Labor Laws: How Effective Are They?

— by Gregory Encina Billikopf —

Labor laws have placed an unreasonable burden on growers. Many laws are confusing. In addition, they are often inconsistent or at least give conflicting messages.

The Law, But...

The 1986 Immigration law is not likely to accomplish what it set out to do. The law requires employers to check a worker's right to work in the United States. Workers nationwide can choose from over 29 forms—many easily counterfeited—to satisfy such requirements. I know that one worker picked up his "green card" (the document is now blue) at a flea market for $3.

Plant crop growers, with few exceptions, are required by the U.S. Department of Labor to complete an ESA-92 form quarterly. The form calls for information on the number of days newly legalized aliens worked. However, most growers I have interviewed have never heard of the form...even though it has been a requirement since 1988.

Many laws are too inflexible. In California, employers may run afoul of overtime law regulations every time they grant a worker's request to work an extra hour today in order to go to a personal appointment tomorrow. This is the case even though the total number of hours worked in the week may be the same.

Many laws are too inflexible. Many laws are not enforced.

Many laws are not enforced. In the August 25, 1991 *San Francisco Chronicle,* Bryan Jay Bashin reports that toilets are not available to many agricultural workers. This is the case even though U.S. law since 1987 requires toilets for workers.

Using farm labor contractors (FLCs) doesn't relieve farmers of important time consuming management responsibilities. In California, farmers need to check that the FLC possesses both a state and a Federal license. Even with a contract with an FLC, growers are responsible for checking an employee's right to work in the United States (I-9 form), unless they are confident that their FLC is an "independent contractor" under immigration rules. Farmers must keep for each worker—and thus insist on receiving from their contractors—such data as the permanent address, social security number, basis on which wages were paid, period earnings, hours worked, and paycheck deductions. Some of this information must be on a weekly basis. And farmers must deal with the union if workers join a union. Even if an FLC is involved, the *grower* (not the contractor) is the "employer" not the FLCs—according to California's Agricultural Labor Relations Act.

Five Suggestions

Labor laws have done much to bring deserved benefits and protections to farm workers. Today, however, there are simply too many laws, each administered by a different agency. Each agency knowing little or nothing about the activities of other agencies. Each new law adds regulations but seldom completely replacing old regulations.

I have five suggestions that would improve conditions for growers, as well as workers.

- Each state, at the very least, ought to incorporate into their laws (perhaps with yearly revisions) the Federal regulations affecting employers so that farmers can deal with a uniform set of laws in each state.
- Make Federal laws sufficiently flexible so that it is possible to recognize when state laws are more strict.
- Amalgamate codes and eliminate duplicative requirements. In California, farm labor contractors need to register three times: with the state and Federal government, and with their local agricultural commissioner's office.
- Make changes in the code effective at a single time of the year.
- Reduce the number of Federal and state agencies involved with labor regulations.

In Summary

To recap, reduce the complexity and duplication of labor regulations and increase enforcement. Perhaps then the labor code would be more likely to be followed, understood, and enforced. Meanwhile, until some major changes take place, farmers who employ agricultural personnel would do well to have a labor consultant or attorney on retainer to keep them up-to-date.

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