

# Texas Agricultural Extension Service

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NEW REGULATIONS GOVERNING HIRED AGRICULTURAL LABOR: WORKMAN'S COMPENSATION, UNEMPLOYMENT COMPENSATION AND PESTICIDE APPLICATION

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## New Regulations Governing Hired Agricultural Labor: Workman's Compensation, Unemployment Compensation and Pesticide Application

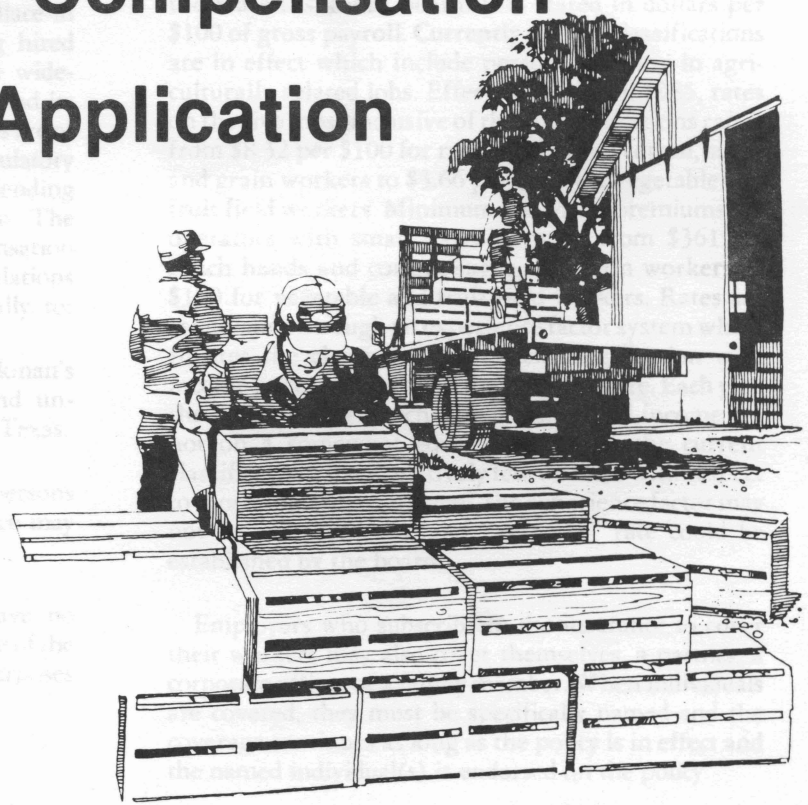
The 1982 Comptroller General report that there were 1.2 million hired agricultural laborers in Texas in 1983 (Goodwin). Various estimates of agricultural employment in Texas range from 30 to 40 thousand seasonal workers and 50 to 60 thousand permanent workers. The Texas Department of Agriculture estimates that 18 percent in food and grain crops and 18 percent in cotton production. The Texas Department of Agriculture estimates that 18 percent in food and grain crops and 18 percent in cotton production. The Texas Department of Agriculture estimates that 18 percent in food and grain crops and 18 percent in cotton production.

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- Provide a list of references and contact persons available to answer specific questions which arise.

These condensations and interpretations have no legal status nor are they intended to replace the law. They are provided solely for informational purposes and are the responsibility of the author.

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# NEW REGULATIONS GOVERNING HIRED AGRICULTURAL LABOR: WORKMAN'S COMPENSATION, UNEMPLOYMENT COMPENSATION AND PESTICIDE APPLICATION

H. L. Goodwin, Jr. and Richard A. Edwards\*

The 1982 *Census of Agriculture* reported that there were 185,020 farms in Texas comprising 131,310,306 acres. Roughly 47 percent of all farms in Texas utilized hired agricultural labor in 1983 (Goodwin). Various estimates of agricultural employment in Texas range from 30 to 80 thousand seasonal workers and 50 to 60 thousand permanent workers. The Texas Employment Commission (TEC) estimated that roughly 25 percent of all hired workers are involved in fruit and vegetable production, 23 percent in livestock production, 32 percent in feed and grain crops and 18 percent in cotton (Glover).

Since June 1984, major changes have taken place in legislative and regulatory standards governing hired agricultural workers in Texas. Considering the widespread and diverse nature of Texas agriculture and its contribution to the state's economy, these changes are of no small consequence. Such legislative and regulatory changes may be lengthy and complex, thereby lending themselves to condensation and interpretation. The objective of this publication provides the condensation and interpretation of selected legislation and regulations pertinent to hired agricultural workers. Specifically, to:

- Condense and interpret changes in workman's compensation, pesticide application and unemployment compensation regulations in Texas.
- Provide a list of references and contact persons available to answer specific questions which may arise.

These condensations and interpretations have no legal status nor are they intended to carry the force of the law. They are provided solely for informational purposes and are the responsibility of the author.

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## WORKMAN'S COMPENSATION

During a special session of the Texas legislature in June 1984, a bill to include certain farm and ranch laborers under the workman's compensation law was passed. Effective January 1, 1985, employers of agricultural labor were subject to the workman's compensation laws. These laws address on-the-job injuries, and the corresponding insurance provides benefits to those injured or disabled while performing these work-related functions.

Cost of workman's compensation insurance is set by the State Insurance Board. It is stated in dollars per \$100 of gross payroll. Currently several classifications are in effect which include persons working in agriculturally related jobs. Effective August 1, 1985, rates on the five most inclusive of these classifications range from \$8.32 per \$100 for ranch hands and cotton, sugar and grain workers to \$3.66 per \$100 for vegetable and fruit field workers. Minimum allowable premiums for operators with small payrolls range from \$361 for ranch hands and cotton, sugar and grain workers to \$190 for vegetable and fruit field workers. Rates are established through an experience factor system which equates the claims made in each classification with income generated through the rate structure. Each year the rate is subject to change if claims and income are not on a somewhat equal basis. Since the current classifications have relatively few workers with respect to those who will be covered, the experience factor may not be representative and "going-in" rate could be established by the board.

Employers who subscribe to the insurance to cover their workers may also cover themselves, a partner, a corporate officer or a family member. When individuals are covered, they must be specifically named and the coverage continues as long as the policy is in effect and the named individual(s) is endorsed on the policy.

The bill provides exemptions if employers hire no migrant labor; no labor for truck farms, orchards or

vineyards; and have gross annual payrolls for seasonal workers of less than \$25,000. Agricultural laborers are classified into three sub-divisions: migrant workers, seasonal workers and farm and ranch laborers.

### **Migrant Workers**

Regardless of number employed or gross annual payroll, all migrant workers must be covered. Migrant workers are defined as those persons employed in seasonal or temporary jobs who are required to be away from their permanent residence overnight.

If migrant labor is provided by a labor agent, the agent is responsible under this law for workman's compensation insurance coverage for these employees. Agents who subscribe must present evidence of insurance to those with whom they contract. When the agent purchases the insurance, the person with whom the labor agent contracts is not responsible in a separate action should injury or death occur. If the agent does not subscribe, however, the person with whom they have contracted is responsible along with the labor agent in any action to recover damages for injury or disability. The bill does not allow an employer to purchase workman's compensation insurance when faced with a situation where the agent has not subscribed.

### **Seasonal Workers**

These are employees who are working in a seasonal or temporary position but are not required to be gone from their permanent residence overnight. Seasonal workers who are employed on a truck farm, orchard or vineyard are covered by this bill. There are no exemptions or exclusions for seasonal labor working in these three operations.

If a seasonal worker is working for an employer or labor agent who employs migrant workers and the seasonal worker is doing the same work at the same time at the same place as migrant workers, then the seasonal worker is considered to be a migrant worker. In these circumstances, there is no exemption from coverage.

Employers of seasonal workers who do not fall into the above categories were exempt in 1985 from subscribing to the insurance if their 1984 gross annual payroll was less than \$25,000. The gross annual payroll includes amounts paid directly to farm and ranch laborers, seasonal and migrant workers and labor agents for their services and the services of migrant or seasonal workers. It does not include wages paid to the employer or his family, if a sole proprietorship; a partner or partner's family, if a partnership; or a shareholder or member of his family, if a corporation and all shareholders are family members. Employers qualify for exemption in subsequent years if the previous year's payroll is less than the required payroll threshold,

adjusted for inflation. The comptroller will provide an annual inflation multiplier before October of each year.

### **Farm and Ranch Laborers**

The following schedule provides guidelines for employers who are exempt from the bill:

<b>Coverage year</b>	<b>Exempt if the preceding year's gross annual payroll is:</b>
1985 to 1987	Less than \$75,000
1988 to 1990	Less than \$50,000
1991 and thereafter	Payroll exemption threshold is the same as determined under the seasonal worker provision, but no exemption is allowed if operation employs three or more who are not migrant or seasonal workers.

## **UNEMPLOYMENT COMPENSATION**

Texas House Bill 32 puts forth guidelines with regard to employers liable for unemployment compensation. Up to this time, employers of agricultural labor were exempt under the law unless they employed 10 or more workers in any 20 weeks during the year or paid than \$20,000 in wages and less salaries during any calendar quarter.

### **Extended Coverage**

Under House Bill 32, coverage has been extended to include the following groups of workers:

- (1) *Migrant workers.* An employing unit who employs migrant labor is liable for coverage regardless of employment or wage criteria.
- (2) *Seasonal workers on truck farms, orchards and vineyards.* An employing unit who employs this type of worker is liable for coverage regardless of employment or wage criteria.
- (3) *Seasonal workers (a) if an employer employs migrant and (b) if the seasonal workers do the same work at the same time and location as the migrants.* An employing unit who employs such seasonal workers is liable for coverage regardless of employment or wage criteria. Seasonal workers qualify only for the period the above requirements are met.
- (4) *Other farm or ranch labor.* An employing unit is liable if he employs four or more workers for any 20 weeks during the year or pays \$7,500 in cash wages in a calendar quarter. This provision goes to three employees or \$6,250 beginning January 1, 1987.

An employer may be liable for tax on wages paid to migrant workers and to certain seasonal workers. Other farm and ranch labor is not taxable unless the employer

has four employees for 20 weeks or pays \$7,500 in cash wages in a calendar quarter. Wages paid to those migrant and seasonal workers must be counted against the employment and wage criteria.

Labor agents, or "crew leaders," are considered employers regardless of who has direction and control. If the labor agent does not pay the tax due, the farmer is liable for payment of the tax due on the wages paid by the labor agent while contracting with the farmer. The labor agent must present evidence to the farmer that he paid the tax (by presenting the cancelled check for tax and the quarterly report). On newly covered labor agents, no proof will be available until after April 30, 1986.

The effective unemployment compensation rate at this time for farmers just coming under coverage is 2.7 percent of their payroll. After 6 quarters, an experience rate may be calculated which will be lower than the initial rate. Status and tax reports are to be filed with the local TEC tax office in the quarter following the date in which the employer became liable. Taxes must be paid on the first \$700 payroll for each employee and are paid quarterly at the time reports are filed. If an employer had a payroll of \$7,500 or more during any quarter or had four or more workers during any 20 weeks in 1985, he was subject to tax payment as of January 1, 1986 and may count these previous quarters toward his experience rate. This would lower the payment rate sooner than the prescribed 6 quarters.

Rates for employers currently under unemployment compensation coverage will not be affected. However, it is now mandatory that all affected employers file quarterly reports relating to payroll, number of employees, job types, etc., rather than the annual report previously allowed.

## PESTICIDE APPLICATION

New provisions to regulate the application of pesticides were adopted by the Texas Department of Agriculture (TDA) and became effective January 21, 1985. The rules are designed to protect the farmworker, the farm operator and their neighbors from potential dangers resulting from direct contact with agricultural pesticides. Pesticides, for purposes of this law, refer to "any and all substances intended to prevent, destroy, repel or mitigate any pests," and include insecticides, fungicides, herbicides, rodenticides and nematocides.

Note that the regulations are not crop specific, applying rather to activities conducted. Therefore, no crop is specifically exempt from the regulations. Final accountability with regard to compliance with these regulations rests with the farm operator. Overall responsibility for management and control of a crop may be transferred to a second party, in which case the second party would be considered the farm operator.

The pesticide regulations are divided into two sections: (1) prior notification and (2) re-entry intervals. Prior notification covers only aerial application of pesticides. Re-entry intervals apply when a worker is expected to enter a treated field to perform labor-intensive tasks within a specified time interval and are in effect regardless of the method of pesticide application.

### Prior Notification

This provision applies to people on property immediately adjacent to the field to be aerially sprayed; to medically sensitive persons living within ¼ mile of the field to be sprayed; to licensed day care centers, primary and secondary schools when children are present; and to hospitals, in-patient clinics, nursing homes and farm labor camps within ¼ mile of the field to be sprayed.

Neighbors are eligible for prior notification only if the request is in writing. The request must contain: (1) name and address of the person making the request, (2) their home and business phone numbers and hours available and (3) location of the farmland to be sprayed. Notification of neighbors may be made via a phone call, personal contact, mail or by posting the appropriate warning flag within 650 yards of each neighbor desiring notification at a height of 5 feet or 2 feet above the crop, whichever is higher. Warning flags can be obtained from pesticide dealers, or by telephoning 1-800-TDA-REGS (823-7347). Flags are to be posted the day before aerial application and removed within 24 hours of application.

Medically sensitive individuals may request notification of pesticide application. Their request must be accompanied by a licensed physician's signed confirmation and approved by TDA. All requests of this type expire December 31 of each year and must be renewed annually. Notification may be made by phone, personal contact or mail, but the warning flag system is not to be used. In the event contact cannot be made, the farm operator should call TDA at 1-800-TDA-REGS and make it known that a diligent effort was made to contact those involved. Institutions mentioned earlier must be notified regardless of whether or not a request for notification is filed. Provisions exist which would allow emergency application without notification.

### Re-entry Provisions

Re-entry provisions establishing when it is safe for a worker to re-enter a field after pesticide application are in effect regardless of the application method. Minimum re-entry times exist prohibiting all workers from entering a field before the spray has dried or dust has settled. Specific re-entry times for commonly used pesticides are listed on the following page:

24-hour re-entry	48-hour re-entry	7-day re-entry
Whenever "danger" is printed on pesticide label	Azinphos-Methyl (Guthion)	Ethyl Parathion
Applies to toxicity category I formulations only	Carbophenothion	
Also includes EPN and Phosalone under federal EPA regulations	Demeton	
	Dicrotophos	
	Disulfoton	
	Endosulfan	
	Endrin	
	Ethion	
	Methidathion	
	Methyl Parathion	
	Mevinphos	
	Monocrotophos	
	Oxydemeton-Methyl	
	Phorate	
	Phosphamidon	

If workers are required to re-enter the field before the re-entry time, signs should be posted at each entry point of the field, in both English and Spanish, containing the Universal Symbol (shown on warning flags), the name of the farm operator and at least two telephone numbers where the operator and/or applicator may be reached. In addition, workers must give the trade and chemical names of the pesticides, safe re-entry date, instructions on how to avoid contamination and accomplish proper washing and laundering if contaminated and a clear statement that entry is prohibited without protective clothing. Farm operators are not required to provide protective clothing. Symptoms of and antidotes for contamination must also be communicated.

Further details concerning the new pesticide regulations may be obtained from the TDA.

### REFERENCES AND CONTACT PERSONNEL

Additional information concerning workman's compensation may be obtained by contacting Lisa Guerra with the Texas Citrus and Vegetable Insurance Exchange. Printed materials further explaining new pesticide regulations are available by request from TDA. You may wish to ask specifically for the following publications:

- How the New Pesticide Standards Affect You: Some Questions and Answers
- Title 4. Part I. Chapter 7  
4 TAC SS 7.25 - 7.31  
Texas Register June 14, 1985

To date, printed material concerning the unemployment compensation coverage is not available. Information can be obtained from any of the contact personnel listed in this publication or from any local TEC Office having a tax division.

All contact personnel are listed following the references. One excellent additional source of information regarding questions on other issues in hired agricultural labor is available through the Texas Agricultural Extension Service, College Station, Texas, 77843, by requesting publication B-1250, *Texas Farm Labor Handbook*.

### REFERENCES

- Glover, Robert W., Texas Agriculture and Migrant Labor. Paper presented at International Conference on Migrant Labor in Agriculture, Davis, CA, May 23, 1984.
- Goodwin, H. L., Jr., "Discussion: Critical Issues in Agricultural Labor Markets." *Southern Journal of Agricultural Economics*. Forthcoming, July 1985.
- United States Department of Commerce, Bureau of Census. 1982 Census of Agriculture. Washington, D.C.: Government Printing Office of Agriculture, October 1984.

**CONTACT PERSONNEL FOR QUESTIONS  
RELATED TO AGRICULTURAL LABOR**

**1. WORKMAN'S COMPENSATION**

Lisa Guerra  
Texas Citrus and Vegetable Insurance Exchange  
P.O. Box 671  
Harlingen, Texas 78551  
(512) 428-4661 or (512) 380-1310

**2. PESTICIDE APPLICATION**

Roger Mulder, Information Specialist  
Regulatory Division  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711  
(512) 463-7647

**3. MINIMUM WAGE, UNEMPLOYMENT COM-  
PENSATION**

Tom Henson, Field Services  
Tax Division  
Texas Employment Commission  
TEC Building  
Austin, Texas 78778  
(512) 463-2699

**Regional Offices**

William E. Day, Director  
616 South Hayden Street  
P.O. Box 1682  
Amarillo, Texas 79189  
(806) 372-5521

John Howell, Director  
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P.O. Box 160  
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(512) 475-3363

Charles C. Rutherford, Jr., Director  
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Beaumont, Texas 77704  
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(817) 335-5111

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Houston, Texas 77251  
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P. O. Box 2152  
Longview, Texas 75606  
(214) 758-1783

Velma A. Burkham, Director  
124 South Oakes Street  
P. O. Box 5351  
San Angelo, Texas 76902-5351  
(915) 653-2321

Earnest C. Leake, Director  
307 Old Guilbeau Street  
P. O. Box 9205  
San Antonio, Texas 78285  
(512) 222-8484

**4. HEALTH, SAFETY AND HOUSING  
STANDARDS**

Troy Lowery  
Texas Department of Health  
General Sanitation Division  
1100 W. 29th St.  
Austin, Texas 78756  
(512) 458-7521

**Regional Offices**

Henry C. Moritz, Director  
P. O. Box 968  
Canyon, Texas 79016  
(806) 655-7151

C. R. Allen, Jr., Director  
4709 66th Street  
Lubbock, Texas 79414  
(806) 797-4331

John L. Bradley, Director  
P. O. Box 10736  
El Paso, Texas 79997  
(915) 533-4972

Myron J. Woltjen, Director  
P. O. Box 2648  
Abilene, Texas 79604  
(915) 695-7170

Hal J. Dewlett, Director  
2651 Matlock Road  
Arlington, Texas 76114  
(817) 460-3032 or (817) 460-3033

Charles R. Webb, Jr., Director  
P. O. Box 190  
Temple, Texas 76503  
(817) 778-6744 (switchboard)

Marietta Crowder, Director  
P. O. Box 2501  
Tyler, Texas 75710  
(214) 595-3585

Charles B. Marshall, Jr., Director  
1401 South Rangerville Road  
Harlingen, Texas 78550  
(512) 423-0130

Rodger G. Smyth, Director  
P. O. Drawer 630  
Uvalde, Texas 78801  
(512) 278-7173

Nina M. Sisley, Director  
1110 Avenue G  
Rosenberg, Texas 77471  
(713) 342-8685

#### 5. MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT (MSPA)

U.S. Department of Labor  
Wage and Hour Division  
Dallas (214) 767-4779  
Austin (512) 475-7001  
Corpus Christi (512) 888-3156  
Lubbock (806) 743-7666

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