

FARMWORKER JUSTICE NEWS



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PHOTO: EARL DOTTER



Increased Pesticide Protections for Farmworkers: EPA'S WORKER PROTECTION STANDARD UPDATED

At the end of September, the Environmental Protection Agency finalized and made public its revisions to the Worker Protection Standard (WPS), a federal regulation aimed at protecting agricultural workers from the health risks associated with pesticides. After more than 20 years of advocacy to strengthen these protections, we welcome these revisions and are pleased that the changes include many important new protections from exposure to pesticides for farmworkers. Farmworkers are routinely exposed to high levels of pesticides in the fields where they work and in the communities where they live. We hope that the improved regulation will result in greater awareness by farmworkers of the risks they face, stronger protections from exposure, and ultimately, fewer pesticide-related injuries, illnesses, and deaths among farmworkers and their family members.

The regulation applies to hired workers involved in the production of crops and "handlers" who mix, load, or apply pesticides. The changes will take effect over the next two years, and compliance with certain provisions will not be required immediately.

The revised WPS includes changes to protections related to:

- Training for Agricultural Workers and Pesticide Handlers
 - Increases the frequency of worker safety training from once every five years to every year
 - Improves the content and quality of worker safety trainings
 - Training must occur *before* workers enter an area where a pesticide has been used; there is no "grace period" for training

- Access to Information about Pesticides Used in the Workplace
 - Workers may designate another individual to access information about the pesticides used at their worksites. In an emergency situation, an employer must promptly provide this information to treating medical personnel
 - Improves posting and notification about pesticide-treated areas
- Protections for Pesticide Handlers
 - Sets 18 as the minimum age for pesticide handling and early entry into restricted areas
 - Provides for medical evaluation, fit testing, and training for pesticide handlers who must use respirators
 - Clarifies requirements for decontamination equipment

While we are disappointed that the final rule does not include some significant safety measures, we will continue to work with our community partners to advocate for greater worker protections at EPA, and at the state and local levels.

In the months to come, we will reach out to farmworkers to help them understand the changes in the law and continue to educate them about their right to a safe workplace and environment. We will also work with EPA to ensure timely implementation and strong enforcement of the new rule, and continued engagement with farmworker communities.

IMMIGRATION POLICY UPDATE

Farmworker Justice continues to serve the farmworker community as a critically important source for information, analysis, and advocacy on immigration policy in the nation's capital. While this Congress remains unlikely to advance reasonable immigration reform, legislative proposals likely will be introduced that would be very harmful to immigrant farmworkers and their family members. Agribusiness continues to press Congress for immigration legislation, and farmworker organizations depend on us to help ensure that their voices are heard and that a just solution is reached. We also garner media coverage and use social media to help shape public opinion on public policy.

The H-2A agricultural guestworker program has been expanding rapidly over the last few years as growers claim labor shortages and request government approval to hire temporary foreign workers. There is no limit on the number of H-2A visas per year. There were about 140,000 jobs certified in FY 2015 and, although that number is still a small fraction of the 2.4 million in the farm labor force, it is expected to continue its growth. With advocates around the country, we have been monitoring and reporting on the operation of the H-2A program, and requesting improvements in implementation and enforcement from Secretary of Labor Tom Perez and heads of the Labor Employment and Training Administration (ETA), and the Wage and Hour Division (WHD). We have also been active in a coalition that seeks to reform abusive international recruitment practices under the H-2A and other worker visa programs. Despite enhanced DOL enforcement recently, abuses of domestic and foreign workers are widespread.

While we continue to prepare for implementation of President Obama's administrative relief program, its implementation date is uncertain. The Deferred Action for Parents of American Citizens and Lawful Permanent Residents (DAPA) program that has the potential to benefit over 700,000 farmworkers and their family members remains on hold due to a court order. The federal government has appealed the district court's decision in *Texas v. U.S.* to the 5th Circuit Court of Appeals. However, the three-judge panel of the Appeals Court is likely to uphold the lower court's decision. While the prospects for the Supreme Court to accept the case and overturn the decision are brighter, the appellate decision must be issued very soon or it will be too late for the Supreme Court to rule during the term that ends in June 2016. As President Obama's term of office ends in January 2017, the future of DAPA remains uncertain.

Farmworker Justice continues to advocate that the administration make DACA and other administrative changes to immigration policy accessible to farmworkers. This includes collaborating with other organizations to urge the administration to take action to protect immigrant workers asserting their labor rights from deportation and provide them access to work authorization. We continue to educate farmworker-serving organizations on DACA and the ways in which to prepare for DAPA by collecting documents through presentations and webinars.



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LITIGATION UPDATE

Farmworker Justice has joined with several farmworker legal advocates to provide judges with important information regarding matters currently pending in their courts. In March 2015, FJ authored an *amicus* brief for the case *Demetrio v. Sakuma Bros. Farms* (*amicus* brief, WA Supreme Court, appeal filed Nov. 2014). Together with the National Employment Law Project, Farmworker Justice wrote an *amicus* brief on behalf of a coalition of farmworker health organizations in a wage and hour class action brought by Columbia Legal Services and local firm Terrell, Marshall, Daudt, and Willie against Sakuma Bros. Farms, a large berry grower in Washington. Plaintiffs are seeking a declaratory judgment from the Washington Supreme Court holding that workers who are paid on a piece-rate basis are entitled to paid rest breaks under state law.

Our brief focused on educating the court about the health impacts of rest breaks for piece-rate workers. Piece-rate workers are low-wage workers and are strongly disincentivized from taking breaks when they are not paid to do so. The result, as studies of farmworker health have indicated, is that piece-rate workers with unpaid breaks are less likely to take breaks, and thus more vulnerable to overwork and heat-related illnesses. If successful, this litigation would protect the right to paid rest breaks for thousands of piece-rate workers on Washington's farms. In the early summer of 2015, the Supreme Court for the State of Washington ruled that piece-rate workers are legally entitled to separately paid rest breaks that must be paid at the average piece-rate pay earned by the individual worker. The Supreme Court's opinion referenced the *amicus* brief filed by Farmworker Justice and NELP.

Jimenez v. GLK Foods, LLC; Ramirez v. GLK Foods, LLC (E.D. Wis., filed February 2012)

Farmworker Justice and local co-counsel filed class action lawsuits charging Wisconsin-based GLK Foods, the world's largest sauerkraut producer, with federal and state wage and labor law violations in its employment of hundreds of H-2B workers since 2006, when GLK replaced its previously all-local workforce with guestworkers. GLK then systematically underpaid the H-2B workers, illegally, charged them illegal recruiting fees, failed to reimburse them for travel to and from their small hometown in Mexico, and sent them home before their contract expired in 2010 and 2011. In 2011, when the H-2B workers were wrongfully terminated due to a potential H-2B wage rate increase, the workers were replaced overnight by a crew of U.S. workers. In both 2010 and 2011, the workers worked for only a few weeks and were unable to earn enough money while in the U.S. to pay for their pre-employment expenses.

These cases seek to establish, among other things, that when an employer recruits and hires H-2B workers to work for a specified period of time, it incurs binding and enforceable legal commitments to employ the workers throughout that period. In July 2014, we filed a motion for summary judgment, requesting that the court rule on GLK's liability on federal wage claims as a matter of law. In early 2015, the parties filed dispositive motions with the Court.

We have also been involved with two cases challenging the EPA's inaction and lack of enforcement of protections against pesticide exposure. In *Pesticide Action Network North America v. Environmental Protection Agency* (9th Circuit., petition for mandamus filed July 2013; appeal and related administrative objection filed June 2014), Farmworker Justice and party have sued the EPA to change its pesticide safety requirements in response to the concerns of farmworkers and their families about alarming health and safety impacts from agriculture's heavy usage of pesticides. The case focuses on an administrative petition filed with the EPA in 2009 by a coalition of farmworker, public health, and conservation advocates urging the agency to set safety standards to protect children who grow up near farms from the harmful effects of pesticide drift. The petition asked the EPA to adopt no-spray buffer zones around homes, schools, parks, and day-care centers for the most dangerous and drift-prone pesticides. EPA ignored the petition for over four years.

Likewise, in *Garcia v. Environmental Protection Agency* (N.D. Cal., filed August 2013), in conjunction with California Rural Legal Assistance and the Center on Race, Poverty, and the Environment, Farmworker Justice represented parents of Hispanic schoolchildren in California in a complaint against the EPA. The complaint, filed under Title VI of the Civil Rights Act, alleged that California's state pesticide regulatory agency approved agricultural uses of

LITIGATION UPDATE (continued from page 3)

highly toxic pesticides that disparately impacted Latino schoolchildren. In 2011, after a decade of investigation, the EPA found that California's pesticide approvals were racially discriminatory. The EPA then entered into a wholly inadequate settlement with California that required the state to do little more than limited monitoring of exposure levels and outreach to affected areas. In 2013, the administrative complainants sued the EPA, seeking to compel it to overturn the settlement and appropriately address the problem. The EPA responded by asking the District Court to dismiss the case, citing agency discretion to use, or not use, its enforcement powers. The EPA also cited that the case law supported the Court to give deference to agency decisions because they are not subject to judicial review.

In the late spring of 2015, appellate briefs were filed. The EPA's arguments asking the Circuit Court to uphold the District Court's dismissal relies mostly on agency discretion arguments; that is, that the EPA's decision is not subject to judicial review. While plaintiffs' argument that EPA exercised its discretion poorly has plenty of evidence to support it, the law is that enforcement decisions are committed to an agency's discretion by law, and a court cannot second-guess the soundness of a decision committed to its discretion or the settlement reached by an agency and a regulated party. Therefore, the settlement is an integral aspect of the agency's underlying enforcement discretion.



OCCUPATIONAL HEALTH GOES MOBILE

Twenty-thousand farmworkers are poisoned every year through occupational exposure to pesticides, the highest rate of chemical-related illness of any occupational group. Although on-the-job pesticide safety training is required for all workers engaged in hand labor in treated fields, a California study in 2000 revealed that 57 percent of farmworkers had not received pesticide safety training. For five years, Farmworker Justice has received an OSHA Susan Harwood Training Grant to partner with community-based organizations to carry out *promotores de salud* programs, which recruit and train individuals from farmworker communities to do educational outreach to their peers.

In 2015, Farmworker Justice partnered with Lideres Campesinas in California to train 19 *promotores de salud* to provide outreach to farmworkers about pesticide safety, heat illness, field sanitation, and workers' rights. In the six months after receiving training, the *promotores de salud* reached 2,800 farmworkers in Ventura County, Kern County, and the Central Coast region around Santa Maria, California. New this year is Farmworker Justice's work with Iana Simeonov, a researcher and consultant, to design and implement a text messaging program to reinforce the health messages received by farmworker participants and to evaluate program effectiveness. The *promotores de salud* participated in developing the text message content and then enrolled farmworkers in the text messaging program during their outreach efforts. For three months after enrolling, farmworkers received occupational health messages and questions, which requested responses to help us better understand their experiences and to evaluate the program.

In 2016, Farmworker Justice will continue our partnerships with Lideres Campesinas and Iana Simeonov to improve the project and reach even more farmworkers with in-depth safety training, both in person and through mobile phone-based education.



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**MILY TREVIÑO-SAUCEDA,
PRESIDENT,
ALIANZA CAMPESINA NACIONAL**

**ROBERT A. WILLIAMS,
FLORIDA LEGAL AID ATTORNEY**

TRANSFORMING RELATIONSHIPS IN AGRICULTURE

The Equitable Food Initiative, a new corporate social responsibility project in agriculture cofounded by Farmworker Justice and a diverse group of partners, has been expanding. There are now several farms in the U.S. and Mexico that have been certified by independent auditors to meet the EFI's standards on labor and occupational safety, pesticide management, and food safety. Before a certification can be issued, each farm must have a Leadership Team, comprising worker and management representatives, that has previously undergone substantial training on working together to address issues and ensure compliance with the EFI standards.

The system provides assurances to consumers of the companies that sell the produce, which currently includes Costco Warehouse and Bon Appetit Management Corp. During the summer, our president Bruce Goldstein joined with other EFI board members to visit a certified strawberry farm near Watsonville, California, and met with the Leadership Team members, who impressed everyone with their commitment. Extensive information about the EFI is available at www.equitablefood.org. Farmworker Justice continues to play an important role in guiding the development of this program, which holds great promise for the future.

ASSESSING FARMWORKER COMMUNITIES' ACCESS TO HEALTH CARE

Farmworkers and their families face numerous barriers to health care access in the U.S. To better understand these barriers and support efforts to improve the health of farmworker families, we conducted a nationwide needs assessment over the summer and fall of 2015. Our staff conducted focus groups with farmworkers, promotores de salud, and staff at community organizations in New York, Maryland, Michigan, California, and Arizona.

Farmworker Justice also asked farmworker service organizations to respond to an online needs assessment. These organizations included legal services, community-based organizations, and Migrant and Seasonal Head Start programs, among others. In total, staff met with 40 farmworkers, 60 promotores de salud, and 24 staff at community organizations. An additional 32 organizations responded to the online needs assessment, representing 13 states, including New Mexico, North Carolina, Pennsylvania, and Oregon.

The needs assessment asked participants questions related to their health care needs, barriers to health care access, the Affordable Care Act (ACA), and their experiences at community/migrant health centers. Workers and promotores shared their own experiences, while community organizations shared the experiences of those they serve. By far, the top identified barriers to health care access were transportation, language, and cost. The lack of transportation in rural areas is well documented and remains a major barrier to health care access in farmworker communities. Interestingly, though, workers most often cited language and cost as top barriers to health care rather than transportation. Language access, including the availability of interpreters and the quality of interpretation, often came up in discussions about health care access among workers and promotores. Many told stories about a lack of interpreters in the clinics, especially in indigenous and Haitian farmworker communities. Due to the lack of available interpreters, many patients had to wait beyond their appointment times before an interpreter became available. Unfortunately, the availability of interpreters did not always result in adequate interpretation. Bilingual (Spanish and English) promotores told us that sometimes the interpretation provided to the doctor was inaccurate or incomplete.

Cost was the most often discussed barrier in focus groups with workers and promotores. Those who did not have health insurance were not able to afford the payments required at health centers, even though health centers have a sliding fee discount program in which the amount paid by the patient corresponds to his/her household income. Yet health insurance did not necessarily make health care more affordable. Copays for medications and additional services (such as tests) were too high. This was especially true for migrant workers with out-of-state health insurance. The workers interviewed in Maryland, for example, all had health insurance from Florida, but did not use it in Maryland because they did not want to incur the extra costs for out-of-network care.



PHOTO: EARL DOTTER

**Open enrollment
for the Health
Insurance
Marketplace
began November
1, 2015 and ends
January 31, 2016.**

The penalty for not having health insurance coverage in 2016 is \$695/person or 2.5% of household income, whichever amount is greater. Farmworker Justice developed materials for farmworkers and advocates on the ACA that can be found on our website.

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the majority responded that there was little to no impact. These sentiments were echoed by the workers and promotores. While most were aware of the ACA, there was still confusion and misinformation, especially when it came to the tax penalty.

A worker in New York said she had heard that if you receive a subsidy from the Health Insurance Marketplace, you have to pay that money back when you file your taxes. For those enrolled in health insurance (25 of the 40 workers we met with had some form of health insurance), few used it because of the high copays, and many found the premiums too expensive, even with financial assistance. A Haitian worker in Maryland said that at the end of the month there was not enough money for food after paying her health insurance premium and other household expenses. In the border areas of Arizona and California, many of the workers prefer to seek care in Mexico rather than the U.S., even though some have U.S. health insurance. The promotores we met with pointed out that while there is more knowledge of the ACA and health insurance due to ads on TV and radio, there remained confusion about where and how the farmworkers could use their health insurance.

Farmworker Justice is working with community organizations, Primary Care Associations, and national organizations to facilitate farmworker access to health care, including health insurance through the ACA. We are also partnering with National Migrant and Seasonal Head Start to encourage parent involvement in health center boards of directors, as well as with the National Center for Medical-Legal Partnership to strengthen relationships between health centers and farmworker-serving legal services organizations. In addition, we are working with federal agencies to raise awareness of barriers to health care in farmworker communities, and to suggest policy changes to improve the health and health care of farmworkers and their families. We continue to seek input from our partners on the ground regarding these efforts.

All farmworkers and their families deserve access to affordable, quality health care. Farmworker Justice is committed to working with our national and local partners to achieve improved health care access, regardless of location, ability to pay, or immigration status.

ADVOCATING FOR FARMWORKER HEALTH IN POLICY

The federal government has requested public comments on a variety of proposed regulations and policies that could have important impacts on the health and well-being of farmworkers and their family members. Farmworker Justice has prepared and submitted comments on wide-ranging issues to ensure that federal policymakers consider the unique needs of farmworkers.

The EPA recently proposed revisions to regulations that pertain to the certification and training of certain pesticide applicators. The agency is updating the standards to certify pesticide applicators after decades of advocacy from us and other farmworker organizations. According to the EPA, the revision's goal is to improve protections for applicators, the public, and the environment from potential harm due to exposure to restricted use pesticides (RUPs). The regulation sets national standards of competency to apply RUPs and requires applicators to be certified as competent to apply them. RUPs may only be used by or under the direct supervision of a certified applicator. The proposed regulations would tighten the certification and training requirements for these applicators, and would provide increased oversight over noncertified applicators working under their supervision. The public and other organizations can comment on the proposed regulations at regulations.gov; search for docket identification number EPA-HQ-OPP-2011-0183. Comments must be submitted by November 23, 2015.

The Department of Health and Human Services (HHS) has asked for the public's comments on *Healthy People 2020*, which is a broad framework to improve public health and reduce health disparities in the U.S. *Healthy People 2020* has various objec-

address key health issues such as access to health care, environmental quality, oral health, and social determinants. In our comments, we urge HHS to take into consideration factors such as migration, immigration policy, and housing, all of which significantly impact the health of farmworkers and other low-wage immigrants. Since most farmworkers are immigrants and are separated from their families, they may experience high levels of stress and cascading health issues due to their immigration status. Farmworkers also tend to live in very crowded and sub-standard housing, which is a recognized social determinant that can have a major influence on an individual's mental and physical health.

Farmworker Justice also monitors federal policy related to access to health care and insurance. We submitted comments about regulations on electronic health records (EHRs) proposed by HHS and the Centers for Medicare and Medicaid Services (CMS). HHS and CMS are responsible for regulating the types of EHR systems that are used. We strongly advocated for the inclusion of industry and occupation health codes in EHR systems, which enable medical providers to input a patient's occupation into their facility's computer system. Such information would provide valuable data for medical researchers and farmworker advocates about how many farmworkers are accessing health care, whether they are experiencing work-related illness or injury, and other health information. In recently issued final regulations, the agencies declined to require EHR vendors to include these codes in their EHR systems because the agencies believe it is still premature to do so. We will continue to advocate for their inclusion in EHR systems.

FARMWORKER JUSTICE

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As you read through this newsletter, I hope you can see the progress we are making on behalf of Farmworkers and the potential for even greater successes.

For over thirty years Farmworker Justice has worked diligently to improve the lives of farmworkers and their families. Our vision is for Farmworkers to gain legal immigration status, safe and healthy working conditions, a voice in their workplace, and wages that provide economic security. Unfortunately, as you know, Farmworkers still perform back-breaking work, hand picking the fruits and vegetables we eat but often must endure low pay, dangerous working conditions, decrepit housing and threats of retaliation for challenging unlawful conduct.

Help us support Farmworkers as they seek to build better lives for their families. Please support Farmworker Justice now by making a year-end gift. We have enclosed a reply envelope for your convenience.

There are many ways to contribute. You may donate a gift in honor of someone or you may consider becoming a sustaining member. If you wish to pay by credit card, visit our website.

With gratitude and good wishes,

A handwritten signature in black ink that reads "Bruce Goldstein".

Bruce Goldstein
President