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# Labor Compliance in Fresh Produce: Lessons from Food Safety

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In May 2016, the Produce Marketing and the United Fresh Produce Associations announced plans to explore efforts to improve compliance with labor laws in the fresh-produce supply chain. Most labor compliance agreements require producers to certify that they are abiding by applicable labor laws, and some go beyond labor-law minimums to require higher-than-minimum wages and grievance systems.

Two labor compliance systems that produce buyers can impose on their suppliers—the Fair Food Program (FFP) and the Equitable Food Initiative (EFI)—require farm employers to educate workers and supervisors about their rights and responsibilities under applicable labor laws. FFP and EFI establish procedures that allow workers to report violations and require growers to undergo third-party audits. However, neither program generates enough revenue from the label that growers may affix to their produce to make the sponsoring organizations self-sufficient. If the evolution of food safety compliance systems in the United States offer any lessons about the evolution of labor compliance systems, it is that a proliferation of labor programs and labels may lead to grower pressure to have government develop and impose industry-wide standards.

Compliance systems are based on goals, indicators, and audits. Protocols are established to prevent problems so that supervisors and workers are educated to implement them consistently. Indicators are the measurements that record ongoing production practices, including tests for water quality or pesticide residues and worker hours and earnings, with flags for out-of-compliance data and complaints of violations to monitors with the power to prevent growers from selling to particular buyers. Third-party audits are snapshot assessments of the operation against a check list of indicators, but the goal is a "motion-picture", that is continual, assessment on a farm evidenced by data and lack of complaints.

## Growers Face Wide-Ranging Laws and Regulations

Federal and state governments have enacted a range of laws and regulations governing how food is produced and handled from farm-to-fork. These laws deal with farming, including how fertilizers and pesticides are applied, employment, such as setting minimum wages and working conditions for hired workers, and food safety measures such as allowable residue levels on produce.

Growers are required to abide by these laws and regulations, and federal and state agencies have investigators and inspectors to respond to complaints and initiate inspections on their own. Many buyers and shippers go further, requiring growers to implement compliance systems and to undergo third-party audits to ensure compliance with applicable laws and any system protocols that go beyond them. Some auditing firms employ and train their own auditors, while others sub-contract audits of particular farming operations to third parties.

Audits are snapshots of a farming operation, verifying compliance at a particular time. What both regulators and buyers want is consistent compliance, which requires functioning systems to ensure compliance, to detect and fix problems, and a culture that makes food safety or adherence to labor laws is a key management objective that becomes a shared everyday goal.

Both quantitative and qualitative data are collected by third-party auditors under food safety and labor compliance systems, but they are generally not reviewed unless problems arise. Indeed, industry leaders and researchers note that food safety data are more often stored and ignored unless there are problems rather than analyzed. There is a similar lack of analysis of farm labor data, with no before-and-after analyses of indicators such as worker earnings, turnover, and retention on participating farms or comparisons between farms producing similar commodities that are in and out of labor compliance programs.



The data collected under compliance systems are private, and are generally not available to researchers. Discussions with those involved in farm labor compliance programs suggest that while worker advocates believe wage and employment indicators improve after program implementation, they have not analyzed labor data. Participating growers, some of whom consider participation in compliance programs a “necessary evil” to sell their produce, have not requested or released before-and-after comparisons of worker turnover, productivity, or other indicators of impacts.

## Evolution of Food-Safety Compliance Systems

Food-safety compliance systems developed as defensive reactions to food-borne illnesses that reduced demand and prices for affected commodities (Cook, 2011). Compliance systems help to overcome the externality that one producer’s unsafe practices can adversely affect all producers by requiring all producers to follow food safety standards. Food-safety systems can be commodity wide or apply only to producers selling to particular buyers.

Food safety became a major issue in 1993 when 623 people, mostly young children, were sickened by *Escherichia coli* (*E. coli*) O157:H7 bacteria in undercooked beef patties at 73 Jack in the Box restaurants in the western United States. Four children died and almost 200 were left with permanent injuries. The litigation resulted in individual and class-action settlements totaling more than \$50 million, the largest payments made until that date for food-borne illnesses.

As a result of the Jack in the Box incident, the U.S. Department of Agriculture (USDA) made the presence of *E. coli* in ground beef an illegal adulterant and the FDA raised the minimum recommended temperature for cooking hamburger from 140 to 155 degrees. Most meat producers introduced Hazard Analysis and Critical Control Point (HACCP) systems to ensure that their food was safe at each point in the production process. The beef industry invested \$30 million in food safety in the two decades after the Jack in the Box incident, 95% to deal with *E. coli* (Andrews, 2013). A steam pasteurization process that killed *E. coli* was approved by USDA in 1995, and was soon used by most major meat processors.

Bill Marler, who represented some of the Jack in the Box victims, said that *E. coli*-related illnesses linked to beef accounted for 90% of his firm’s food-borne illness revenue between 1993 and 2005. Today beef-related cases represent less than 5% of Marler’s revenue, that is, the beef industry’s response to the Jack in the Box incident has dramatically reduced beef-related illnesses and litigation (Andrews, 2013).

The number of produce-linked illnesses doubled between 1980-1987 and 1987-1995, prompting government and industry efforts to implement Good Agricultural Practices (GAPs) to prevent the contamination of fresh produce. GAPs and third-party audits changed the culture of many produce firms, encouraging them to treat food safety as an ongoing challenge and to develop risk-reduction programs.

Bagged spinach on September 14, 2006 was linked to an *E. coli* O157:H7 outbreak that killed three people and hospitalized over 100. The contaminated spinach was less than 1,000 pounds of the 680 million pounds of spinach a year consumed by Americans, but led to the recall of all bagged spinach and a slow recovery in fresh spinach sales and prices. The contaminated spinach was eventually traced to a 51-acre field leased by a spinach grower

from a cattle rancher, with *E. coli* found in nearby cattle and wild pig feces and river water. The fact that the contaminated spinach was mixed with other spinach meant that, instead of sickening only a few, thousands became ill (Calvin, 2007).

Spinach's so-called "9/14 moment" convinced industry leaders of the need for food-safety standards to restore consumer confidence in leafy green vegetables, which were approved as the voluntary California Leafy Green Products Handler Marketing Agreement (LGMA) of 2007. The 71 handlers who accounted for 99% of the leafy greens produced in California agreed to buy produce only from growers who agreed to implement best practices to ensure that their produce was safe and to have trace-back systems to discover exactly where and how any food-illness outbreaks occurred.

The Food Safety Modernization Act (FSMA, PL 111-353) gave the FDA new powers to require food producers to take steps to prevent contamination and to document their food-safety efforts. FDA issued regulations in November 2015 that incorporate many of the best practices developed by the LGMA to govern how U.S. fruits and vegetables are grown, harvested, cooled, and transported, including worker training, health and hygiene and monitoring irrigation water, fertilizers, animals near fields, and equipment (Collart, 2016).

Experience with food-safety systems suggests three lessons for labor compliance systems:

- First, food-safety protocols have both bottom-up and top-down qualities. GAPs were responses to food-safety issues on individual farms and commodities and were spread by industry associations, but the eventual response was a top-down government-led effort that developed minimum standards for all producers. Similarly, labor-compliance can be bottom-up, as when a union organizes the workers employed by a grower who pays low wages or this grower cannot recruit or retain workers, or top-down, as when the threat of federal and state penalties or the inability to sell produce to preferred buyers induces grower compliance with labor laws.
- Second, whether inspected by governments or third-parties, audits are snapshots of practices on the day and place inspected. More important are systems and cultures to ensure that food safety protocols or labor laws are obeyed consistently in order to avoid cases in which farms found in compliance on one day are found in violation on another. Collecting data and recording and responding to complaints are vital to monitoring compliance.
- Third, food-safety audits and systems were developed primarily as a defensive reaction to outbreaks of illness that imposed negative externalities on all producers. Some of the first food-safety systems offered price premiums to compliant growers, but these disappeared after "everyone complied." Buyers and consumers expect food to be safe, making it hard to sustain premiums for compliant farms (Crespi and Marette, 2001). Farm labor compliance systems today are in the premium-price, good seal-of-approval phase during which the relatively few growers participating get premium prices or easier access to preferred buyers.

## Different Approaches to Farm-Labor Compliance

Compliance with labor laws can arise in bottom-up fashion, as when workers refuse to work for farmers who do not pay at least minimum wages, or top-down, as when buyers require growers to abide by standards and have their compliance certified to sell their produce. In tight labor markets, bottom-up worker behavior can encourage farmers to comply with labor laws in order to obtain workers, since workers with other job options reject substandard jobs.

Workers can quit jobs at poor farms, feel empowered to complain to enforcement authorities, or form unions to negotiate wage increases and improve working conditions. For example, the slowdown in new—unauthorized—workers since the 2008-2009 recession has forced "better" growers to abandon policies that refused to rehire within a season any worker who quit temporarily for a better paying job, an example of a tight labor market improving worker bargaining power (Martin, 2016).

Top-down compliance programs encourage employers to comply with labor laws to avoid a penalty or to receive a benefit. Sticks or penalties include fines for violations, and carrots or incentives include premium prices, preferred access to buyers, or a label that makes a particular commodity more desirable to consumers. Top-down compliance can involve individual growers, as with labor law enforcement, or many growers, as with agreements negotiated between worker advocates and buyers that provide benefits to certified growers.

### Fair Food Program

The best-known farm labor compliance program is the FFP of the Coalition of Immokalee Workers (CIW) in southwestern Florida (Rural Migration News). The CIW effort began in bottom-up fashion, as the CIW pressed major Florida tomato growers in the 1990s to raise piece-rate wages from \$0.40 for picking a 32-pound bucket of mature-green tomatoes—picked green and ripened with ethylene—educate workers about their rights, and implement a grievance system with neutrals to deal with worker complaints. CIW supporters engaged in work stoppages and hunger strikes to pressure tomato growers to accept the FFP, and enlisted the help of former President Carter, who promised to mediate talks between workers and tomato growers in 1998, but tomato growers refused to negotiate.

The CIW in 2001 switched to a top-down strategy that pressured tomato buyers to require growers to comply with the FFP in order to sell their tomatoes. The CIW picketed Taco Bell outlets on college campuses until Taco Bell in 2005 became the first major buyer to join the FFP, paying a premium for the Florida tomatoes that it buys that growers pass on to workers.

The FFP requires growers to obey all applicable labor laws, but goes beyond labor law compliance to require that farm workers on participating farms be educated about their rights. Health and safety committees with worker representatives on participating farms monitor compliance, and complaints are investigated by neutrals employed by the Sarasota-based Fair Food Standards Council, which monitors a 24-hour complaint hotline, responds to worker complaints within two or three days, and audits FFP farms by interviewing half of the workers in every crew.

The FFP also requires tomato buyers to pay growers an extra \$0.015 a pound for the Florida mature-green tomatoes they buy. Growers keep \$0.02 or 13% of the premium to cover administrative costs and pass \$0.13 cents or 87% of the extra funds to tomato pickers. When workers are picking tomatoes, they do not know if they will be earning the extra pay, which is received only for tomatoes that are sold to FFP buyers.

The FFP code requires growers to use technology to record hours worked, with workers checking in and out so that their hours of work are recorded accurately. Growers rather than contractors are considered the employers of all workers on their property, and pay stubs must have information required by law plus a line for the FFP premium pay and a telephone number that workers can use to make complaints.

The FFP covers 17 major tomato growers who may employ a peak 30,000 workers. The Quarterly Census of Employment and Wages reported that an average 15,000 workers on 300 Florida vegetable farms were paid total wages of \$372 million in 2015, an average of almost \$500 a week; FFP premiums often add \$30 to \$60 to weekly pay (FFP, 2016). Under the FFP, growers are not permitted to require workers to cup or overfill their buckets, which the CIW estimates adds 10% to worker earnings because workers can fill more buckets that are level-full.

The CIW has agreements with major tomato buyers, including McDonald's, Subway, Wal-Mart, and Sodexo. CIW and FFS Council staff are paid from foundation grants, a funding system that the CIW hopes to change with the FFP label unveiled in October 2014, so that payments for use of the label will eventually cover staff costs. The FFP is expanding, covering the tomatoes produced by Florida-based growers on the eastern seaboard during the summer months and peppers and strawberries grown in Florida.

The CIW reported that \$5.2 million in extra payments were made to tomato pickers in 2010-2011, reflecting funds that had been held in escrow from previous years, an average \$3.1 million in 2011-2012 and 2012-2013, and almost \$4.1 million in 2014-2015 (FFP, 2016). Florida growers shipped 35 million 25-pound cartons of tomatoes a year recently or about 875 million pounds. The \$4.1 million in FFP premiums could apply to 315 million pounds or

36% of the crop, but it should be emphasized that some tomatoes generate higher per-pound premiums for workers, such as cherry and grape tomatoes.

The effects of the FFP on worker satisfaction, productivity, and turnover have not been studied. CIW staff report that some FFP growers are issuing fewer W-2 statements with stable production, suggesting less worker turnover. They also report fewer workers leaving tomato harvesting as production ebbs to work in higher-earning blueberries, where farms do not participate in the FFP.

The FFS Council investigated over 1,400 worker complaints in the past five years. The usual remedy for a valid complaint is grower agreement to fix the problem and to develop a plan of action to prevent recurrence, such as retraining or dismissing supervisors. If a farm sells some tomatoes to an FFP buyer, then all of the farm's workers are covered by the FFP, a policy that extends FFP standards to workers even when they are not picking for buyers who are paying the price premium.

### Equitable Food Initiative

The Equitable Food Initiative was launched in 2012 by Oxfam America and the United Farm Workers (UFW) union with the support of Costco (EFI, 2016). The EFI aims to cover workers in all commodities in all of the United States as well as Canada and Mexico. EFI standards assess labor, food safety, and environmental sustainability on individual farms. The standards call for full compliance with federal, state, and local labor laws, compliance with GAPs for food safety, and for growers to manage "pests without the use of hazardous pesticides, sound crop management, nutrient and water resources, management of the surrounding habitat and worker involvement."

A key element of each category, labor, food safety, and sustainability, is worker involvement in the formulation of the standards, training about their content, and input in implementing them. Farm workers are to be "trained their rights and responsibilities, educated about the standards and constructive methods of communicating with their employers, and afforded opportunities for professional development." Worker involvement is to be facilitated through "an authorized worker liaison team or through traditional labor union representation." Workers are to be paid while they are being trained, both men and women are to be represented on liaison teams, and collective bargaining agreements are to take precedence over the standards if their provisions exceed EFI standards.

There are 11 labor standards, many with several benchmarks and indicators. For example, there are 11 health and safety benchmarks, and each has at least one indicator, such as having workers compensation, providing water and toilets, and providing respirators when needed. Labor laws require employers to satisfy most of these benchmarks, but EFI standards go beyond them in labor relations by requiring worker input into employer wage-setting decisions and training to resolve disputes with the option to appeal to third-party neutrals. Employers do not have to provide housing to workers, but if they do, it must satisfy federal, state, and local standards, and the EFI standards clarify that farm worker tenants have the right to invite guests, including union organizers.

The first farming operation certified was an Andrew & Williamson's (A&W) strawberry farm in California in July 2014; a second A&W strawberry farm was certified in 2016. California's Earthbound Farms, a vegetable producer, and Washington's Pacific Agra Farms, an onion producer, have been certified by EFI, as well as several Mexican berry operations and a Canadian vegetable farm.

EFI trains workers and supervisors in EFI standards, with Costco rewarding participating growers with preferential access to its buyers. The EFI emphasizes that hundreds of pickers can monitor food-safety protocols better than third-party auditors who visit farms periodically, and says that some workers who have been trained now realize the importance of food safety.





Trained supervisors and workers—the multi-stakeholder teams at the heart of EFI—extend their knowledge of EFI standards to the farm’s entire workforce to ensure compliance, so that compliance becomes a responsibility of both supervisors and workers. Each farm’s teams meet regularly to ensure continued compliance, and workers can report non-compliance to EFI via a smartphone app. Third-party auditors issue compliance certificates that allow farms to put the Responsibly Grown, Farmworker Assured label on their produce for three years.

EFI has a staff of 10 funded by foundation grants to publicize the program, train leadership teams on farms, and work with growers and buyers. The effects of EFI on farm worker earnings, productivity, and turnover have not been evaluated. Anecdotal evidence suggests that growers in the program believe that worker turnover has decreased in response to higher pay, worker feelings of belonging to an organization that cares about them, and end-of-season bonuses.

## Hopes and Challenges for Farm Labor Systems

Compliance systems can be defensive or offensive. In the case of food-safety, systems were largely grower-led defensive reactions to food-borne illnesses that reduced demand and prices for all growers. By contrast, the labor compliance system, FFP, was an employee-led initiative to appeal to consumers of fast-food chains that purchase mature-green tomatoes, asking them to encourage tomato buyers to pay more for tomatoes and require growers to pass the extra payments on to tomato pickers. The labor compliance system, EFI, is an offensive effort led by Costco, Oxfam, and the UFW to develop standards that protect workers; it encourages farmers to participate by giving them preferred access to Costco buyers.

Farm labor compliance systems have not been evaluated to date. Both FFP and EFI are worker advocate-buyer agreements that offer growers access to buyers as an incentive to participate. Compliance is assessed in a 0-1 fashion, but growers are normally given a “reasonable” time to remedy violations before being excluded. Labor compliance systems have not developed indices of compliance with a passing grade, so that participating growers can be ranked and compliance assessed over time. There have been no before-and-after surveys of long-term employees to assess worker satisfaction or to analyze changes in worker earnings, productivity, and retention, and no comparisons of workers on participating and non-participating farms.

The evolution of food safety compliance systems offers hopes and challenges for similar farm labor systems. Any premium prices once received by pioneering growers who adopted food safety compliance systems disappeared as food safety systems became the norm. If there is a similar evolution in farm labor compliance, current preferred access to buyers and premium prices may disappear. The hope is that growers may be able to attract and retain more productive workers if labor compliance increases, especially if compliance programs increase worker and supervisor training and result in more satisfied and productive workers.

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