

Protect Your Business—Prevent Penalties

Agriculture



Department of Industrial Relations
Labor Enforcement Task Force (LETF)

2020

As an agricultural employer, you play an important role in agriculture. You also earn a living and bring jobs to the community. When you understand and comply with labor laws, you protect the investment you have made, promote a positive image, and avoid paying penalties.

Through the Labor Enforcement Task Force (LETF), under the direction of the Department of Industrial Relations, California agencies work together to make sure employers are following labor, safety and health, licensing, and payroll tax laws. LETF can help you understand which laws apply to you and how to comply. LETF also inspects businesses and cites employers if violations are found.

PENALTIES

NOT following the law will hurt your business.

Here are some examples of the kinds of penalties you would owe your workers and state agencies.

IF YOU:	YOU WOULD OWE:
Misclassify employees as independent contractors	Fines of \$5,000 to \$25,000 per violation, plus unpaid payroll taxes
Fail to pay the minimum wage or overtime; fail to provide rest and meal breaks	All wages owed, plus penalties
Fail to provide a pay stub	\$250 per employee each time they are paid
Violate health and safety rules	Up to \$25,000 for each serious violation and a possible shutdown of operating equipment
Punish or retaliate against workers	All wages owed, a fine of up to \$10,000 per employee, and workers get their jobs back
Fail to have workers' compensation insurance	At least \$1,500 per employee, and no one can work until all workers are covered
Fail to have appropriate licensing	Fines of up to \$100 per employee per day, up to \$10,000

TOTAL:

NOT WORTH THE RISK!

In some cases, criminal charges may be filed. You may serve up to 10 years in jail.

Pay at least minimum wage and overtime for extra hours

Allow workers to bring up concerns without punishing them

Provide a workplace free of discrimination and harassment

Provide a safe workplace

As an employer, some of your

KEY RESPONSIBILITIES

are to:

Have workers' compensation insurance

Pay all payroll taxes and keep records of employees and contractors

Have appropriate licenses

Give rest and meal breaks

Agricultural employer penalized for violations of heat illness and other standards

During a Labor Enforcement Task Force inspection in the fields, inspectors found a crew of 10 farm workers harvesting cilantro in 90-degree weather. The employer was fined \$24,500 for failing to conduct safety and heat illness prevention training to workers and for not providing adequate shade, single-use drinking cups for drinking water, and hand-washing facilities.

Note: This example reflects a typical scenario.

In 2018, agricultural employers inspected by LETF were assessed over \$165,000 in initial penalties. This brochure describes some of the common problems LETF inspectors find in agriculture. It also lists where you can get help.

Problems LETF finds in agriculture

Licensing

Labor Code section 1683 requires that anyone acting as Farm Labor Contractor (FLC) must be licensed by the Division of Labor Standards Enforcement (DLSE), must keep his/her license up-to-date, and must keep it in his/her possession. For more information about FLC licenses, please go to: <http://www.dir.ca.gov/DLSE/FLC.htm>.

Employee Hiring

Agricultural employers are often cited for:

1 Misclassifying employees as independent contractors.

In September 2019, Governor Newsom signed Assembly Bill (AB) 5 into law. The new law addresses the “employment status” of workers when they are claimed to be an independent contractor and not an employee. For more information, visit the Employment Status Portal: <https://www.labor.ca.gov/employmentstatus/>.

2 Not keeping all required records.

You must keep records of all your employees for the past four years. This should include name, address, job type, and last four digits of the Social Security number. For minors under 18, you must list their dates of birth.

Wages and Breaks

Agricultural employers are often cited for:

1 Not paying workers the wages they are owed.

- You must pay at least minimum wage for all hours worked. If the city where you are working or the federal government has a higher minimum wage than the state, then you must pay whichever of those rates is highest. For minimum wage rates, see page below.

2 Not allowing rest or meal breaks.

Workers must receive:

- A paid 10-minute rest break for every 4 hours of work.
- An unpaid meal break of at least 30 minutes if they work 5 hours or more. (An employee can agree to skip meal breaks if the workday is 6 hours or less.)

3 Paying a piece rate or other nonhourly rate that does not meet minimum-wage requirements (including any required overtime) or does not separately compensate workers for required breaks and other nonproductive time. For more information on piece rate compensation see below.

4 Not giving pay stubs or not paying payroll tax.

You must give out pay stubs, list the deductions, and pay payroll tax. For each pay period, keep records of work hours and amounts paid to each worker.

Visit: www.dir.ca.gov/dlse/DLSE-FAQs.htm for more information on all the items that must be included in a wage stub.

Health and Safety

Agricultural employers are often cited for:

I Not complying with the following regulations:

- § 3457 (c). Provide potable drinking water, single-use cups, toilets and hand-washing facilities
- § 3395 (d). Allow access to shade
- § 3441 (a). Reduce machinery hazards, e.g., guards for machinery and safe practices when using agricultural equipment
- § 3395 (f). Establish Emergency Response Procedures
- § 3439 (a). Ensure availability of first-aid materials onsite
- § 3395 (h). Provide employee and supervisor training on heat illness prevention

Many hazards have specific regulations that describe what an employer must do to protect workers. These are called Title 8 Safety Orders, such as those listed above, and you can find them here: www.dir.ca.gov/samples/search/query.htm.

If you have Health and Safety questions, please refer to “Code

of Regulations, Title 8” and/or contact your nearest Cal/OSHA Consultation Office.

- 2 Not providing the necessary equipment (such as long-handled tools).
- 3 Lacking a proper safety plan (Injury and Illness Prevention Program or IIPP).

You must have a written plan to identify hazards and protect workers. You must also have a way for workers to make suggestions without threat of being fired or punished.

Other employer-required programs:

- Hazard communication
- Heat Illness Prevention Program, www.dir.ca.gov/dosh/heatillnessinfo.html
- Energy Control Program

- 4 Poor records of training.

Safety training must be in a language that workers understand. Keep records that include date, type of training, name of trainer, and names of workers who attended. You must pay workers for the time they spend in training.



Stay up to date with new labor laws

Below are some resources to help you stay updated and comply with important recent changes to labor laws:

- **Paid Sick Leave.** Employers must do several things to comply with the Healthy Workplace Health Family Act; visit www.dir.ca.gov/DLSE/ab1522.html.
- **Piece-Rate Compensation.** Effective January 1, 2016, AB 1513 adds section 226.2 to the Labor Code concerning how to compensate piece-rate workers for required breaks and other nonproductive time. Visit www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm.

Schedule for California Minimum Wage Rate, 2020–2023

Date	Minimum wage for employers with 25 employees or less	Minimum wage for employers with 26 employees or more
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.00/hour	

Overtime for Agricultural Workers

Beginning in 2019, the number of hours worked per day or per week before overtime pay is required at a rate of one and one-half times the agricultural employee's regular rate of pay will phase-in according to the following schedule:

Schedule for Changes to Daily and Weekly Hours After Which Agricultural Workers Receive Overtime Pay

Effective date for employers with 26 or more employees:	Effective date for employers with 25 or fewer employees	Overtime (1.5x regular rate of pay) required after the following hours per day/hours per work-week:
Jan. 1, 2019	Jan. 1, 2022	9.5/55
Jan. 1, 2020	Jan. 1, 2023	9/50
Jan. 1, 2021	Jan. 1, 2024	8.5/45
Jan. 1, 2022*	Jan. 1, 2025*	8/40

*Double the regular rate of pay required after 12 hours in a workday.

Agricultural employees are also generally entitled to time and one-half pay for the first eight hours worked on the seventh consecutive day of work, and double-time pay for all work performed in excess of eight hours on the seventh consecutive day of work. For more information visit DIR's Overtime for Agricultural Workers Page (<https://www.dir.ca.gov/dlse/Overtime-for-Agricultural-Workers.html>).

Retaliation is illegal

Employers can be required to reinstate fired employees, pay employees' lost wages, and pay fines up to \$10,000 per employee if they punish or fire workers for:

- **Speaking up** about wages that are owed to them
- **Reporting** an injury or a health and safety hazard
- **Filing** a claim or complaint with a government agency.

It is illegal for employers to threaten or retaliate against workers in any way.

For example, employers cannot:

- **Threaten** workers with deportation
- **Punish** workers with undesirable tasks
- **Fire** workers or send them home
- **Prevent** workers from getting a different job.

You do not have to agree with the workers. If you are complying with labor laws, you do not have to make the changes that are being requested. But everyone benefits when workers feel safe enough to bring up concerns. Listen to your employees and involve them in coming up with solutions that work for everyone.

Where to Get Help

There are resources that can help you understand which laws apply to you and how to comply.

LETF

Call the Labor Enforcement Task Force (LETF) toll free at **855-297-5322** or go to www.dir.ca.gov/letf.

Cal/OSHA

Call Cal/OSHA Consultation at **800-963-9424** or go to www.dir.ca.gov/dosh/consultation.html.

Consultation Services provides free health and safety consultation to employers. Consultation Services is separate from the Cal/OSHA Enforcement Branch. All your communications with Consultation Services are confidential.

- To improve your safety plan, Cal/OSHA offers templates for an injury and illness prevention model program for agricultural employers with intermittent workers, and a heat illness prevention sample procedure: www.dir.ca.gov/dosh/heatillnessinfo.html.
- Go to www.dir.ca.gov/samples/search/query.htm to find regulations about specific hazards (Title 8 standards).

Other sources of help

- Agricultural Employers' Associations
- Small Business Development Centers
- Your workers' compensation insurance broker can offer assistance, including help with developing a safety plan.
- The Governor's Office of Business and Economic Development (GO-Biz): www.business.ca.gov

This booklet provides general information and is not meant to serve as legal advice. It was developed by the Department of Industrial Relations and its Labor Enforcement Task Force with assistance from the Labor Occupational Health Program at UC Berkeley.

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