

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 6. DIVISION OF LABOR STANDARDS ENFORCEMENT
SUBCHAPTER 9. LABOR COMMISSIONER'S FARM LABOR CONTRACTOR
FUND
FARM LABOR CONTRACTORS

Repeal Section 13660 as follows:

~~13660. Definition of "Damages."~~

~~Damages under Section 1684(c) and (d) of the Labor Code are defined as the following:~~

~~(a) Wages including interest;~~

~~(b) Damages including interest according to proof of actual damages incurred by an employee of a farm labor contractor, by a person who has been recruited, solicited, supplied, hired, furnished or transported by the contractor on behalf of an employer engaged in the growing or producing of farm products or pursuant to a loss suffered by an employee of a farm labor contractor, or person described above, for any violation of Division 2, Part 6, Chapter 3 of the Labor Code;~~

~~(c) Damages shall not include penalties assessed pursuant to Section 203 of the Labor Code or penalties assessed pursuant to any other provision of law.~~

~~Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.~~

Repeal Section 13661 as follows:

~~13661. Procedure for Obtaining Damages from the Fund.~~

~~A claim for recovery from the fund must be made in writing by an employee(s), or other claimant(s), or his or her (their) representative. The claim need not be in any particular form but must contain the following:~~

~~(a) A list naming each employee or claimant for whom recovery is sought. The list shall include the name and address of each employee or claimant, the amount of the recovery sought under each of the items listed in Section 13660 above, including the particular provision of Division 2, Part 6, Chapter 3 of the Labor Code allegedly violated, and the name and address of the farm labor contractor(s) whose conduct has allegedly damaged the employee(s) or claimant(s).~~

~~(b) A copy of the written assignment of the claim(s) to the representative, if applicable.~~

~~(c) A declaration or affidavit under penalty of perjury which complies with the provisions~~

of Code of Civil Procedure Section 2015 .5 containing information regarding attempts made to satisfy the claim by demand against the surety bond provided in Labor Code Section 1684(c) and the results of that demand. The declaration or affidavit must also disclose what attempts, if any, were made to collect the recovery sought directly from the farm labor contractor and the results of those attempts. If no attempts have been made to collect either from the surety bond or the farm labor contractor, the declaration must explain the reasons for such inaction. The fact that no attempts have been made will not of itself defeat recovery from the fund, if the failure to make any attempts is reasonable. The declaration or affidavit required herein may be signed by the representative of the employee(s) or claimant(s), if the information submitted does not require the personal knowledge of the employee(s) or claimant(s).

(d) A copy of any judgment or award issued by a court or the Labor Commissioner, which relates to or supports the recovery sought by the employee(s) or claimant(s). If the judgment was uncontested or obtained by default or other summary procedure, the employee(s), claimant(s) or representative seeking recovery shall submit declarations under penalty of perjury signed by each employee or claimant seeking recovery setting forth the actual losses that were suffered by the employee(s) or claimant(s) including the information set forth below in subsections (1) (6). If the judgment or award was contested, it must contain the information set forth below in subdivisions (1) to (6); if the judgment or award does not contain such information, additional declarations under penalty of perjury signed by the employee or claimant providing the missing information must be submitted. The representative of the employee(s) or claimant(s) may sign declarations submitting information to comply with this subsection, if the information submitted does not require the personal knowledge of the employee(s) or claimant(s).

(1) The name and address (if known) of the contractor;

(2) The period of time during which the wages were earned;

(3) The number of hours worked or the pieces picked or completed;

(4) The promised rate of pay;

(5) The total amount of wages owed less any amount recovered from the farm labor contractor or the surety bond and/or employer of the farm labor contractor;

(6) Proof of any actual damages suffered pursuant to the particular provision of Division 2, Part 6, Chapter 3 of the Labor Code allegedly violated.

(e) If no judgment or award has been obtained from a court or the Labor Commissioner, the employee(s), claimant(s) or his or her (their) representative seeking recovery shall submit declarations under penalty of perjury signed by each employee or claimant providing the information set forth in subdivisions (1) (6) in (d), above. The representative of the employee(s) or claimant(s) may sign declarations submitting information to comply with subsection (d), if the information submitted does not require

the personal knowledge of the employee(s) or claimant(s).

(f) If the declarations are insufficient to sustain a recovery from the fund, either due to lack of information or due to a belief that the information submitted is potentially inaccurate, the Labor Commissioner may order an investigatory hearing pursuant to the provisions of Section 13662.

(g) A claimant who contracts with a farm labor contractor may also seek recovery from the fund if he or she has been damaged by a farm labor contractor within the meaning of Section 13660. When such a claim is submitted, besides documenting the claimant's own loss, the claimant must also satisfy the requirements of subsections 13661(a)-(e) regarding the loss of the employees or other claimants.

Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.

Repeal Section 13662 as follows:

~~13662. Hearing.~~

~~The Labor Commissioner shall have the authority to order an investigatory hearing to determine the amount of damages, if any, actually suffered by the employee(s) or other claimant(s) seeking recovery from the fund. Notice of the hearing shall be served on the defendant farm labor contractor and the employee(s) or other claimant(s) seeking recovery from the fund either personally or by registered mail in accordance with the provisions of subdivision (e) of Section 11505 of the Government Code. The hearing shall be conducted by a Deputy Labor Commissioner and shall be held in the District Office having jurisdiction over the area where the nonpayment of wages allegedly occurred or any other appropriate venue.~~

Note: Authority cited: Section 1699, Labor Code. Reference: Section 1684, Labor Code.

Add new article:

Article 1. Application For Farm Labor Contractor License

Adopt Section 13660 as follows:

13660 Application for New License:

To apply for a Farm Labor Contractor license pursuant to Labor Code section 1684, the applicant shall complete, sign, and submit an application, either DLSE 401-N, DLSE 401-R, or DLSE 401-S, and provide the documents listed below. DLSE 401-N shall be filed as the initial application for a farm labor contractor license. DLSE 401-R shall be filed for renewal of a farm labor contractor license by an applicant who seeks to renew a license but does not qualify to file a DLSE 401-S pursuant to 8 CCR 13661 subd. (b). DLSE 401-S shall be filed for renewal of a farm labor contractor license by an applicant

who seeks to renew a license and qualifies to file a DLSE 401-S pursuant to 8 CCR 13661 subd. (b). The applicant shall certify under penalty of perjury that the information provided on the application form, any supplementary documents, and any other information submitted by the applicant in support of the application is true and correct.

(a) The application shall contain, but is not limited to, the following information to be provided by the applicant:

(1) If the applicant is an individual, that individual's name, date of birth, driver's license number and Social Security number of individual. If applicant is a corporation, the date of incorporation. If applicant is a partnership, the date the partnership was created, or for a limited partnership, the date of filing of the certificate of limited partnership. If applicant is a limited liability company (LLC) the date of filing the articles of organization.

(2) All names under which the applicant is doing business or has done business within the previous three years;

(3) Current physical business address (number, street, city or town, county, state, zip code) and mailing address if different than physical business address. If the current address information subsequently changes, the applicant must immediately, but no later than 5 days thereafter, advise the Labor Commissioner of the change;

(4) Business telephone number;

(5) A copy of the Migrant and Seasonal Worker Protection Act Certificate that has been issued to applicant;

(6) Identity of the legal form or type of ownership of the farm labor contactor business (individual/sole proprietor, partnership, corporation, limited liability company, or other business form)

(A) If individual or sole proprietor ownership, the full name, residence address, mailing address, if different, telephone number of owner, and designation of an agent for service, including physical address, and telephone number of the designated agent;

(B) If partnership, the full name, residence address, mailing address, if different, and telephone number of each partner;

(C) If corporation or LLC, the full name, title(s), residence address, mailing address, if different, and telephone number of all corporate officers, managing agents and LLC members;

(7) For all persons, except bona fide salaried employees, or entities with a financial interest in the applicant's business, including but not limited to partner(s), corporation(s), LLC(s) or other business association, the name, address

and statement of the person or entity's percentage of financial or profit sharing interest in the applicant's business.

(8) Indicate whether the applicant will utilize the services of any other individual or entity to recruit, solicit, hire, furnish, employ, or transport agricultural workers. If so, state whether the other person or entity has at any time in the past been issued a farm labor contractor's license, and provide the information required of the applicant in Subsection (a)(1) for the other person or other entity, as well as all farm labor contractor license numbers currently or formerly held by that other person or entity.

(9) The name and business address of all growers with whom the applicant plans to contract with in the future and, if applicable, with whom the applicant has contracted during the past three years;

(10) The name and title of the person who will take the written examination for the applicant and whether the person prefers to take the exam in English or Spanish;

(11) If the applicant intends to maintain a labor camp or other housing, submit evidence of its location and a copy of a health license or other record of compliance with health and safety laws issued in the appropriate jurisdiction of the camp or housing;

(12) Indicate that applicant will not sell or propose to sell intoxicating liquors, including wine or beer, on the premises where the applicant operates;

(13) Indicate whether the applicant has submitted to the Internal Revenue Service IRS Form 8821;

(14) Indicate whether the applicant intends to provide transportation to employees, and:

(A) For each vehicle to be used for this purpose, identify the make and model, the license plate number, and vehicle identification number (VIN);

(B) Evidence of applicant's liability insurance coverage in the amount set by the Vehicle Code, for each vehicle identified, including name and address of coverage carrier, policy number, coverage limits, including medical coverage, the policy's effective dates for each vehicle applicant intends to utilize;

(C) Identify the name, address and driver's license number, of each individual who will operate any vehicle to provide transportation, as required by Section 12519 of the Vehicle Code.

(D) An applicant must acknowledge that for any additional vehicle which is sought to be used in the transportation of employees which is not

identified on the application must be registered with DLSE not later than 7 days prior to use of the vehicle for transportation of workers.

(15) Indicate whether applicant's farm labor contractor operation will be conducted in connection with any other business, and if so, the type of business and name and address of the other business:

(16)(A) Indicate whether any person identified under subdivisions (a)(6) and (a)(7) of this section:

(i) owes any delinquent unpaid wages;

(ii) has any unpaid judgments outstanding;

(iii) has any liens or suits pending in court against him, her or it;

(iv) owes payroll taxes or personal, partnership or corporate income taxes, social security taxes or disability insurance taxes;

(v) has ever been cited or charged with violating any federal, state or local statute or regulation related to working conditions or workers' health or safety; if so, state the charge and the disposition;

(vi) has ever plead guilty or nolo contendere to or been convicted of a crime substantially related to working conditions or workers' health or safety;

(vii) has ever had any license or permit issued by any agency of the State of California suspended, revoked, or denied, or has had any disciplinary action imposed upon him, her or it in connection with the holding of a license or permit;

(B) If any person or entity identified in subdivision (A) above falls within subdivision (i) through (vii), the applicant shall submit to the Labor Commissioner an explanation regarding the incident and documentation supporting the explanation, including but not limited to, description of the violation or charge, date of incident, court or agency name (federal, state or local), and the disposition, if any, of the matter.

(17) Indicate whether applicant has filed a tax return with the federal Internal Revenue Service for the previous year:

(18) Applicant shall submit a list including the name and addresses of any spouse, domestic partner, brother, brother-in-law, sister, sister-in-law, cousin, cousin-in-law, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, or daughter-in-law of the applicant if the applicant is an individual, of a partner if applicant is a partnership and of an officer or shareholder if applicant is

a corporation, LLC or other business entity, who has ever applied for a farm labor contractor's license, and whether any such license has been denied or revoked.

(19) Applicant shall certify that he, she, or it is aware of all applicable worker safety requirements related to agricultural working conditions, including heat illness injury prevention and pesticide use and exposure, and will comply with all applicable requirements.

(b) The applicant for a farm labor contractor license shall provide to the Labor Commissioner the following along with the application for a license:

(1) Application and filing fee pursuant to Labor Code section 1684(a)(4);

(2) Examination fee pursuant to Labor Code section 1684(b)(1). The applicant shall pay a one hundred dollar (\$100) fee separate from the application fee for three attempts to pass the examination in a calendar year. Failure to pass after three attempts shall result in rejection of the application, forfeiture of the examination and applications fees, and inability to re-apply and retake the test until the beginning of the next calendar year after rejection.

All fees may be paid online by accessing <http://www.dir.ca.gov/dlse/Online> Payment, or by submission of a certified check, cashier's check, or money order to the Division of Labor Standards Enforcement;

(3) If applicant is a corporation, a copy of the Articles of Incorporation and the most recent Statement of Information (Form SI-200) filed with the Secretary of State; if the applicant is an LLC, a copy the Articles of Organization; and if a partnership, a copy of the written partnership agreement, if any;

(4) Two (2) current passport photos for individual as sole proprietor, each partner, and a representative of a corporation, limited liability company, or other business association. If the identity of a representative changes during the period of the license, the corporation or business association shall submit two passport photographs of the new representative so that the division can issue a new license.

(5) An original Farm Labor Contractor Surety Bond [DLSE 402] or a deposit of an undertaking in lieu of bond which otherwise satisfies the requirements for a surety bond described in Labor Code Section 1684(a)(3), as provided in Section 13664.

(6) A copy of the applicant's previous year tax filings with the Internal Revenue Service and Franchise Tax Board and California Employment Development Department report forms DE9 or DE9C, if any;

(7) Certificate of Workers' Compensation Insurance or certificate of self-insurance issued to the applicant or valid contract with third party to provide workers' compensation insurance. This certificate and documentation shall contain name of the insured, its fictitious business name ("dba"), if any, and

current physical business address of the insured, effective and expiration date, amount of coverage and a policy number. If the applicant provides a contract with a third party to provide workers' compensation insurance, the applicant shall also provide a Certificate of Workers' Compensation Insurance or certificate of self-insurance issued to that third party demonstrating workers' compensation coverage for employees of the applicant.

(8) Evidence of completion of eight hours of approved educational classes during the previous year in accordance with Section 13662.

(9) Pursuant to Labor Code section 273 subdivision (b), a statement that applicant has satisfied all current requirements imposed in a final court judgment, Labor Commissioner order, or an accord (e.g. settlement agreement) involving unpaid wages. If an applicant has a currently unsatisfied judgment, order, or accord, the Labor Commissioner will not approve the application unless the applicant complies with Labor Code section 273 subd. (c).

(10) Applicant certification that he or she will provide all protective measures, materials and equipment necessary to comply with heat illness injury prevention requirements (see Title 8, California Code of Regulations, Section 3395) at each work site where work is to be performed.

(c) The Labor Commissioner may request any additional supporting documentation as proof of statements made in response to application questions and to complete investigation to his or her satisfaction as to the character, competency and responsibility of the applicant.

Note: Authority cited: Labor Code section 1699, Reference: Labor Code sections 273, 1682, 1683, 1684, 1685, 1688, 1689, 1695, 1696, 1696.3, 1696.4, 3700, 3701, 3701.7; Health & Saf. Code sections 17960, 17965, 34240, 34290; Vehicle Code section 12519.

Adopt Section 13660.1 as follows:

13660.1 Character, Competency and Responsibility:

(a) In determining whether an applicant possesses satisfactory character, competency and responsibility, the Labor Commissioner shall consider all information submitted in connection with the application or otherwise obtained by the Labor Commissioner during the review of an application, including information listed in section 13660 subd. (a)(16) of these regulations. Conduct or conviction of a crime is substantially related to working conditions if it evidences present or potential unfitness of an applicant to perform the functions authorized by the license in a manner consistent with the requirements of the Labor Code. The conduct or convictions considered substantially related to working conditions shall include, but not be limited to, the following:

(1) Any violation of a provision of the Labor Code or Title 8 of the California Code of Regulations;

(2) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another;

(3) Crimes involving physical violence against persons; or

(4) Crimes or other acts that indicate a substantial or repeated disregard for the wages, health, safety, or welfare of employees. "Other acts" include but are not limited to, actions or conduct involving violations of law determined to be willful, repeated, or serious within the meaning of the applicable statutory scheme and shall constitute a "substantial or repeated disregard" for purposes of this section.

(b) When considering whether an applicant who falls within subdivision (a) has the character, competency and responsibility to be licensed as a farm labor contractor, the Labor Commissioner shall consider whether the applicant has been rehabilitated. When considering whether the applicant has been rehabilitated, the Labor Commissioner will consider the following criteria:

(1) For a felony conviction that is substantially related to the qualifications, functions, or duties of a licensee, seven (7) years have passed from the time of release from incarceration or completion of probation without the occurrence of additional criminal activity.

(2) For misdemeanor convictions that are substantially related to the qualifications, functions, or duties of a licensee, three (3) years have passed from the time of release from incarceration or completion of probation without the occurrence of additional criminal activity.

(3) For other act(s) that are substantially related to the qualifications, functions, or duties of a licensee, three (3) years have passed from the time of commission of the act(s), without the occurrence of additional act(s) substantially related to the qualifications, functions, or duties of a licensee.

(4) The amount of time needed to demonstrate rehabilitation under this subsection may be increased or decreased by taking into account the following:

(A) The nature and severity of the crime(s) or act(s) that are under consideration;

(B) Evidence of any crime(s) or act(s) committed subsequent to the crime(s) or act(s) that are under consideration as, or that were, the grounds for denial, suspension, or revocation, which also could be considered as grounds for denial, suspension, or revocation.

(C) Evidence that applicant has successfully completed the period of parole or probation and complied with its restitution terms and all other sanctions lawfully imposed against the applicant.

(D) Consistent work history subsequent to the release from incarceration, or the completion of probation if no incarceration was imposed, subsequent to the time of commission of the act(s).

(E) Documents or testimony from credible individuals who have personal knowledge of the applicant's life and activities subsequent to the time of commission of the crime(s) or act(s) who can attest to the applicant's or licensee's present fitness for licensure.

(F) Other relevant evidence, if any, of rehabilitation submitted by the applicant or licensee. For example, relevant evidence may include evidence of recovery from drug and/or alcohol addiction or abuse or completion of a drug and/or alcohol aversion program if the crime(s) or act(s) related to or involved drug and/or alcohol use; or evidence of completion of an anger management program if the crime(s) or act(s) demonstrated the applicant's or licensee's inability to control one's temper.

(c) No farm labor contractor license shall be issued to any applicant who has an unsatisfied final judgment of a court or a decision of an administrative agency that would be covered by the surety bond against the farm labor contractor.

Note: Authority Labor Code section 1699. Reference: Labor Code sections 55, 59, 61, 1684, Bus. & Prof. Code section 481.

Adopt Section 13660.2 as follows:

13660.2 Date a Denied Applicant May Reapply for Licensure.

Except as provided in Labor Code Section 1685(b), an applicant who has been denied licensure because of a determination that the applicant lacked the character, competence or responsibility to be licensed as a farm labor contractor (Labor Code section 1684 subd. (a)(2)), the applicant may reapply no less than one year after the denial.

Note: Authority: Labor Code section 1699. Reference: Bus. & Prof. Code section 486.

Adopt Section 13661 as follows:

13661 Application for Renewal of License

- (a) To apply for renewal of a Farm Labor Contractor license, the applicant shall complete, sign, and submit the appropriate application at least 90 days before expiration of a current license.
- (b) Applicant shall file a form DLSE 401-S if there has been no change in a previous application for a license as a farm labor contractor other than a change in vehicle driver referred in subdivision (c)(6)(C) below, the applicant, or any partner if the applicant is a partnership or any officer if the applicant is a corporation or any member if the applicant is a LLC or other business association, has no outstanding citation charging violation of a statute or regulation related to working conditions, unpaid wages or unpaid penalties, or has not filed all required tax returns, or has not been convicted of a crime while licensed as a farm labor contractor, misdemeanor or felony, related to working conditions.
- (c) If applicant for a farm labor contractor's license is eligible to file for renewal of a farm labor contractor's license under the previous paragraph, the renewal applicant shall certify under penalty of perjury that the information he or she has provided on the application form, any supplementary documents, and/or any other information submitted by the applicant in support of the application is true and correct. Required information on the application includes, but is not limited to, the following:
 - (1) Name of individual or entity applying for license renewal;
 - (2) Previous license number;
 - (3) An examination fee pursuant to Labor Code section 1684(b)(1) unless the applicant is exempt from examination pursuant to Labor Code section 1684(c).
 - (4) An original Farm Labor Contractor Surety Bond [DLSE 402];
 - (5) Certificate of Workers' Compensation Insurance or certificate of self-insurance issued to the applicant or valid contract with third party to provide workers' compensation insurance. This certificate and documentation shall contain the name of the certificate holder, fictitious business name ("dba"), if any, current physical business address, effective and expiration date, amount of coverage and a policy number.
 - (6) For each vehicle the applicant will use to transport employees:
 - (A) The make and model of the vehicle, the license plate number, and vehicle identification number (VIN);
 - (B) Evidence of applicant's liability insurance coverage in the amount set by Vehicle Code, section for each vehicle identified,

including name and address of coverage carrier, policy number, coverage limits, including medical coverage, the policy's effective dates for each vehicle applicant intends to utilize;

(C) If there is a change in the identity or address of a driver of a vehicle applicant will use to transport employees, a copy of the individual's driver's license, a copy of the Department of Motor Vehicles (DMV) certificate to operate a farm labor vehicle and evidence from DMV of the individual's clear driving record of said individual.

(D) An applicant must acknowledge that for any additional vehicle which is sought to be used in the transportation of employees and not identified on the application must be registered with DLSE not later than 7 days prior to use of the vehicle for transportation of workers.

(7) A current list including names of all persons who the applicant will employ to hire, recruit, solicit, supervise, furnish, employ, pay, transport, or otherwise direct or measure the work of agricultural employees, the name and address of all such individuals who have applied for and denied a state farm labor contractor's license or who has held a farm labor contractor's license;

(8) The federal farm labor contractor Employee certificate number;

(9) A copy of previous year's payroll records (DL-9 or DL9C) filed with EDD;

(10) Number of employees the renewal applicant anticipates hiring or rehiring during the next year;

(11) The estimated gross annual revenue for the business;

(12) A copy of registration certificate from the agricultural commission in each county in which the business has contracted with a grower, and;

(13) Evidence of completion of eight hours of approved educational classes during the previous licensing period.

(14) A statement that applicant has satisfied all requirements imposed in a final court judgment or Labor Commissioner order, or pursuant to an accord, involving unpaid wages. If an applicant has an unsatisfied judgment, Labor Commissioner Order, or accord, the Labor Commissioner will not approve the application unless the applicant complies with Labor Code section 273 subd. (c).

(15) Applicant shall certify that he, she, or it is aware of all applicable worker safety requirements related to agricultural working conditions, including heat illness injury prevention and pesticide use and exposure, and will comply with all applicable requirements.

(16) Applicant certification that he or she will provide all protective measures, materials and equipment necessary to comply with heat illness injury prevention requirements (see Title 8, California Code of Regulations, Section 3395) at each work site where work is to be performed.

- (d) If there is any change in a previous application for a license as a farm labor contractor other than the identity of a driver referred in subdivision (c)(6)(C) above, renewal applicant shall file a form DLSE 401-R and state the details of each and every change to information previously provided.

Note: Authority cited: Labor Code sections 273, 1699. Reference: Labor Code sections 1684, 1689, 1696; Vehicle Code Section 12519.

Adopt Section 13662 as follows:

13662 Written Examinations.

- (a) If the applicant for a farm labor contractor license is an individual (sole proprietor), the individual shall take the examination required by Labor Code section 1684(a)(5).
- (b) If the applicant is a partnership, corporation, limited liability company, or other business association, the applicant shall appoint a representative who shall take the examination required by Labor Code section 1684(a)(5).
- (1) If the application of a corporation, limited liability company, partnership or business association is approved, identity of a representative shall appear on the face of the license. The license containing a designation of a representative shall become void when the appointed representative leaves the business entity or association. In such case, the license shall be surrendered to the Labor Commissioner.
- (2) If the authorized representative leaves the farm labor contractor business during the licensing period, the farm labor business entity or association must designate a new representative who shall take and pass the examination. Additionally, the entity or business association shall submit two color passport photographs of the new representative to the Labor Commissioner and the Division shall issue a new license.
- (c) As part of the application submitted to the Labor Commissioner, each applicant for a farm labor contractor's license is required to submit photos as identification of the person who will take the examination.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684.

Adopt Section 13663 as follows:

13663 Schedule for Processing Applications.

(a) Within sixty (60) calendar days of receiving an application, the Labor Commissioner shall inform the applicant in writing that either:

(1) A license will be issued; or,

(2) A license will be rejected; or,

(3) Additional information will be required to meet the licensing requirements.

(A) Within sixty (60) calendar days from the date on the written notice of defective application, the applicant must correct and return the application with the requested information and/or documentation to the Labor Commissioner.

(B) If the applicant fails to meet the aforementioned deadline, the application will be rejected, and the applicant shall forfeit the application fee. Following a rejection pursuant to this subdivision, the applicant may submit a subsequent application and pay the fees required pursuant to Labor Code Section 1684.

(b) The Labor Commissioner may issue a temporary license to the applicant for a farm labor contractor's license only when the Labor Commissioner is unable to complete the determination within the time limits set out in subdivision (a) of this section and the delay is not the fault of the applicant.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684.

Adopt Section 13663.5 as follows:

13663.5 Issuance of Replacement License

A request for a replacement farm labor contractor's license shall be accompanied by a Declaration and Request for Replacement License, signed under penalty of perjury, which shall contain the following information: FLC registration number name, address and telephone number of the FLC, expiration date, statement of circumstances necessitating replacement, and a \$25 license replacement fee. If an applicant provides the information required by this section, a replacement license shall be issued upon request. The replacement shall be issued only to replace a license which is lost, destroyed, or mutilated.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1683.

Adopt Section 13664 as follows:

13664 Surety Bonds; Establishing Annual Payroll.

- (a) To comply with the duty to obtain and maintain a surety bond (see Labor Code section 1684 subd. (a)(3)), the applicant for a Farm Labor Contractor license shall file with the Labor Commissioner an original bond issued by a surety company duly authorized to do business in the State of California. The bond shall be on a form provided by the Labor Commissioner. In lieu of a surety bond, an applicant may deposit with the Labor Commissioner an undertaking of a cash bond or certificate of deposit which otherwise meets the full requirements of a surety bond described in Labor Code Section 1684(a)(3), including retention by the Labor Commissioner of the cash or certificate of deposit for a period of 3 years after the licensee ceases its business as a farm labor contractor.
- (b) As proof of annual payroll, the farm labor contractor shall provide to the Labor Commissioner either copies of Employment Development Department Quarterly Wage and Withholding Report (currently Form DE-9) for each quarter of the year preceding the pending application or a copy of Employment Development Department Annual Reconciliation Statement (currently Form DE-9C) for the year preceding the pending application.
- (c) If the Labor Commissioner, an employee, or an employee representative, proceeds against the surety bond or undertaking and payment is made therefrom to the Labor Commissioner or to the employee or the employee representative, the employer shall take all steps and actions necessary to ensure that a surety bond or undertaking which meets all of the requirements set forth in subdivision (a) of this section, including the required principal sum, is continuously in place so that there is not a break at any time in the continuity of the protection afforded by the bond. If the employer at any time fails to provide a surety bond or undertaking that meets all of the requirements of subdivision (a) of this section the Labor Commissioner shall suspend and may revoke the employer's license, or deny his, her or its application for a license.
- (d) To ensure that the purpose of the bond is fulfilled, the Labor Commissioner will retain the original of the bond or undertaking in his or her possession for no less than three years after the employer ceases engaging in the business.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684 subd. (a)(3).

Adopt Section 13664.1 as follows:

13664.1 Payment of Wage Claims Against Bonds

If a farm labor contractor fails to pay wages, interest on wages, or damages as awarded by the Labor Commissioner, the employee or employee's representative

shall first attempt to proceed against the employer's surety bond to recover the amount owed.

Note: Authority cited: Labor Code section 1699,. Reference: Labor Code section 1684 subd. (a)(3).

Add new article:

Article 2. Educational Classes for Farm Labor Contractors

Adopt Section 13665 as follows:

Section 13665 Education Program Approval; Course Criteria; List of Approved Courses.

(a) Any person, nonprofit organization or educational institution may submit to the Labor Commissioner at the San Francisco Office of the Division of Labor Standards Enforcement's Licensing and Registration Unit an application for evaluation and approval of a proposed educational program in farm labor contracting. The applicant for educational program approval shall submit the written request at least sixty (60) calendar days before the initial start date of the proposed educational program. The written request shall be accompanied by:

(1) a written outline;

(2) a description of the educational program;

(3) a copy of all instructional materials;

(4) a schedule of the proposed date(s), time(s), and location(s) for the proposed educational program;

(5) a copy of the brochure or flyer that will be distributed to proposed participants;

(6) the number of education hours proposed to be offered, and;

(7) a resume for each of the proposed instructor(s).

(b) If the Labor Commissioner determines that insufficient information has been provided to meet the criteria specified in subdivision (c)(1) of this section, the Labor Commissioner may investigate any facts regarding the program and request additional information before making a determination.

(c) The Labor Commissioner may approve any educational program submitted for evaluation which meets the following criteria:

(1) The instruction shall relate only to farm labor contractor activities and responsibilities and must include the following subjects: laws and regulations regarding wages, hours, and working conditions; penalties; the necessity of

determining the costs of engaging as a farm labor contractor to enable the applicant to pay legal wages and still return reasonable pay for his or her activities; employee housing and transportation; CAL/OSHA health and safety requirements including Injury and Illness Prevention Program, heat stress illness prevention and response, field sanitation; and safe work practices related to pesticide use; workers' compensation; sexual harassment prevention; the prohibition on retaliating or threatening retaliation upon an employee for exercising a right or privilege provided for in the Labor Code or other law; labor relations and collective bargaining; and child labor laws.

(2) Applicant shall submit a resume for all of the proposed instructors and attest to the instructor's competency. The resume must include a statement that the proposed instructor satisfies at least one of the following qualifications:

(A) possession of a bachelor's degree in the subject in which he or she is to teach from an institution listed as an institution of higher learning by the U.S. Department of Education or its successor agency, or the equivalent of such a bachelor's degree.

(B) possession of a valid adult or secondary school teaching credential or certificate from this or another state authorizing the holder to teach;

(C) five years of experience in the technical occupation in the subject in which he or she is to teach, or;

(D) possession of a license to teach issued by an appropriate state licensing board or federal agency for the subject in which he or she is to teach.

(3) The instructional program shall be at least eight hours in length.

(d) Within thirty (30) calendar days of receiving a written request for evaluation and approval of an education program in farm labor contracting, the Labor Commissioner shall inform the requestor in writing:

(1) the request for evaluation and approval is complete and accepted for filing;

(2) the request for evaluation and approval is denied, or;

(3) the request for approval is incomplete, specifying the information required to correct the deficiency.

(e) The approval of an educational program pursuant to this section shall be valid for one year from the date of the Labor Commissioner's written notification that the educational program has been approved. Persons, nonprofit organizations, or educational institutions must reapply to the Labor Commissioner for approval to offer a program once the period of approval has expired, by resubmitting the documentation as specified above.

- (f) The Labor Commissioner and the entity providing the education program shall make a list of approved programs available to any member of the public upon request.
- (g) Any person, nonprofit organization, or educational institution offering an approved program shall report to the Labor Commissioner in advance of a program presentation any of the following changes:
 - (1) a change in the approved program, outline or program materials;
 - (2) any change in the date(s), times(s), location(s) of the program; or
 - (3) any change in instructional staff;
- (h) The Labor Commissioner, or his or her authorized representative, shall be entitled to attend any approved program to monitor class presentations at no charge.
- (i) The Labor Commissioner may, at his or her discretion, disapprove any educational program for purposes of crediting a class(es) for licensure.

Note: Authority cited: Labor Code Section 1699. Reference: Labor Code section 1684 subds. (a)(5) and (b).

Adopt Section 1366.5 as follows:

13665.5 Records of Education.

- (a) The instructor, nonprofit organization, or educational institution shall maintain a record of licensees who have successfully completed the course of instruction for a period of three years following completion of the curriculum.
- (b) Each licensee shall maintain a record for three years of all continuing education that he or she acquired during each license period.
- (c) The records specified in subdivisions (a) and (b) of this section shall include:
 - (1) the license holder's name;
 - (2) license or certificate number;
 - (3) name of the instructor, nonprofit organization, or educational institution
- (d) A certificate of program completion or written statements containing all the information specified in subdivision (c), issued by the instructor, nonprofit organization, or educational institution shall be sufficient to constitute the records specified in subdivisions (a) and (b).
- (e) The approved program provider shall submit the records specified in subdivision (a) to the Labor Commissioner within thirty (30) days after each program is completed.

(f) At the time of renewal, each licensee shall submit to the Labor Commissioner a record of all continuing education that he or she acquired during the preceding license period.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684.

Add new article:

Article 3. Duties of Contractors

Add Section 13666 as follows:

Section 13666 Posting Rate of Compensation

The rate of compensation that a licensee is paying his or her employees must be displayed pursuant to Labor Code section 1695(a)(7) in a format no smaller than 8-1/2 x 11 inches and in bold lettering no smaller than 16-point font. The name of the licensee shall be identified on this posting.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code sections 1684, 1695 subd. (a)(7)

Add Section 13666.1 as follows:

Section 13666.1 Identification Signage at Worksite

- (a) A licensee shall erect a temporary sign at each worksite where workers are working which prominently and legibly identifies the licensee's name, license number in the top-half portion of the sign, and a name and working phone number for the licensee's field supervisor in the bottom-half portion of the sign.
- (b) The sign required in subdivision (a) shall be placed initially within 30 feet and be clearly visible from the access road where workers enter the worksite for the workday and shall not be obstructed by vehicles, other signs, trees, or other objects. The sign shall be no smaller than 4 feet by 4 feet and have contrasting colors for the background and lettering for legibility. The sign may be either staked in the ground or be fixed on a fold-out frame (A-frame when folded out) but the bottom of the sign shall be at least 12 inches above the ground.
- (c) Each licensee shall post an additional sign, no smaller than 3 feet by 3 feet, in reasonably close proximity where each crew is working which includes the name of the licensee and the name and working phone number of the licensee's field supervisor in charge of the crew.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code sections 1695.6, 1695.7.

Add Section 13666.2 as follows:

Section 13666.2 Worker Safety Training of Crew Leaders and Forepersons

- (a) A licensee shall provide periodic worker safety training to each crew leader, foreperson or other employee whose duties include the supervision, direction or control of any agricultural worker on behalf of a licensee. The training shall include, but not be limited to, implementing programs and practices for heat illness injury prevention and response (see 8 CCR Sec. 3395) and pesticide use and exposure (see Food and Agricultural Code Sections 12980-12988), and be conducted at least once during each quarter of a calendar year that a licensee operates. A quarterly period commences on January 1, April 1, July 1, and October 1 of each calendar year.
- (b) The licensee shall maintain a record of all training and information provided to each crew leader, foreperson or other supervisor of workers under subdivision (a). This record shall: (i) state the date(s) on which the training and information were provided; (ii) identify the crew leaders, forepersons or other supervisors to whom the training and information were provided; (iii) describe the training and information provided and, if written materials were provided, include a copy of such materials; and (iv) contain the licensee's certification that the foregoing is true and complete. The licensee shall maintain these records for two years and shall make them available, upon request, to the Labor Commissioner.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1695(a)(9).

Add new article:

Article 4. Farmworker Remedial Account

Add Section 13667 as follows:

13667 Procedure to Obtain Damages from the Farmworker Remedial Account

- (a) An employee of a licensed farm labor contractor or an unlicensed farm labor contractor who has been recruited, solicited, supplied, hired, furnished or transported by the contractor on behalf of an employer engaged in the growing or producing of farm products and who has suffered damages in the form of non-payment of all or part of the wages owed to the employees may seek recovery from the Farmworker Remedial Account.
- (b) A claim for recovery from the Farmworker Remedial Account must be addressed to the Labor Commissioner by an employee(s), or his or her (their) representative or a farm labor contractor on behalf of his or her employees or their representatives. The history and current status of the claim submitted against the Account will determine what additional information, if any, will be required by the Labor Commissioner.

Information necessary to satisfy this section does not need to be in any particular format. Claims may originate from an Order, Decision and Award, the judgment of a civil court or other tribunal; or from other determinations. For claims originating from an Order, Decision and Award of the Labor Commissioner, or other tribunal, a copy of the final decision and findings may satisfy the requirements of this section.

(c) To file a claim for recovery from the Farmworker Remedial Account, the following information is required:

- (1) A list naming each employee or claimant for whom recovery is sought and the time period for which recovery is sought;
- (2) the name and address of the farm labor contractor(s), grower(s) or packer(s) whose conduct has damaged the employee(s), or claimant(s);
- (3) valid form of identification, including a social security or Taxpayer Identification Number, if available, of each employee for whom recovery is sought;
- (4) A copy of the written authorization of claimant to his or her representative authorizing the representative to act on his or her behalf that bears the claimant's signature, if applicable, and mailing instructions for payment of the claim;
- (5) A copy of an Order, Decision or Award or final court judgment, if applicable, and;
- (6) A declaration or affidavit under penalty of perjury which complies with the provisions of Code of Civil Procedure Section 2015.5 containing information regarding attempts made to satisfy the claim by demand against the surety bond provided in Labor Code Section 1684(a)(3) and the results of that demand. The declaration or affidavit must also disclose what attempts, if any, were made to collect the recovery sought directly from the farm labor contractor, grower or packer and the results of those attempts. If no attempts have been made to collect either from the surety bond or the farm labor contractor, grower, or packer, the declaration must explain the reasons for such inaction. The fact that no attempts have been made will not of itself defeat recovery from the Farmworker Remedial Account, if it is shown that any attempt would have been futile. The declaration or affidavit required herein may be signed by the representative of the employee(s) claimant(s), or farm labor contractor if the information submitted does not require the personal knowledge of the employee(s), claimant(s), or farm labor contractor.

(d) If the declarations submitted in support of application for recovery are insufficient to sustain a recovery from the Farmworker Remedial Account either due to lack of information or due to a belief that the information submitted is potentially inaccurate, the Labor Commissioner may order an investigatory hearing.

(e) Subject to the discretion of the Labor Commissioner, a farm labor contractor may seek recovery on behalf of his or her employees from the Farmworker Remedial Account if he or she is unable to pay the employees due to the failure of a grower or packer to pay the contractor. When such a claim is submitted, the farm labor contractor must also satisfy the requirements regarding the loss to employees or other claimants and must first exhaust remedies against his or her bond before applying to the fund on behalf of his or her employees.

(f) In exercising discretion under Labor Code Section 1684(a)(4), the Labor Commissioner may review the following criteria: all materials submitted pursuant to 13667(a) and (b); any evidence submitted by the farm labor contractor which can establish a grower or packer's failure to pay for farm labor contracting services as defined at Labor Code section 1682(b); and any evidence which reflects upon a farm labor contractor's character, competency or responsibility.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684.

Add Section 13667.1 as follows:

Section 13667.1 Hearing.

The Labor Commissioner shall have the authority to order an investigatory hearing to determine the amount of damages, if any, actually suffered by the employee(s), or other claimant(s), seeking recovery from the Farmworker Remedial Account. Notice of the hearing shall be served on the farm labor contractor, and the employee(s) or other claimant(s) seeking recovery from the Farmworker Remedial Account either personally or by certified mail. The hearing shall be conducted by a Deputy Labor Commissioner and shall be held in the District Office having jurisdiction over the area where the damages allegedly occurred or any other appropriate venue.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684(a)(4).

Add Section 13667.4 as follows:

Section 13667.4 Payment of Wage Claims Against the Farmworker Remedial Account

The Labor Commissioner shall pay all valid claims against the Farmworker Remedial Account in the order received. If there are insufficient funds in the Farmworker Remedial Account to pay a valid claim, the valid claim shall be held until adequate funds are deposited into the Farmworker Remedial Account to pay the valid claim.

Note: Authority cited: Labor Code section 1699. Reference: Labor Code section 1684.