit. An FLC must have DOL authorization for each facility or property used to house migrant farm workers. See "Exemptions" section above.

## **Field Sanitation**

The OSHAct Field Sanitation Standards require employers to provide at no cost to the workers:

- potable drinking water, suitably cool and in sufficient amounts, dispensed in single-use cups or by fountains, located so as to be readily accessible to all employees;
- for every 20 employees, one toilet and handwashing facility located within a quarter-mile walk, or if not feasible, at the closest point of vehicular access; and
- notice to each employee of the location of the facilities and reasonable opportunities during the workday to use them.

Employers must also maintain facilities in accordance with public health sanitation practices.

Certain states, such as those with OSHA-approved state plans, have adopted standards more stringent than the Federal requirements. Where both Federal and state requirements apply to an agricultural establishment, the employer must comply with the stricter requirement. Contact the state labor agency or department of health to find out whether your state has such requirements. For more information, see Fact Sheet 51: "Field Sanitation Standards under the Occupational Safety and Health Act."

## **Transportation**

The MSPA requires any non-exempt person who uses, or causes to be used, a vehicle to transport migrant or seasonal agricultural workers to comply with applicable Federal and state vehicle safety and operator requirements. MSPA requires specific insurance levels for each vehicle used to transport workers. FLCs must obtain specific authorization from the U.S. Department of Labor for each vehicle they use or cause to be used to transport workers. See Fact Sheet 50: "Transportation under the Migrant and Seasonal Agricultural Worker Protection Act" for additional information.

## **Posters/Forms**

The FLSA requires the employer to post the FLSA poster (Form WH-1088).

The SCA requires the employer to post the SCA poster (Form WH-1313) and the Wage Determination.

The MSPA requires employers to post the MSPA poster (Form WH-1376). Each agricultural employer, agricultural association, or FLC that provides housing must also post a written statement of the terms and conditions of occupancy as well as an occupancy permit at each housing site. Wage and Hour has optional forms available that employers may use to achieve compliance with MSPA recordkeeping, posting, and disclosure requirements.

## **State/Local Laws**

Individual state or local laws may vary from Federal law. When Federal, state, and local laws apply to the same circumstances, employers must comply with the law that provides the greatest benefit to the worker. Check with the appropriate state agency as to what each State requires.

## **Where to Obtain Additional Information**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For additional information, visit our Wage-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).