Washington Small Fruit Conference

Labor Briefing

Rick Anderson
CFO
wafla.org

Patricia Taylor
H-2A Account Executive
wafla.org

Dan Fazio
Director
wafla.org
What are the issues for 2016?

- What are the top labor questions from small fruit growers?
- How can you make the H-2A legal guest worker program work for you?
- An Agency just showed up – now what?
Who is WAFLA?

Premier HR Association in PNW.
700 + members: WA, OR, ID, CA.
HRAnswers.
Products and Services.
Largest H-2A provider on the west coast (second largest in the nation).
Agricultural Labor Issues 2016

Premier HR Association for seasonal employers

December 2, 2015
Rick Anderson
CFO
Top Labor Questions

• Piece rate rest break pay
• Temporary worker housing (TWH) rule change
• ACA
• Living wage movement
• Labor shortage
Piece Rate Pay for Rest Breaks

- WA Supreme Court made law with their ruling July 16, 2015
- Court did not address retroactive compensation
- WA L&I has released their guidance
- Growers who pay piece rate must comply
Piece Rate Pay 101

• Agricultural workers must be given a full 10-minute rest period for each 4-hour work period.

• Agricultural employers who pay by piece-rate must pay separate compensation for rest periods at their “Regular Rate of Pay”.

• Regular rate must be the larger of minimum wage or piece rate earnings computation.

• “Total Active Hours of Work” does not include break time.
Compute Amount Owed for Rest Periods:

1. Working rate of pay = Total piece rate earnings ÷ Total active hours
2. Regular rate of pay = larger of minimum wage or working rate of pay
3. Compute minimum wage make-up pay if the regular rate is below minimum wage
4. Regular rate $\times$ rest break time = $$ Amount owed for rest breaks
Total Pay Compensation:

+ Minimum wage make-up pay (if any)
+ Rest break pay at regular wage
+ Piece rate earnings

= Total Pay for the week
# Example of Piece Rate Pay

[wafla logo]

## Rest Break Calculator

http://www.wafla.org/PieceRateRuling

---

## Input Data

<table>
<thead>
<tr>
<th>Employee Name:</th>
<th>Joe Sample</th>
<th>ID #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Worked or Pay Period</td>
<td></td>
<td>12/2/15</td>
</tr>
<tr>
<td>Total earnings from piece rate for the day or pay period</td>
<td>$631.00</td>
<td></td>
</tr>
<tr>
<td>Total hours to be paid (including paid rest breaks, excluding meal periods)</td>
<td>60 Hours 0 Minutes</td>
<td></td>
</tr>
<tr>
<td>Time spent on required paid rest breaks</td>
<td>2 Hours 0 Minutes</td>
<td></td>
</tr>
<tr>
<td>Minimum wage or applicable hourly rate</td>
<td>$9.47</td>
<td></td>
</tr>
</tbody>
</table>

*WA 2015 minimum wage = $9.47/hr, WA 2015 AEWR = $12.42/hr, or your base hourly rate*
### Compute the Wages

#### Calculator

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Piece Rate &quot;Working Hours&quot;</td>
<td>58.00 hrs</td>
</tr>
<tr>
<td>Rest Break Hours</td>
<td>2.0000 hrs</td>
</tr>
<tr>
<td>&quot;Working Rate of Pay&quot; (piece rate compensation earned divided by the total hours spent working (not including hours spent resting))</td>
<td>$10.88 /hr</td>
</tr>
<tr>
<td>Minimum wage make-up pay required?</td>
<td>No</td>
</tr>
<tr>
<td>Amount of minimum wage make-up pay</td>
<td>$0.00</td>
</tr>
<tr>
<td>&quot;Regular Rate of Pay&quot; (the higher of the minimum wage or the working rate of pay)</td>
<td>$10.88 /hr</td>
</tr>
<tr>
<td>Amount of Rest Break pay owed at the Regular Rate of Pay</td>
<td>$21.76</td>
</tr>
<tr>
<td>Piece Rate Earnings</td>
<td></td>
</tr>
<tr>
<td>Total Pay Compensation (Piece Rate Pay + Rest Break Pay + Min Wag Make-up Pay)</td>
<td>$652.76</td>
</tr>
</tbody>
</table>
New Temporary Worker Housing Rules (TWH)

**Significant Changes**

- Brief overview of the most significant rule changes
- Camp Management Plans
- Licensing requirements
- Crackdown on unlicensed TWH
Key Dates:

Washington Department of Health and Labor & Industries issued the final rules for TWH June 15, 2015

- Some amended section went into effect 7/16/15
- Majority of rules effective 1/1/16 (after 2015 season)
- Specific rules go into effect 1/1/17
- Existing housing square footage grandfathered to 1/1/19
- Family housing vs. common facilities
Responsible Agencies:

• DOH is responsible for licensing TWH in compliance with federal regulations and state law.

• L&I has enforcement authority for safety and health as defined by federal and state regulations.
Space Requirements:

Note the difference of “occupant” and “temporary worker”

<table>
<thead>
<tr>
<th>Adopted language:</th>
<th>WAC 246-358-029 Table 1:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Floor Space Requirements</strong></td>
<td><strong>Sleeping room only</strong></td>
</tr>
<tr>
<td></td>
<td>50 square feet per occupant</td>
</tr>
</tbody>
</table>

- The 100 sq ft per worker applies only in family shelter with sleeping and cooking in the same room and is a federal requirement. Some TWH operators may be able to reduce to 50 sq ft per occupant (plus 20 sq ft for the first occupant) by providing a separator between sleeping and cooking areas, or by removing the cooking areas.

- For existing housing prior to 1/1/2016, DOH will delay the effective date to 1/1/2019 giving operators time to comply. You may request an additional extension to meet the requirement, but must request the extension before 1/1/2019 on a DOH form.
Facility Requirements:

The previous two-toilet minimum per gender was changed

<table>
<thead>
<tr>
<th>Facility requirements</th>
<th>Toilets</th>
<th>Handwash Sinks</th>
<th>Bathtubs or Showers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td>Common Facility, Single Sex</td>
<td>2 minimum, 1 per 15</td>
<td>2 minimum, 1 per 15</td>
<td>2 minimum, 1 per 6</td>
</tr>
<tr>
<td></td>
<td>occupants</td>
<td>occupants</td>
<td>occupants</td>
</tr>
<tr>
<td>Common Facility: Male/Female</td>
<td>1 minimum, 1 per 15</td>
<td>1 minimum, 1 per 15</td>
<td>1 per 6 occupants</td>
</tr>
<tr>
<td></td>
<td>occupants</td>
<td>occupants</td>
<td></td>
</tr>
<tr>
<td>Each Family Shelter</td>
<td>1, if provided</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

Partitions in showers and toilets will be required January 1, 2017
Other Changes:

- Heating systems in habitable rooms to 70 degrees by 1/1/17.
- Lockable, anchored personal storage delayed to 1/1/17.
- Lockable storage not required in family shelters.
- Cots allowed.
- Microwaves allowed for 4 per 10 cooking surfaces ratio.
- Rails on top bunks not required.
- Food handling and eating areas must be covered and enclosed or screened.
More Changes:

• Removed requirement for hot water in all hand wash sinks.
• Locks are required on exterior doors of family shelters and on bedroom doors (if any) in family shelters.
• Locking mechanism on all toilet and shower stall doors (if provided).
• Fire extinguishers are required in each dwelling unit with a sleeping area if there is not more than 1 emergency exit.
Camp Management

These are the rules for living in this camp. The rules are for your protection and are intended to help you live in a safe place. Each person must follow the rules or they may be asked to leave.

**Emergency Contact Information**

Camp Owner/Manager—Name: __________________________ Phone: __________________________
Camp Address: __________________________ City: __________________________
Police Phone: __________________________ Ambulance Phone: __________________________
Clinic Address: __________________________ Phone: __________________________
Hospital Address: __________________________ Phone: __________________________
First aid trained—Name: __________________________ How to contact: __________________________
First aid supplies are located at: __________________________
County Health Department Address: __________________________ Phone: __________________________
Housing Complaints: State Department of Health Phone: 1-800-832-8822
Emergency Procedures:
  In case of fire, do this: __________________________
  In case of an earthquake, do this: __________________________

**Note:** An emergency escape map/plan is posted in each building or sleeping area. If missing, notify the owner/manager.

**Camp Fees**

Charges for staying in the camp (if applicable) are:
Rent: $_______ □ per month □ per week Utilities: $_______ □ per month □ per week
Damage deposit: $_______ Other charges: $_______

**Camp Rules**

- Do not overcrowd the housing. The maximum number of people allowed to stay in this camp is ______.
- Report problems—sickness, drinking water quality, or gas fumes and odor—to the owner/manager.
- Keep camp clean and neat. No littering. Do not throw trash on or near the grounds.
- Do not use disposable items such as plates and cups. Instead, use reusable plates and cups to help reduce waste.
## Affordable Care Act

- **2016 Reporting Requirements**

Filings are due in 2016 for the 2015 calendar year to implement two new sections of the IRS Code:

<table>
<thead>
<tr>
<th>6055 - Minimum Essential Coverage (MEC) Reporting</th>
<th>6056 Applicable Large Employer Reporting (ALE)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>To Employee</strong></td>
<td><strong>To Employee</strong></td>
</tr>
<tr>
<td>Documents Required</td>
<td>1095-C</td>
</tr>
<tr>
<td>Sections to Complete</td>
<td>Part I, II, III, IV</td>
</tr>
<tr>
<td>Transmittal to IRS</td>
<td>All info</td>
</tr>
<tr>
<td>Provided by</td>
<td>Include 1095-B data in IRS transmittal</td>
</tr>
<tr>
<td><strong>Who is affected</strong></td>
<td>Health Carrier</td>
</tr>
<tr>
<td><strong>What is Provided</strong></td>
<td>Enrolled Employees and Dependents</td>
</tr>
<tr>
<td><strong>What is Provided</strong></td>
<td>Name/Address/TIN (SSN)/Months Covered</td>
</tr>
<tr>
<td><strong>How is it Provided</strong></td>
<td>E-file required over 250 returns</td>
</tr>
<tr>
<td><strong>When is it Needed</strong></td>
<td>1095-B and 1095-C to individual by 2/1/2016</td>
</tr>
<tr>
<td></td>
<td>1095-B and 1095-C to IRS on 3/31/16 (E-file)</td>
</tr>
<tr>
<td></td>
<td>or 2/28/16 (Paper)</td>
</tr>
</tbody>
</table>
ACA Reporting for Large Employers (>50)
Living Wage Movement

• Several cities are pushing to increase the minimum wage
• The Restaurant Association, long opposed to a minimum wage increase, is now planning to support a bill to increase the min wage to $12/hr.
  • Goal is to allow a tip credit and a training wage
  • Prevent jurisdictions from implementing their own min wage
  • Would rather negotiate a bill in the Legislature vs. ballot initiative
  • May include a state directed min wage by county
• What are your thoughts?
Labor Shortage

- Agriculture continues to experience a labor shortage in all sectors:
  - Seasonal workers (pruning, thinning, harvest, etc.)
  - Qualified supervisors
  - Skilled & technical (mechanics, agronomists/horticulturists, irrigators, applicators, etc.)
- Shortage is becoming more severe
- E-verify coming
- Borders are tighter
- Agriculture workforce aging out
- Fewer entrants into the workforce
Labor Shortage Solutions

• Law of supply and demand – compete with wages & benefits
• When the supply is short – they demand
• Farm Labor Contractors (they are drawing from the same labor pool)
• Legal Guest Worker Program (H-2A, H-2B, EB-3)
Questions

http://www.wafla.org/employerresources

8830 Tallon Lane NE
Lacey, WA 98516
(360) 455-8064
www.wafla.org