

# Labor Management Decisions

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## Back in Circulation

After nearly two years' absence, *Labor Management Decisions* is resuming publication, with plans for a regular schedule of three issues annually — Fall, Winter, and Spring. Our apologies for the long break and thanks to those who phoned or wrote to inquire about *LMD*.

Since last appearing in this form, the Agricultural Personnel Management Program (APMP) has hopped onto the digital wave and established a presence on the World Wide Web. While only beginning to fathom the possibilities and tap the power of the Internet, we are sure that electronic communications technology will be profoundly enriching extension education and research work in all fields. Please visit our homepage at <http://are.berkeley.edu/APMP/>.

Although the site is under perpetual construction, it already contains a wealth of material and structured links to educational articles, legal and government references, research findings, practical advice, and other resources pertinent to management of human resources in production agriculture. If you are able to spend some time exploring the website and have comments or suggestions, we would be very pleased to hear them from you. Click on the link to "Electronic Farm Call" or the one for comments at the bottom of the home page and send a message, or contact Betsey Tabraham via more traditional means (address and phone number are on page 16).

Among other developments that you have not read about in *LMD* have been production of the Second Edition of *Labor Management Laws in California Agriculture*, Publication 21404, by Howard Rosenberg, Valerie Horwitz, and Daniel Egan; the *Agricultural Personnel Management Program 1991-94 Report*; and a project report, *An Analysis of Contract Relationships between Farm Labor Contractors and Farmers in California Agriculture*, Publication APMP004, by Dawn Thilmany (see "Resources," page 13, for more information).

At the back of this issue (pages 13 - 14), and in our website, is an index of all articles that have appeared in *Labor Management Decisions* since the first issue, Spring 1991. Future indexes will be published annually.



## What Rules for California Ag Pesticide Users?

Howard R. Rosenberg

The spray is still drying and the dust not completely settled, but revisions of California's pesticide safety regulations have definitely taken shape. Given the long period of uncertainty since the U.S. Environmental Protection Agency (EPA) touched off the revision process in 1992 by publishing a new federal Worker Protection Standard for Agricultural Pesticides (WPS), it would be understandable if growers and other labor managers were unsure of their obligations. Now, however, we can pretty much know what the rules will be in California agriculture.

The best general advice for agricultural employers wondering about their legal responsibilities for safe use

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of pesticides remains, as always, to consult the county Agricultural Commissioner's staff and to follow the product label. This article, while by no means a substitute for those two primary sources of guidance, attempts to explain and put into perspective how the WPS has affected California state rules. It describes: (1) developments in refining the WPS, (2) the process of revising California regulations in accord with the federal rule, (3) important changes in California that are now virtually in place; and (4) practical steps for managing under the new rules and the remaining uncertainties.

### The Federal Regulatory Revision

The Worker Protection Standard has followed a remarkable course since movement toward its adoption began in the early 1980s, amidst concern that upwards of four million people working in fields, forests, nurseries, and greenhouses were not adequately protected by existing rules. Despite broad based support for the goals of the WPS, debate about the means for achieving them has persisted.

The Federal Environmental Pesticide Control Act of 1972, which amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of 1947, authorized the U.S. EPA to promulgate regulations to protect worker health and safety, and the agency issued one in 1974. Subsequently, after extensive consultation with affected groups, EPA published a "final" version of the WPS in August 1992. In doing so, it not only superseded its own 1974 rule but also overlaid a diverse array of state regulations, mandating that more than one-half million employers in the nation take measures to reduce exposures, mitigate risks, and educate workers.

The WPS expands on the scope of the 1974 rule to protect not only pesticide handlers who mix, load, apply, or otherwise handle pesticides, but also workers performing hand labor operations in fields treated with

pesticides and all other people exposed to agricultural pesticide residues. In brief, it requires pesticide safety training, notification about pesticide applications, provision of decontamination (washing) supplies, emergency medical assistance, use of personal protective equipment, and restrictions for entry into treated areas during restricted entry intervals following pesticide application.

In the four years since its publication, the WPS has intimidated and baffled a large share of those whom it is supposed to guide. Only weeks before it was to take effect in April 1994, Congress enacted legislation delaying full implementation for several months. Many aspects of the rule were still in need of interpretation, people to be affected by the WPS were uncertain about its specifics — if aware at all of its very existence — both employers and administrative agencies were unprepared to implement it, and the EPA itself was reconsidering certain provisions.

Most of the WPS became effective nominally on January 1, 1995. That month, however, acting on points raised in a July 1994 petition from the National Association of State Departments of Agriculture (NASDA), the EPA proposed a set of revisions. In May 1995, after considering public comments on these proposals, the Agency issued five significant changes in the rule (see sidebar). More amendments and exceptions have been requested and announced in 1995 and 1996, and additional modifications may come down at any time.

Beginning with a session in Florida during February this year, the EPA has conducted a series of public hearings throughout the United States to help assess initial operation and effects of the WPS. Together with counterpart state agencies, it invited agricultural workers, handlers, growers, and interested others to present oral and written comments that would be used to improve upon their pesticide safety programs. In conjunction with the hearings, federal and state officials also visited with local groups of workers and employers in less formal settings.

The two meetings held in California — July 23 in the Fresno area and July 25 in Salinas — were attended by 58 and 85 people, respectively. Most of the discussion in Fresno focused on worker training. Comments in Salinas reflected a broader set of concerns, about practical impacts of entry restrictions on nursery harvest, the requirement to notify all workers within one-quarter mile of a treated field, and means to display application-specific information, in addition to worker training.

### Developments in California

California's already-existing agricultural pesticide safety program, administered by the Department of Pesticide Regulation (DPR, within Cal/EPA) and county Agricultural Commissioners, had been a model

## Key Changes to the WPS Final Rule

Early in 1995 the EPA proposed and requested comments on five significant changes in the Worker Protection Standard as issued in 1992. "Recognizing the unique circumstances and diversity in agricultural settings affected by the WPS," it published a set of notices addressing concerns that had been expressed by many individuals and organizations, including the National Association of State Departments of Agriculture. After a period of public comment, WPS revisions were finalized and announced in the *Federal Register* on May 3, 1995. One rule amendment exempted crop advisors and their employees from some restrictions; another shortened the allowable grace period for worker training; and three administrative actions altered WPS restrictions on worker entry into treated fields. A subsequent amendment, published in June 1996, reduced the requirement for decontamination supplies in fields treated with low-toxicity pesticides.

- ❑ **Exemption of certified crop advisors and persons they supervise.** By removing crop advisors and employees under their direct supervision from coverage by most WPS provisions, this amendment allows knowledgeable professionals greater flexibility to choose appropriate measures to protect themselves, safely conduct tasks, and convey pertinent information to those working for them. The exemption applies only after the pesticide application has ended and only during performance of crop advising tasks in the treated area. According to the WPS, crop advisors include persons who assess pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants, but not those who perform hand labor tasks. The amendment allows crop advisors to substitute pesticide safety training received during certification or licensing if it is equivalent to WPS pesticide handler training. This rule also established a grace period exempting *all* persons in crop advising tasks until May 1, 1996, to allow them time to acquire certification or licensing.
- ❑ **Training grace period and retraining interval for field workers.** The 1992 WPS gave employers a grace period of 15 days in which to ensure that a newly hired worker received the obligatory pesticide safety training. After a transition period of 5 years, the grace period was to drop from 15 to 5 days. This May 1995 amendment accelerated that schedule so that, as of January 1, 1996, the federal rule requires employers to ensure that untrained workers receive basic pesticide safety information before they enter a treated area on the establishment and that they receive the complete WPS safety training no more than 5 days after initial employment. California's revised regulation, however, is more stringent, allowing field workers no entry to work in a treated field before completing the prescribed WPS safety training (thus providing a zero-day grace period). Under both the WPS and California rules, training of fieldworkers is to be repeated no less frequently than every 5 years. The federal rule also specifies a 5-year retraining interval for handlers, but California requires yearly retraining for them.
- ❑ **Irrigation activities during the restricted entry interval (REI).** The 1992 WPS limited worker early-entry activity in treated areas under an REI to 1 hour in a 24-hour period. This May 1995 administrative exception allows early entry to perform certain necessary and unforeseen, "limited contact" irrigation activities for a maximum of 8 hours in a 24-hour period during the REI provided that: entry is no sooner than 4 hours after the pesticide application; inhalation exposure does not exceed any applicable labeling standard or ventilation criteria; labeling of the pesticide used does not require "double notification" of workers (through both spoken word and posted sign); contact with treated surfaces is minimal and limited to feet, lower legs, hands, and forearms; the required personal protective equipment for early entry is provided; no hand labor (e.g., hoeing, picking, pruning) is performed; and workers are informed of the specifics of the exception. California rules incorporate this exception.
- ❑ **Limited-contact activities during the REI.** EPA similarly increased from 1 to 8 hours in any 24-hour period the maximum duration of early entry for other limited-contact tasks that could not have been foreseen, cannot be delayed, and do not require hand labor. This May 1995 exception has the same restrictions as listed above for early-entry irrigation activities, including the stipulation that in no case can entry be sooner than 4 hours after the pesticide application. California rules incorporate this exception.
- ❑ **Restricted entry intervals for low-risk pesticides.** Through a May 1995 policy statement EPA established a process for product manufacturers (registrants) to reduce the minimum REI from 12 to 4 hours for certain low-risk pesticides and included a candidate list of 114 active ingredients that might be eligible. Registrants were able to propose additions to the candidate list and to make REI label changes by notification until December 1995. Any label changes after that date will be made through the regular label amendment process.
- ❑ **Required provision of decontamination supplies.** The 1992 final rule required that workers be provided a "decontamination site" for washing off pesticide residues when in an area where, within the last 30 days, a pesticide has been applied or a restricted-entry interval has been in effect, regardless of the product used or duration of its REI. After its May 1995 policy statement recognized the considerably lower risks of certain pesticides, EPA proposed in September 1995 to shorten the length of time for which decontamination supplies must be available to workers in fields treated with those pesticides. In June 1996 it published a rule amendment reducing this requirement from 30 to 7 days following the expiration of REIs for substances that meet EPA's risk screening criteria for low-toxicity.



for the federal rule. While the WPS sets standards equal to or lower than California's in most respects, it requires more in a few others. Because state rules may substitute for the federal standard if they provide at least equivalent protection in all main aspects, the DPR has been revising the California regulations to meet this condition, so that employers here will be spared the need to deal with two similar sets of requirements.

Flux in the WPS has naturally complicated the task of revising the state rules. Legal challenges and administrative interpretations, exceptions, and revisions all may affect what the California regulations have to be made equivalent to. The national regulation firmed considerably with issuance of EPA's decisions on five controversial matters in May 1995 (see sidebar), and the California DPR then produced a comprehensive draft of state revisions. As federal issues were being resolved, DPR staff had been redrafting sections of its state regulations and negotiating terms of equivalence, in consultation with EPA administrators and related state agencies.

Over the next few months, moves at the national level to rescind or dramatically alter the WPS were introduced and defeated. The DPR carried on with its interdepartmental consultation and on January 5, 1996, published a comprehensive regulatory revision package. The proposed state regulations were accompanied by a call for public input either in written form or at one of six hearings held around the state in late February and early March. Largely responding to the comments it received by March 15, DPR modified portions of the proposal and published a notice of these further changes in July.

On October 2, 1996, DPR Director James W. Wells signed the final regulatory revision and sent it into concluding procedural steps, which are not expected to result in any more changes. The revised rules will be distributed to county Agricultural Commissioners and explained to county staff before taking effect, most likely on January 1, 1997.

## The Lay of the Treated Land

The basic structure of the California regulatory system has not changed. It still defines and specifies protections for two broad types of workers — “pesticide handlers,” who work directly with chemical pesticides, and “fieldworkers,” who may come into contact with pesticides or pesticide residues while working in an area that has been treated. There continue to be requirements for safety training, pesticide application notices, protective clothing and equipment, restriction of entry to treated areas, washing facilities, and emergency medical care.

While most of the state rules already in place are to be retained, some have been modified and others added to conform to the WPS. In the process of thoroughly reviewing the California regulations, DPR has also clarified some language and eliminated obsolete passages. Important elements of the state regulatory system affected by the revision are summarized in the following subsections.

**Labeling.** New labeling that refers to WPS provisions has been required on products shipped by manufacturers of registered pesticides since April 1994. As of October 1995, all products with old labeling were to have been removed from the channels of trade or to have been re-labeled. Labels on any previously purchased pesticide supplies that growers, custom applicators, or others may still possess, however, do not have to be replaced. The old-labeled products may be used until they are gone.

**Handler training.** The revised state rules for training pesticide handlers incorporate new federal criteria, while maintaining some of the standards that are more stringent than their counterparts in the WPS. As they were before the WPS, California employers are responsible for ensuring that employees who handle pesticides have received training on specified topics related to the pesticides used, including label information, safety precautions, and medical care. Training for handlers now will also cover heat-related illness, environmental concerns, and cautions against taking pesticides or containers home.

Another new provision added to meet the federal standard limits eligibility to conduct this handler training. Only persons in one of the following categories will qualify: California certified commercial applicators, private applicators, agricultural pest control advisors, and professional foresters; licensed county biologists; UC Farm Advisors; and persons who have completed a UC Integrated Pest Management Project “instructor training” course or have other qualifications approved by the DPR.

California requires annual retraining of pesticide handlers, exceeding the federal standard that allows a 5-year retraining interval. Cards authorized by the U.S. EPA to verify handler training therefore will not be recognized here.

**Fieldworker training.** Perhaps the most significant change for California employers is the new requirement to ensure that every employee (not only handlers) has been instructed on pesticide safety within the past five years before beginning work in a treated field. Previous California regulations required general pesticide safety training for field work supervisors but not for the workers under their direction.

The training is to cover routine decontamination and washing; restricted entry intervals (REIs) and field posting; places where pesticides are encountered; routes of exposure; hazards of pesticides; symptoms of overexposure; first aid and obtaining medical care; dangers of taking home pesticides or containers; requirements of the state hazard communication program; employee rights regarding pesticide safety; and responses to questions.

As with handler training, eligibility to conduct the required fieldworker training is limited. Holders of a license or certificate issued by the DPR, certified applicators, registered professional foresters, county agricultural biologists, UC Farm Advisors, and persons who have completed a UC Integrated Pest Management Project "instructor training" course or other course approved by the DPR are qualified to conduct it.

Unlike the federal rule, California's more demanding standard allows no grace period during which workers may be in treated fields before this training. It requires the employer to ensure that each employee has been trained within the last 5 years, in a manner the employee understands, before beginning work in any treated field where an REI has been in effect during the past 30 days. So far, with the regulatory revisions not formally in place, agricultural commissioners have taken a "compliance assistance" or educational approach to enforcement of this provision.

**Notice of pesticide applications.** Operators of agricultural property are responsible for ensuring that specific notice of pesticide applications is given to persons who may be in or near the treated field. Those to be notified include workers on the operator's payroll as well as employees of any contractor or service firm engaged by the operator. The revised regulations more clearly distinguish links in the chain of responsibility for getting application information to workers. As required by the WPS, a commercial pest control business is obligated to provide information to the operator of a property that it treats, and the operator of the property to inform workers and other persons who may be on the property.

Property operators will be expected to display the following data in a central workplace location for 30 days, starting no later than 24 hours after application, for each treatment of a field within one-quarter mile of where employees will be working: (1) identification of the treated area; (2) time and date of the application; (3) the restricted entry interval; and (4) the product name,

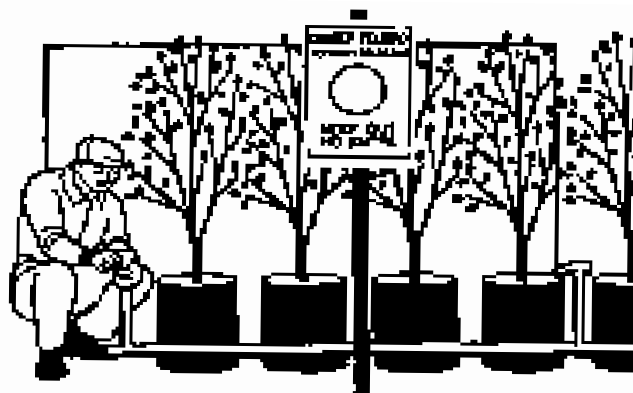
EPA registration number, and active ingredients. Information on the existing California pesticide use report meets only part of this requirement.

In addition, California will require that, before any pesticide application, notice be given to employees not only if known to be on or likely to enter the treated field (as previously), but also, in accord with the WPS, if they may walk within one-quarter mile of the field. The property operator may provide this notice either orally or by posting the treated field, unless the pesticide label explicitly states that "double notification"—both oral communication to fieldworkers and posting—is necessary.

These WPS notification requirements and the "quarter-mile rule" are likely to pose problems for some employers, particularly in California's Central Coast, much of which is farmed intensively in numerous small ranches or lots, often near residential properties. At both the DPR hearing in Salinas last February and the EPA meeting there in July, attendees spoke of logistical difficulties in notifying the many employees, labor contractors, custom harvesters, advisors, and others working in and nearby the different properties, especially to meet the oral part of the double-notice requirement. Others speakers, citing increasingly edgy relations at the agricultural-residential interface, expressed concern that the quarter-mile rule might be a stimulus to litigation by neighboring residents.

**Hazard communication.** California regulations have provided for communicating the hazards of pesticides through Pesticide Safety Information Series leaflets A-8 (for handlers) and A-9 (for fieldworkers), which employers display either at the worksite or at a central location where workers begin the day. Under the revised rules, DPR is altering these leaflets to incorporate WPS safety information and state more clearly that employees are to have unimpeded access to them.

**Entry restrictions and exceptions.** During an application, no one other than the persons (handlers) applying the pesticides and wearing the required personal protective equipment may be in the area being treated.



Pest control advisors or crop advisors, categorized as handlers by the WPS, are also allowed into the field to perform crop advising tasks during and after the application, if they have appropriate protection and equivalent training. Fieldworkers may not enter during treatment.

After an application, fieldworkers are also generally prohibited from entering a treated area for a specified period (REI). The 1992 WPS made existing entry restrictions more definite, replacing the waiting period of "until sprays have dried, and dusts have settled" with a specific minimum time, based mainly on the dermal toxicity of the active ingredient of the pesticide. Most federal REIs now range from 4 to 72 hours, and they are stated on product labeling. Longer intervals that California is maintaining for some chemicals are noted in the state regulations. If REIs are specified on the pesticide product labeling, they apply to owners and their families as well as to hired workers.

The WPS provided for some exceptions to REIs, allowing early entry for necessary, short-term tasks. Workers may enter a treated field during an REI for "no-contact" activities—if there is to be no contact with anything that has been treated, including soil, water, air, equipment, or plant surfaces. They may also enter, no earlier than 4 hours after treatment, for limited periods to perform low-contact activities, including low-contact irrigation. Adopting the WPS amendments of May 1995 (see sidebar), the California rules allow for up to 8 hours per employee per day in tasks involving exposure that is minimal and limited to the feet, hands, legs below the knee, and forearms below the elbow. Early entry for irrigation activities that involve significant contact with treated surfaces during an REI is permitted for up to 1 hour per day.

**Administrative exceptions to entry restrictions.** The WPS established a process for interested parties to petition for additional exceptions to the federal re-entry standards, and the California rules now authorize the DPR Director to administratively integrate any exceptions that the U.S. EPA grants under that process. In June 1994, the EPA granted rose growers a limited, 2-year exception allowing workers wearing appropriate protection to enter a treated area to harvest greenhouse-grown cut roses, no sooner than 4 hours after pesticide application, for up to 3 hours in any 24-hour period. Although that exception expired in June 1996, the California revision explicitly incorporated it, adding the proviso that it could be used only if the supporting exception granted by the U. S. Environmental Protection Agency is still in effect.

**Field posting.** The California sign that has been used to post treated fields for over 20 years contains a skull-and-crossbones symbol near the center with words in English and Spanish warning of the pesticide danger and to keep out. The EPA has approved this familiar format as equivalent to the field warning sign now re-

quired under federal law. The state regulations will adopt, however, with some differences in wording, the EPA versions of signs for posting fields treated by chemigation (a stop sign) or fumigation (skull and crossbones, with warnings in English and Spanish).

**Special greenhouse ventilation criteria for re-entry.** Entry restrictions protecting against respiratory injury pertain to greenhouses where a pesticide has been used as a space treatment, or where the labeling of the pesticide product requires respiratory protection for applicators. The EPA has approved California's request for equivalency of its standard for determining how soon workers may enter a greenhouse after a pesticide application.

California regulations require ventilation of the space before workers enter, until the air is measured and meets a numerical standard stated in the product labeling. If no standard is stated, ventilation is to continue until either 10 calculated air exchanges have occurred or timed procedures have been followed: 2 hours of mechanical ventilation, such as with fans; 4 hours of passive ventilation, such as by opening vents, windows, or doors; or 24 hours with no ventilation; or **any combination** of these calculated and timed procedures, the percentage portions of which add up to 100 percent.

**Decontamination facilities.** The WPS as published in 1992 requires provision of a decontamination site (equipped with water, soap, disposable towels) for washing off pesticide residues whenever workers perform any task in an area where a pesticide has been applied or an REI has been in effect within the last 30 days. In June 1996, EPA announced a rule amendment reducing from 30 to 7 days the length of time during which such washing facilities are required following the expiration of restricted-entry intervals for "low-toxicity" pesticides, those with REIs of 4 hours or less.

Though the California regulations incorporate that change, it is of little practical consequence. The washing facilities that are required at all times by state and federal field sanitation standards can meet the pesticide decontamination requirement for field workers. The state rule calls attention to this: "It is not the intent of these regulations to require separate or duplicate equipment or facilities. Equipment and facilities provided for compliance with the requirements of other agencies may also be used for complying with these regulations . . ."

**Civil penalty actions.** A rewritten section of the state regulations guides county Agricultural Commissioners in levying fines for pesticide safety violations as civil offenses. Breaches of the California standards are to be designated as Class A, B, or C (no longer minor, moderate, and serious). Violations that have caused actual harm to human or animal health, property, or the environment are of Class A and punishable by civil penal-

ties of \$600 to \$1,000. Class B violations are those that did not cause harm but posed a reasonable possibility of causing harm to human or animal health, property, or the environment. The fine range for Class B offenses is \$150 to \$599. Rule violations that did not pose a reasonable possibility of causing harm to human or animal health, property, or the environment are Class C, subject to fines of \$50 to \$149. Penalties in all classes may be doubled by the Agricultural Commissioner for repeat occurrences within two years. Criminal prosecution of safety rule violators may result in substantially larger fines and imprisonment.

Exposure to civil penalties is not limited to employers. The revised California rules also expressly authorize Commissioners to penalize employees who are licensed to apply pesticides and, of their own decision, fail to use personal protective equipment in accord with the standards of their profession.

### Information to Manage Ahead

Finally, with only a couple of months until the revised California regulations go into effect, there is less uncertainty about what the rules are to be than how willing and able employers are to abide by them. A slowdown in the flow of changes and clarifications will probably be accompanied by an expansion of services and advice to help fully implement the adjustments in our pesticide safety standards.

The most important sources of guidance about pesticide use and safety in California continue to be the product label and the county Agricultural Commissioner's office. Cooperative Extension staff, employer associations, and industry publications also offer assistance in staying abreast of developments. At the national level, the EPA has an Interpretative Guidance Workgroup (IGW) which issues periodic clarifications in question-and-answer form. Decisions made by the IGW are conveyed to Regional EPA offices and state pesticide regulators, who in turn are responsible for getting the word out to Agricultural Commissioners, educators, and employers. The IGW renderings are significant even to states with their own equivalent rules. California is committed to following federal guidance on matters not otherwise dealt with by its state regulations.

Updates and discussion are also available on the Internet. Timely announcements and lively discussion can often be found on the WPS-Forum, an electronic meeting ground and reference archive maintained at the College of Natural Resources, University of California at Berkeley. Opened in 1994, the Forum currently has about 350 subscribers across the United States from Cooperative Extension and other university educators, agricultural production and service firms, pesticide companies, worker and environmental advocacy organizations, and government agencies. Participants post



messages to clarify the regulation, identify and solve problems in living with it, and share resources that aid in compliance.

Among topics of continuing conversation on the Forum are rule revision proposals, safety training for fieldworkers, costs and benefits of the regulation, control of access to treated fields, and personal protective equipment for handlers. The Forum archive contains many reference and resource documents, such as the original WPS notice and amendments published in the *Federal Register*, the California DPR proposed regulations and Initial Statement of Reasons, EPA questions and answers, a directory of training materials, and petitions from affected groups. Also in the archive are all messages posted on the Forum since discussion began in May 1994. To subscribe to the WPS-Forum, send to [Listproc@are.berkeley.edu](mailto:Listproc@are.berkeley.edu) the message:

SUBSCRIBE WPS-FORUM <yourfirstname>  
<yoursurname>

Or visit the APMP World Wide Web site to connect to the archive, to find a form for easily subscribing to the Forum, or to link to more references on pesticide safety and other personnel management topics (see description and website address in boxed statement on page 1).

*Many thanks to Roy E. Rutz, Program Supervisor, Worker Health and Safety Branch, California DPR, for technical advice on this article, and to Betsey Tabraham for important editorial contributions.* □

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## Workers' Comp Costs Are Down

Although it has been reported that medical costs for treating injuries covered by workers' compensation insurance are far higher than those for similar injuries covered by group health insurance, two recent studies show declines in workers' compensation costs. In California, costs and frequency of medical-legal examinations have fallen since reform of the state's workers' compensation system. Similar trends, attributed to employers' cost-containment efforts, have been occurring nationally.

### California

The cost of medical-legal exams on Permanent Partial Disability (PPD) claims has decreased sharply from its peak during the 1991 accident year, according to a report by the California Commission on Health and Safety and Workers' Compensation. For the insured community, total costs of medical-legal exams performed on PPD claims (measured at 40 months after the beginning of the accident year) declined 84 percent from a high of \$394.5 million for the 1991 accident year to an estimated \$64.5 million for 1994.

This savings of \$330 million comes from drops in both the number of exams and cost per exam. The average cost per exam declined 38.6 percent from \$987 for 1990 accident year claims to an estimated \$606 for 1994 accident year claims.

The report presents results from a study of the effect of the 1993 reform package on California's workers' compensation program. (For a summary of the main elements of the legislation, see *Labor Management Decisions*, Fall 1993, Vol. 3, No. 2.) The study, based upon data provided by the Workers' Compensation Insurance Rating Bureau (WCIRB), was conducted by the UC DATA Survey Research Center at the University of California at Berkeley under contract with the Commission on Health and Safety and Workers' Compensation.

Reforms in 1989 and 1993 attempted to reduce the number of medical-legal reports by forensic doctors. Survey data indicate that these efforts to deal with the "dueling docs" syndrome have succeeded. The average number of exams per claim has declined by half, from 2.2 exams for the 1991 accident year to an estimated 1.1 exams for the 1994 accident year. This decline is reflected in a drop in the number of represented cases. Exams in unrepresented cases remain consistently lower and have changed little.

The study also found significant reductions in the number and cost of psychiatric medical-legal examinations. Costs dropped from \$93.8 million in the 1991 accident year to an estimated \$5.9 million in the 1994 acci-

dent year, a savings of about 93 percent. This represents 28 percent of the overall reduction in all medical-legal costs during those years.

Reform measures also included provisions for arbitration and mandatory settlement conferences, introduced to reduce the need for hearings and decisions, and to speed the resolution of cases. Data from the WCIRB survey suggest that the new resolution mechanisms have not accomplished these goals.

The Commission on Health and Safety and Workers' Compensation, created by the workers' compensation reform legislation of 1993, is charged with overseeing the health and safety and workers' compensation systems in California and recommending administrative or legislative modifications to improve their operation. A copy of the report may be obtained from Christine Baker, Executive Officer, Commission on Health and Safety and Workers' Compensation, 30 Van Ness Avenue, Suite 2122, San Francisco, CA 94102. Phone: 415/557-1304. Fax: 415/557-1385. The report is also available through the Department of Industrial Relations' website at <http://www.dir.ca.gov/>.

### United States

Considerable reductions in workers' compensation costs nationally during the last five years have resulted from employers' focus on reducing claims, according to the Reuters news agency, reporting on a study conducted by Conning & Co., a research and investment firm specializing in the insurance industry. The amount of workers' claims fell from \$28 billion to \$20 during 1991 - 95 in the segment of the workers' compensation market covered by traditional property and casualty insurers. Total premiums paid by employers to insurers also dropped, from about \$32 billion to \$26 billion.

Companies initiated safety programs, emphasized managed care, and focused on reducing adversarial relationships with injured employees in their efforts to control soaring costs. The study was based on historical results of the top 100 companies in the workers' compensation business, representing over 90 percent of the U.S. written premiums. □

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## TEAM Act Vetoed

Last summer President Clinton vetoed the Teamwork for Employees and Management (TEAM) Act. The bill would have amended the National Labor Relations Act to allow employers "to establish, assist, maintain or participate" in "an organization or entity... in which employees participate to address matters of mutual interest (including issues of quality, productivity and efficiency)...."



The bill, which had been strongly opposed by the AFL-CIO, would have modified the section of the National Labor Relations Act that prohibits employers from dominating or interfering with the formation of any labor organization or contributing financial or other support to it. In his veto message, the President said the TEAM Act would "...abolish protections that ensure independent and democratic representation in the workplace" and that it would "undermine the system of collective bargaining" by permitting employers to establish company unions.

In recent years, rulings by the National Labor Relations Board (NLRB) have resulted in confusion about the status of employer-employee safety committees, which, in California, are recommended or, in some cases required, by law. Such uncertainties were discussed in the Fall 1993 issue of *Labor Management Decisions* in "Might Your Farm Safety Committee Be a 'Labor Organization'?" (Volume 3, Number 2). □

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## Workplace Violence Drawing Concern

Incidents of workplace altercations appear to be on the rise. Nearly half of the more than 1,000 human resource professionals who responded to a survey by the Society for Human Resource Management (606 North Washington St., Alexandria, VA 22314-1997) said that one or more violent incidents had occurred in their workplaces since January 1, 1994. In an earlier survey conducted by the organization, 33 percent of respondents had reported violent acts in their workplaces between 1988 and 1993.

Although the total number of violent workplace incidents was up, only 1 percent of the survey respondents reported shootings, rapes, sexual assaults, or stabbings. More common events were threats, with nearly 40 percent of respondents reporting at least one occurrence. In addition; 22 percent reported incidents involving pushing or shoving; 13 percent reported fistfights.

According to the survey data, men committed 77 percent of the violent acts. Men also were more often the victims (53 percent) than were women. Personality conflicts (62 percent), work-related stress (27 percent), family or marital problems (27 percent), emotional problems or mental illnesses (25 percent), firings (16 percent), and drug or alcohol abuse (16 percent) were the most frequently cited motivations for violence.

As a result of the increased violence, businesses are adding to their security measures. About two-thirds of the survey respondents said their organizations have security systems designed to control access to their employees, compared with 61 percent in the 1993 survey.

Of the survey respondents, 59 percent said their companies have written policies addressing violent acts in the workplace, and 73 percent have written rules and regulations on weapons at work.

Fifty-four percent of the survey respondents said they refer potentially violent employees to Employee Assistance Programs (EAPs) as a preventive measure. Also, 29 percent train human resource managers to identify the warning signs of violent behavior, 28 percent said their organizations train managers and supervisors, and 11 percent train employees. In addition, 25 percent provide employee training on conflict resolution, and 10 percent said they help employees to obtain restraining orders to protect them from potential aggressors.

In an attempt to avoid hiring potentially violent employees, 66 percent of the organizations represented in the survey thoroughly investigate the backgrounds of potential employees. Only 6 percent of respondents said their organizations routinely require psychological testing of all potential employees.

For a discussion of the legal implications of workplace violence and practical suggestions for preventive actions employers might take, also see "Preventing and Coping with Workplace Violence," in *Labor Management Decisions*, Summer 1994 (Vol. 4, No. 2). □

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## Drug Testing Commonly Used

Eight out of ten major U.S. companies surveyed by the American Management Association now routinely test employees or new hires for illegal drugs. This figure is up 3 percent from 1995, and is the highest level reported in the 10-year history of the association's annual survey. Since 1987, corporate drug testing has nearly quadrupled from 22 to 81 percent of surveyed firms, while periodic or random testing of employees has increased from 2.5 to 34 percent. The association said its latest survey results are based on the experience of a representative group of 961 companies, which tested more than 200,000 employees and 500,000 job applicants in 1995.

The test-positive rate among employees has shown a general decline, from 4.2 percent in 1990, to 2.5 percent in 1991 through 1993, to 1.9 percent in both 1994 and 1995. Among job seekers, respondents said the test-positive rate rose slightly to 4 percent last year.

While the cost naturally varied by number of people tested, the average per test was \$35. The average per company was \$50,161, but 62 percent of respondent firms spent less than \$10,000.

If a job applicant tests positive, 94 percent of the surveyed companies withdraw their job offer, although 4

percent allow for other options, including a retest at a later date. When employees test positive for illegal drug use, 22 percent of the companies immediately fire them; 14 percent fire them only after they repeatedly fail a drug test. About 21 percent of companies enforce a suspension or probation on employees who have tested positive, and 2 percent may reassign them to other duties. Counseling and treatment referrals are made by 63 percent.

Companies that mix testing with anti-drug initiatives have consistently lower test-positive rates than those that test employees but offer no other anti-drug programs, according to the association. Of surveyed firms, 44 percent offer drug education and awareness programs, up from 21 percent in 1987. And 52 percent train supervisors to spot possible drug problems, double the 1987 figure.

Source: Crain Communications. □

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### Minimum Wage Increase Is in Effect

Along with the federal increase that became effective October 1, California's minimum wage rose to \$4.75 per hour, beginning a two-step process. The second step will bring the minimum wage to \$5.15 an hour on September 1, 1997.

The federal minimum wage legislation also established a sub-minimum, or "opportunity," wage of \$4.25 per hour, applicable only to employees under 20 years of age during their first 90 consecutive days of employment with each employer.

The federal law enacted in August also declares that time spent in home-to-work travel by an employee in an employer-provided vehicle, or in activities performed by an employee that are incidental to the use of the vehicle for commuting, is not "hours worked" and so does not have to be compensated. This provision applies only if the travel is within the normal commuting area for the employer's business and the vehicle use is subject to an agreement between the employer and the employee or representative.

To relieve any confusion about the minimum wage increase in California, the state Department of Industrial Relations has opened a toll-free hotline offering detailed information to both employers and employees. The number is 1-888-ASK-WAGE (1-888-275-9243), and it provides the information to callers in English, Spanish, and Chinese. Callers will hear a recorded message that summarizes the changes in the minimum wage and related issues, including applicability of the state's opportunity wage, meal and lodging credits, and how the new minimum wage affects tipped employees. □

Californians are scheduled to vote November 5 on two additional increases in the minimum wage. If the measure passes, the hourly minimum wage rate would increase to \$5 on March 1, 1997, and to \$5.75 one year later, on March 1, 1998 — resulting in four increases in the California minimum wage over two years. The hotline will be updated by the Division of Labor Standards Enforcement to reflect new information if the ballot measure passes.

Sources: Steve Sutter and California Department of Industrial Relations. □



### DOL Offers Nationwide Job Listings on the Web

America's Job Bank (AJB), a computerized network linking the 1,800 state Employment Service offices and maintained on the Internet by the U.S. Department of Labor, contains information on about 250,000 jobs, featuring listings from all state employment services as well as linking directly to corporate home pages and private placement services. According to DOL, the job bank offers employers rapid, national exposure for job openings and job seekers "the largest pool of active job opportunities available anywhere." More than 1,000 new jobs are added each day, the department said.

Employers may choose to have the Employment Service provide screening/referral control of candidates or to receive referrals directly from job seekers. They may also request a link to job openings running on their own servers or to privately operated employment placement services. The AJB, funded through Unemployment Insurance taxes paid by employers, is free to both employers and job seekers.

The Internet address of the job bank is: <http://www.ajb.dni.us/>. From there, employers can link to "Employer Services" to submit information for listings in the job bank. Job seekers may search by means of a self-directed occupational menu, look for job titles by keywords, or find listings by job codes or numbers. At this writing in mid-October, there were 1,569 job listings in the "agriculture/forestry" category nationwide; further refinements could be made by state, city, title, salary, and "new jobs."

According to the DOL, America's Job Bank is also available on computer systems in public libraries, colleges and universities, high schools, shopping malls, and other places of public access. □

## Resources

### Publications

***Agricultural Personnel Management Program 1991–94 Report*** describes the program's mission, history, philosophy, and use of resources. An overview of activities in the APMP from 1991 through 1994 includes annotated lists of extension meetings, education and research projects supported by program grants, and publications. Yearly budgets and expenditures through fiscal year 1994–95 are summarized. For a free copy of the report, contact Betsey Tabraham (see page 16).

***Labor Management Laws in California Agriculture, Second Edition.*** Publication 21404 (ISBN 1-879906-29-5). The 190-page October 1995 edition, by Howard R. Rosenberg, Valerie J. Horwitz, and Daniel L. Egan, is an extensive update of the 1990 publication. The book summarizes state and federal laws on terms of employment (such as wages, rest periods, safety standards) and interactions between employers and workers (such as pre-hire screening, collective bargaining, and dismissal). Specific statutes, administrative rules, and case precedents are discussed within the context of the types of management decisions they affect. The book is available for \$15 plus \$4 postage and handling (please make check payable to *UC Regents*) from Communication Services – Publications, Division of Agriculture and Natural Resources, University of California, 6701 San Pablo Avenue, Second Floor, Oakland, CA 94608-1239 (phone: 510/642-2431 or, in California, 800/994-8849; fax: 510/643-5470; e-mail: anrpubs@ucdavis.edu).

**Project reports.** The following three publications are available for \$1.75 (to cover postage and handling; please make check payable to *UC Regents*) from Communication Services – Publications (see above listing):

***An Analysis of Contract Relationships between Farm Labor Contractors and Farmers in California Agriculture.*** Publication APMP004, by Dawn Thilmany, former graduate student in the Department of Agricultural Economics, UC Davis (now Assistant Professor, Department of Economics, Utah State University, Logan), and edited by Carole Frank Nuckton, presents eleven case studies based on joint interviews with farmers and the FLCs with whom they have contracted. Published March 1995; 40 pages.

***Coping with Structural Job Displacement of Timber Industry Workers.*** Publication APMP002, by Donald R. Nelson, Peter C. Passof, and Elizabeth Bury describes previous efforts to deal with impending displacements; presents results of surveys to assess timber employment opportunities, worker abilities, interests, and needs, and availability of resources to meet employer and worker needs; and offers recommendations for adjustments to displacement. August 1994; (44 pages).

***Directly Hiring Workers Versus Using Farm Labor Contractors.*** Publication APMP003, by Sabrina Isé, Jeffrey M. Perloff, Stephen R. Sutter, and Suzanne Vaupel. The authors use information from two surveys to compare growers who hire workers directly with growers who use farm labor contractors (FLCs) to supply workers, examining their experience with FLCs, views of employee quality and liability, differences in costs, and reasons for hiring directly or indirectly. Labor-management relations of direct-hire growers are compared with those of FLCs. The 44-page report was published in December 1994.

***Employee Incentive Pay in Dairies, Third Edition*** (1995, 46 pages) has been published in Stanislaus County. Compiled by Gregory Billikopf, who also wrote an introductory chapter on incentive pay principles, the publication contains chapters by dairy scientists on motivating employees to work toward decreasing days open, reducing calf mortality, enhancing milk production, increasing milk quality, maintaining milking equipment, and improving feeding management. To receive a copy, send a check for \$4 (includes tax and shipping), payable to *Stanislaus Farm Advisors' Trust* to: University of California, Attention G. Billikopf, 733 County Center 3, Modesto, CA 95355, or call (209) 525-6654.

**English/Spanish safety handbooks.** Richard Bruce, Specialty Safety Training, has written two bilingual training manuals — *Farm Safety* and *Orchard Safety*. The farm handbook covers safety in the shop, use of general equipment, lockout/blockout, tractors, backhoes, forklifts, as well as procedures related to pesticide application and the Worker Protection Standard. The orchard handbook covers such subjects as safety in pruning and brush disposal, harvest operations, and use of processing equipment. Each book is \$29.95, plus \$2.50 handling (U.S. orders), and sales tax (California residents), and is available from Thomson Publications, P.O. Box 9335, Fresno, CA 93791. Phone: 209/435-2163. Fax: 209/435-8319.

***Managing Human Resources in Small and Mid-Sized Companies,*** Second Edition. Written by Diane Arthur, the book is a reference for dealing with human resource issues as they arise and clarifying complex procedures, or as a planning tool for developing policies and practices. The Second Edition has been updated and expanded to reflect changing workforce demographics, current legal requirements, compensation trends, and advances in information management. Guidelines are presented on how to: set up or expand a human resource department; recruit, interview, select, and orient new employees; administer preemployment and employment tests as well as assess their value; establish compensation, benefits, and performance appraisal programs; manage career development, counseling, discipline, and other employee relations functions; organize in-house publications, dependent-care

resources, food services, and other productivity boosters; maintain viable records and information management systems. An appendix includes employee application forms, sample interview questions, sample job descriptions, guidelines for performance appraisals, and sample disciplinary warnings. The book is available from College and University Personnel Association (CUPA) for \$50, members, \$55, nonmembers. For more information, contact Steve A. Siegel, CUPA, 1233 20th Street, NW, Suite 301 Washington, DC 20036 (Phone: 202/429-0311, ext. 371. Fax: 202-429-0149. E-mail: [ssiegel@cupa.org](mailto:ssiegel@cupa.org)).

**Getting Started in Human Resource Management** was written to help smaller employers adopt human resource strategies to improve company performance and comply with workplace laws and regulations. The author, Joseph P. Bacarro, of Action Management Inc. and 1996 chair of the Society for Human Resource Management (SHRM) Employee & Labor Relations Committee, says "Many companies with fewer than 100 employees do not have a human resource manager, but all businesses need good human resource management practices if they are going to survive." The book suggests ways to improve productivity through the use of performance improvement programs; presents strategies for compensation and benefits, training and development, recruitment and selection, and effective use of human resource consultants; and covers governmental regulations. Copies (catalog number 35.65002) may be purchased by calling the SHRM Distribution Center at 800/444-5006. The cost is \$25 for SHRM members, \$30 for non-members.

**The Mixed Economic Progress of Immigrants.** This 134-page report by Robert F. Schoeni, Kevin F. McCarthy, and Georges Vernez examines the differences in the rate of economic progress of immigrants from different countries of origin and identifies reasons for the differences. It also discusses whether the economic progress of recent immigrants is slower than that of previous generations of immigrants and assesses the economic progress of immigrants in California separately from that of those in the rest of the nation. The book, publication MR-763-IF/FF, costs \$15, plus \$3 handling for the first copy (for domestic orders) and 8.25 percent sales tax (for California residents). It may be ordered from Rand on the Internet (<http://www.rand.org/>) or by telephone (310/451-7002), fax (310/451-6915), e-mail ([order@rand.org](mailto:order@rand.org)), or regular mail (Distribution Services, RAND, P.O. Box 2138, Santa Monica, CA 90407-2138).

## Videotapes

**Protecting Crops, Protecting People — Can IPM Work for You?** In a 23-minute video from the California Department of Health Services and the California Public Health Foundation, five California growers discuss their use of integrated pest management, and its effects

on their business, their workers, and themselves. Copies of the video may be obtained free of charge by writing to California Department of Health Services, Occupational Health Branch, 2151 Berkeley Way, Annex 11, Berkeley, CA 94704.

**Farm labor management videos.** Four videotapes from Canada use a "light-hearted approach" to provide basic instruction on supervising workers. Sold for \$30 per set of two in English or in French, the videos — *Hiring the Right Person for Your Farm* and *Managing People on Your Farm*; and *How to Supervise Employees Better* and *How to Discipline Employees Better* — were produced jointly by the British Columbia Ministry of Agriculture, Fisheries and Food; Agricultural Employment Services; University of Guelph; Ridgetown College; and Ontario Agriculture Training Institute. Order by check or money order payable to *Agricultural Employment Services* (price includes postage) from Agricultural Employment Services, 307-34252 Marshall Road, Abbotsford, B.C., Canada V2S 1L9. □

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## No Loss of Detail on IWC Posters, Yet

A bill to simplify workplace poster requirements was under consideration by the state legislature during 1995-96, but died in the Senate Committee on Industrial Relations at the end of the session. A.B. 1961 was supported by the California Department of Industrial Relations and passed the Assembly in January 1996.

Its purpose was to "cut costs and enable the Industrial Welfare Commission to inform California workers, in plain language, of the basic laws governing wages, hours and working conditions," according to Lloyd W. Aubry, Jr., DIR Director. IWC orders in technical language would still be available upon request by anyone who desires a copy.

Under current law, employers are required to post, conspicuously in their place of employment, multi-page IWC orders containing the exact language of regulations adopted by the IWC and a "statement as to the basis" explaining why these regulations were adopted. The language is complex and difficult to understand, Aubry said. In contrast, the federal government currently requires employers to post a summary of employers' obligations and employees' rights under the Fair Labor Standards Act.

The IWC had estimated that the proposed bill would reduce the cost of producing these documents by approximately one-half, as well as eliminating other costly and unnecessary bureaucratic expenses. Since A.B. 1961 has now expired, poster simplification would depend on introduction of a new bill in the next legislative session. □

## Events

**Noon Seminar Series, Agricultural Health and Safety Center, UC Davis.** Beginning in October, the seminars are being held the first Friday of each month from noon to 1 p.m. For details, phone 916/752-4050.

**Worker Protection Standard Train-the-Trainer Programs.** The UC Statewide IPM Project's Fall schedule includes workshops for trainers of fieldworkers and for trainers of both fieldworkers *and* pesticide handlers. Participants completing either course receive certificates qualifying them to issue the blue EPA cards to fieldworkers they have trained. For details, phone (916) 752-5273, send an email message to [diane.clarke@email.ipm.ucdavis.edu](mailto:diane.clarke@email.ipm.ucdavis.edu), or visit the IPM website — <http://www.ipm.ucdavis.edu/>.

Separate, but identical, 4-hour courses for trainers of fieldworkers are offered in English and in Spanish at each location at a cost of \$40:

<i>October 30, Salinas.</i>	<i>November 20, Holtville.</i>
<i>November 8, Visalia.</i>	<i>December 3, Ontario.</i>
<i>November 19, Indio.</i>	<i>December 6, Oxnard.</i>

The 8-hour course (\$100) for trainers of fieldworkers and pesticide handlers also covers the California-specific training requirements for pesticide handlers. Sessions are in English or Spanish, as indicated below:

<i>October 29, Salinas.</i>	English.
<i>November 6, Visalia.</i>	English.
<i>November 7, Visalia.</i>	Spanish.
<i>December 4, Ontario.</i>	English.
<i>December 5, Oxnard.</i>	Spanish.

**AgFresno Ag Employers' Seminar.** *Wednesday, November 20, 9:00 a.m. to noon.* Fresno Fairgrounds: Hospitality Building. The seventh annual seminar for growers, packers, farm labor contractors, and others will include an update on farm worker transportation issues and will also feature a short course on rights and responsibilities under California's Agricultural Labor Relations Act, with presentations by representatives of the Agricultural Labor Relations Board. For information, phone Steve Sutter at 209/456-7560.

**Pesticide Worker Safety Training Program.** December 3 -5, 1996. Training sessions in English and Spanish in the safe handling and application of pesticides as required by state regulations. Call Cooperative Extension Tulare County at 209/733-6363 for location. Manuel Jimenez, Farm Advisor.



Lively case discussion by Spanish-speaking supervisors, foremen, farm labor contractors, and others marked the three-day Supervisory Skills Training seminar, presented last December by APMP Farm Advisor Gregory Billikopf in Modesto. The popular workshop will be held again this December.

**Agricultural Supervision and Management.** Two seminars offered by Gregory Billikopf (the fifth annual seminar in Spanish, to be held in December, and the second annual seminar in English, in February) will be presented in Modesto at 733 County Center 3, Corner of Scenic Drive and Oakdale Road.

Spanish. *Wednesday - Friday, December 4 - 6, 1996, 9:30 a.m. - 5:00 p.m. Wednesday; 8:00 a.m. - 5:00 p.m. Thursday; and 8:00 a.m. - 3:00 p.m. Friday.* The workshop will cover supervisory communication, counseling employees, power and abuse of authority (including sexual harassment and favoritism), discipline and termination, conflict management, and farm safety. Cost for the three days, including lunch, is \$45 (\$35 for preregistration by November 28).

English. *February 25-27, 1997.* The program is for first-line supervisors, managers, and others interested in improving supervision in agricultural operations. Participation of supervisors and one or more managers from the same business is encouraged. Various presenters will discuss selecting and orienting employees, motivating through pay systems, discipline and termination, counseling and listening skills, farm manager perspectives, power and abuse of authority, managing conflict, labor management information through e-mail and web sites, and labor law. Cost, including lunch each day, is \$45 (\$35 for registration postmarked no later than January 31, 1997).

For more information on either meeting, contact Melinda Ange by phone (209/525-6654), or e-mail ([maange@ucdavis.edu](mailto:maange@ucdavis.edu)). □

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*Following are the articles that have appeared in Labor Management Decisions since the first issue, Spring 1991, Volume 1, Number 1. This index is also on-line at the APMP website [<http://are.Berkeley.EDU/APMP/>], and eventually all the articles referred to will also be up on the site. If you do not have access to the Internet and would like to receive a particular issue, please write or phone Betsey Tabraham (see page 16).*

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Agricultural Personnel Management Program  
 University of California  
 319 Giannini Hall #3310  
 Berkeley, CA 94720-3310

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### Agricultural Personnel Management Program Staff

*Gregory Encina Billikopf*, Area Agricultural Personnel Management Farm Advisor (Stanislaus, Merced, and San Joaquin counties), UC Cooperative Extension, 733 County Center III Court, Modesto, CA 95355. Phone 209/525-6654. E-mail: gebillikopf@ucdavis.edu.

*Howard R. Rosenberg*, Director, APMP, and Cooperative Extension Specialist, Department of Agricultural and Resource Economics, 320 Giannini Hall, University of California, Berkeley, CA 94720-3310. Phone 510/642-7103. E-mail: howardr@are.berkeley.edu).

*Stephen R. Sutter*, Area Agricultural Personnel Management Farm Advisor (Fresno, Kings, Madera, and Tulare counties), UC Cooperative Extension, 1720 S. Maple Ave., Fresno, CA 93702. Phone 209/456-7560. E-mail: srsutter@ucdavis.edu.

*Betsey H. Tabraham*, Coordinator, Agricultural Personnel Management Program, 319 Giannini Hall, University of California, Berkeley 94720-3310. Phone 510/642-2296. E-mail: tabraham@are.berkeley.edu.

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