

# Labor Management Decisions

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## Looking Ahead

Rex J. Woods

In a time of change and new ventures, the focus of this issue of *Labor Management Decisions* is risk, inspired by the sessions on labor supply, regulations, and management at the California Seminar on Agricultural Risk Management held on October 21, 1998, in Sacramento, the first in a series of conferences co-sponsored by the U.S. Department of Agriculture. The seminar's labor sessions, planned by Howard Rosenberg and Steve Sutter, dealt with the "Supply of Labor and Requirements of Law" and "Managing People in Agricultural Production." On this and following pages, Dr. Rosenberg provides a framework for the discussion and introduces summaries of the panelists' presentations.

Since the last issue of *Labor Management Decisions*, the APMP, as well as the entire UC Division of Agriculture and Natural Resources (DANR), has been in transition. DANR is in the process of implementing a new mission-based structure. Organizational and personnel changes have also occurred within the APMP, led by Howard Rosenberg ending his term as APMP Director on July 1, 1998. From his Specialist position in the Department of Agriculture and Resource Economics at Berkeley,

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## Agricultural Risk Management

### Recognizing and Managing Risks in Ag Labor Management

Howard R. Rosenberg

What is a dicey term like "labor" doing in a place called "risk?" Plenty. Its presence in a risk management forum can be traced to creditors' assessing loan applicants in terms of such success characteristics as production management ability and adoption of improved methods. Those who want to control their lending risks tend to appreciate borrowers who can effectively manage their production risks, among which are significant risks related to engaging and managing human resources.

Keeping creditors happy is not the only reason, of course, for wanting to manage risks well. Producers have their own keen interests in achieving good bottom-line results and a modicum of serenity in their personal lives.

Work performed by people is critical to all agricultural production, and about one-fourth of total operating expenses on California farms each year goes to pay for it. This kind of aggregate measure, though, and the use of cost-per-acre averages in farm budgeting, obscure the significance of countless decisions that farmers make in managing labor. Crop budget sheets, for all their benefits, can do a disservice in implying that labor contributions and the costs for them are kind of fixed by formula. Not so. Those numbers on the labor

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line of a crop budget sheet are not for sure. Labor expenses and the returns to them are quite variable. Two farms with the same crop mix and equal payrolls may have very different business results.

Some of the forces that affect labor costs and production outcomes are external to the farm, part of the business environment, and others are within the farm business organization. The risks that all represent can be managed, and speakers at the October seminar discussed potential effects and ways of dealing with both sorts. In the first session, the focus was mostly on the external factors — the legal and regulatory environment and the farm labor market. In the second session, we homed in on the effects of organizational design and personnel management practices within the farm.

### **The Labor-related Risks**

What is this thing called “risk” that managers are constantly grappling with? It might be formally defined as the value of the difference between an optimal outcome and one that is actually realized. We can see risk more plainly as a chance that something will go wrong, that something “bad” will happen. With respect to labor, unfortunately, there is a rich assortment of possibilities. Consider five types of labor-related risks, or occurrences that may affect business results by raising costs or lowering revenues.

The classic labor-related risk, the first one most farmers think of and that’s always lurking, is the chance that essential tasks will not get done. Fields might be left unplanted, plants not protected or cultivated at critical times, or ripe crops left in the field or orchard. Things like this could happen if, for example, there are fewer workers than jobs in the local labor market, specific jobs are not attractive to workers who have alternatives, ineligible employees are abruptly removed from the workplace or depart in fear, or workers take a collective job action. Not having people around to do the work certainly alleviates your costs, but it’s murder on your revenues.

A second type is the chance that the work will be done, but poorly or not on time, thus raising unit labor costs or lowering product value. Physical results take such forms as bruised produce in the bin, wilting transplants, a mastitis epidemic in the dairy herd, and butchered trees and vines. The possible causes? Instructions may be unclear, workers lacking essential job skills, tools outdated or lousy, the pay system designed to reward the wrong kind of performance, or employees trying to get even for a real or perceived injustice.

Third is the risk of incurring high indirect labor expenses, often associated with turnover, absenteeism, or mandatory benefits. Instability of the workforce increases total costs of finding, hiring, orienting, and su-

pervising personnel. In addition, frequent turnover and accidents raise experience ratings that affect workers’ compensation and unemployment insurance premiums for years. Indirect costs more subtly connected to labor management may take the form of avoidable equipment damage, wasted feed or chemicals, and missing tools.

While risks in a fourth category — conflict with employees — may lead to or accompany any of the three above, they are worthy of a separate identification. Workers have many legal grounds on which to base charges of employer wrongdoing, and defending against them is expensive, win or lose. Furthermore, discord does not have to develop into a formal complaint or litigation, or to otherwise involve third parties, to be costly. Even quiet disgruntlement takes its toll in employee performance, overall workforce stability, and managerial time. What can give rise to dysfunctional conflict? Various factors, including inattention to employees’ needs for basic information, blockages in communication channels, unrealistic performance expectations, abusive first-line supervision, and ignorance of legal mandates and prohibitions.

Finally, also often linked to other types, is the risk of the government taking your time, assessing fines, or imposing other penalties for a violation of laws and regulations. Some penalties are corollary to complaints filed by employees, and others are strictly between employers and agencies. You know this kind of risk has been realized when, for example, you receive a notice of missed or improper tax reporting, a letter strongly suggesting that you dismiss certain employees with bogus social security numbers, or repeated visits from an inspector.

Management decisions and practices can change both the odds of these outcomes occurring and the costs of bearing those that do. Panelists at the risk management seminar examined all these types and sources of risk, and they discussed ways to reduce risk ahead of time or recover from adverse outcomes.

### **The “Labor Shortage” Issue**

There has been much public controversy of late about the size and extent of the first type of risk. “Labor shortage” is the term typically used to name that classic risk — not enough people available when needed to perform tasks throughout the production cycle, particularly for harvest, which in most specialty crops is the time of greatest need for human resources. The production “technology” of most crops requires that lots of work and dollars be expended before a rather brief payoff period that no one wants to miss and few can afford to.

This risk has been at the core of heated debate between proponents and opponents of new visa provi-

sions for agricultural workers. Familiar arguments have been revisited over the past few years. Growers have reported greater difficulty in recruiting and retaining workers, and their concerns have found expression in a series of legislative proposals for temporarily increasing the farm labor supply. "Guestworker program" advocates have contended that (1) field jobs are admittedly difficult, sometimes dangerous, and often of short duration; (2) most people with options cannot or will not do them; and (3) it is bad public policy, as well as disconcerting to employers, to depend so much on unauthorized workers to perform these jobs.

In response, farm worker representatives and other opponents have all but proclaimed, "Balderdash." They have characterized the proposed measures as nothing better than a reincarnated Bracero program simply designed to keep wages down and workers powerless. Lots of people here are available for these jobs, they maintain, and more would be if market forces were allowed to work and induce employers to offer better job terms. Their concerns have been expressed in a vigorous public opinion and lobbying campaign that carried the day in last year's Congress.

Ironically, those on both sides of the argument have cited a report by the General Accounting Office released on December 31, 1997 (<http://are.berkeley.edu/APMP/pubs/gao-h2a.pdf>). Congress had asked the GAO to help sort out the claims and counterclaims, to bring light and data to these issues. The GAO study addressed: (a) the likelihood of a farm labor shortage, (b) the need for non-immigrant guestworkers in agriculture, and (c) the capacity of the current H-2A visa program to meet the need for such guests and at the same time protect workers, both U.S. residents and foreign nationals who enter with work visas.

This existing H-2A program is a vehicle by which agricultural employers facing a certified labor shortage may recruit workers abroad to work on a temporary basis. It was codified in the Immigration Reform and Control Act of 1986 as one of the mitigations to potential effects of the new ban on hiring unauthorized workers. But it has been little used and is generally regarded as unsuited to the practical needs of specialty crop agriculture.

The initial speaker, Al French, has had a good seat for the recent debates and legislative activity. As the USDA Labor Affairs Coordinator, he has heard all the analyses, contributed some of his own, and developed a rich stock of knowledge about not only the legislative machinations but also conditions in farm labor markets throughout the country. Mr. French reviewed the reasoning of the proponents and opponents of the work visa legislation in this Congress, the attempts last year to craft provisions meeting the interests of employer

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## Guestworkers in Agriculture: The H-2A Temporary Agricultural Worker Program

Al French

Coordinator, Agricultural Labor Affairs<sup>1</sup>  
Office of the Chief Economist  
U.S. Department of Agriculture

The H-2A Temporary Agricultural Worker program permits agricultural employers who can demonstrate a labor shortage to import foreign workers on a temporary basis under terms and conditions that will result in no adverse effect to U.S. workers similarly situated. The program is authorized by the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRCA) of 1986. The following information summarizes the process of applying for an H-2A certification and employers' obligations under the program. The U.S. Department of Labor regulations at 20 CFR Part 655, Subpart B,<sup>2</sup> govern the application process.

### Who May Apply

Any agricultural employer who needs workers to perform temporary or seasonal labor or services may apply. The employer may be an individual proprietorship, an association of agricultural producers, a partnership, or a corporation. An authorized agent also may apply on behalf of an employer.

### What to Submit

Documents required are:

- Application for Alien Employment Certification (Form ETA 750, Part A. Offer of Employment);
- Agricultural and Food Processing Clearance Order (Form ETA 790);
- attachments as appropriate to supplement information requested on the above forms; and
- statement of authorization of agent or association, if applicable.

### When to Apply

At least 60 calendar days before the first date on which workers are needed, applications must be filed with the appropriate Regional Administrator (RA) of

1. Mr. French maintains an informative website at <http://www.usda.gov/oce/oce/labor-affairs/affairs.htm>.
2. Available on the Internet at [http://www.doleta.gov/regs/cfr/20cfr/toc\\_Part600-699/0655\\_toc.htm](http://www.doleta.gov/regs/cfr/20cfr/toc_Part600-699/0655_toc.htm).

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the U.S. Department of Labor (DOL) Employment and Training Administration (ETA) and with the local office of the state employment service (Employment Development Department in California). To avoid delays in hiring workers, first-time applicants should submit their applications well ahead of the 60-day deadline in the event that DOL requires clarification or other modifications. If the application is acceptable, the RA will make a certification determination 20 calendar days before the date on which the workers are needed.

## How and Where to Apply

Applications may be filed in person, mailed certified return receipt requested, or delivered by guaranteed commercial delivery to the appropriate RA in the region of intended employment (see Region 9 address on page 5) and to the local office of the state employment service. If a labor certification is granted, the employer is then responsible for filing a visa petition with the Immigration and Naturalization Service for the admittance of aliens into the United States.

## The Employer's Obligations

**Recruitment.** The employer is required to engage in independent positive recruitment of U.S. workers. This means an active effort, including newspaper and radio advertising as directed by DOL in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers to secure U.S. workers.

**Wages.** The wage or rate of pay must be the same for U.S. resident and H-2A workers. It must also be at least as high as the applicable Adverse Effect Wage Rate (AEWR), the applicable prevailing wage rate, or the federal or state minimum wage, whichever is higher. The AEWR for California was \$6.87 per hour in 1998 and is \$7.23 in 1999 (<http://www.usda.gov/agency/oce/oce/labor-affairs/aewr99.htm>). Prevailing wage rates are established by the state employment service for specific crop and labor market areas.

**Federal Unemployment Tax Act and F.I.C.A.** These taxes are not payable for alien H-2A workers, because they are not eligible for benefits under these programs.

**Housing.** The employer is obligated to provide free, inspected and approved housing to all workers who are not able to return to their residences the same day. Prospective H-2A employers should contact the Wage and Hour Division of the U.S. Department of Labor to arrange for an inspection at least 30 days before the date of their need for workers.

**Meals.** The employer must either provide three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own food. An employer who provides meals

may charge each worker a certain amount (\$7.60 in 1998) per day for the three meals.

**Transportation.** The employer is responsible for the following types of transportation: (1) After a worker has completed 50 percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work. (2) The employer must provide free transportation between any required housing site and the worksite for any worker who is eligible for such housing. (3) When the work contract is completed, the employer must pay for return transportation to the place of recruitment or to the next job.

If it is the prevailing practice for employers in the same crop and labor market area to advance transportation funds to prospective workers, H-2A employers must also arrange or advance such transportation.

**Workers' compensation insurance.** Workers' compensation or equivalent insurance is required for all workers. The employer must provide proof of coverage to the RA before certification is granted.

**Tools and supplies.** The employer is to furnish, at no cost to the worker, all tools and supplies necessary to carry out the work, unless it is common practice for the worker to provide some items.

**Three-fourths guarantee.** The employer must guarantee that each worker will be offered employment for at least three-fourths of the workdays in the work contract period and any extensions.

**Fifty percent rule.** Any qualified U.S. worker who applies for a job must be employed until 50 percent of the contract period has elapsed.

**Labor dispute.** Assurance is required that the job opportunity for which the employer is requesting H-2A certification does not exist due to a strike or lockout.

**Certification fee.** An employer who is granted temporary alien agricultural labor certification is charged a \$100 fee, plus \$10 for each job opportunity certified, up to a maximum fee of \$1,000 for each certification granted. An additional petition fee is payable to the Immigration and Naturalization Service.

**Other conditions.** The employer is required to keep accurate records of a worker's earnings and to provide the worker with a complete statement of hours worked and related earnings on each payday. Wages are to be paid at least twice monthly or more frequently if it is the prevailing practice. The employer must give each worker a copy of the work contract.

## Application Review

Under normal circumstances, the RA will notify the employer in writing within seven calendar days after

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receiving an application, if it is acceptable or needs modifications.

### Recruitment of U.S. Workers

When it receives an employer's application for temporary alien agricultural labor certification, the local state employment service office must promptly prepare a local job order and begin recruiting U.S. workers in the area of intended employment.

Within seven calendar days after receiving the application, the local office must prepare an agricultural clearance order to permit the recruitment of U.S. workers by the state employment service system on an intrastate and interstate basis. After accepting an application for consideration, the RA will give both the employer and the state employment service direction on specific recruitment efforts to be conducted. The employer may be required to advertise and recruit in states regarded as labor supply states.

### Notices of Acceptance

The notice:

- will inform the employer and the state employment service of specific efforts expected regarding recruitment of U.S. workers;
- will require that the job order be placed into appropriate intrastate and interstate clearances; and
- may require the employer to conduct independent recruitment efforts within a multi-state region (including the Commonwealth of Puerto Rico) of traditional or expected labor supply.

### Notices of Nonacceptance

Notice that an employer's application is not accepted for consideration will:

- state why it is not acceptable;
- describe changes necessary for the application to be considered;
- allow the employer five calendar days to resubmit the application; and
- outline procedures that may be used to appeal the RA's nonacceptance.

### Basis for Denying Certification

Certification may be denied if:

- there is insufficient time to test the availability of U.S. workers;
- U.S. workers are available to fill all the employer's job opportunities;

- the employer has not complied with the workers' compensation requirements;
- the employer has not complied with recruitment requirements;
- after the application was accepted for consideration, the employer has adversely affected the wages, working conditions, or benefits of U.S. workers; or
- the RA determines that the employer has substantially violated a material term or condition of a previous certification within the last two years.

### Appeals of Certification Denials

If the employer is found to have complied with the H-2A requirements, the RA will grant the temporary alien agricultural labor certification for the number of job opportunities for which it has been determined not enough U.S. workers are available. After certification, the employer must continue to recruit U.S. workers until the H-2A workers have departed for the place of work. In addition, the state employment service will continue to refer to the employer U.S. workers who apply during the first 50 percent of the contract period, and the employer must hire those U.S. workers who are qualified to perform the jobs.

### Violations, Penalties, and Sanctions

A major consideration of IRCA is the enforcement of all provisions related to protections for workers. The Employment Standards Administration (ESA) of DOL has a primary role in investigating the terms and conditions of employment. ESA is responsible for enforcing contractual obligations of employers, and it may assess civil monetary penalties and recover unpaid wages. ETA enforces other aspects of the laws and regulations and is responsible for administering sanctions for violations of the regulations.

### Appeals of Employer Penalties

The RA will inform the employer about the system of appeals provided for in the regulations.

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Applications to use the H-2A program in California or other states in federal Region 9 may be submitted to:

Regional Administrator  
U.S. Department of Labor, ETA  
71 Stevenson Street, 8th Floor  
P. O. Box 3767  
San Francisco, CA 94105  
(415) 995-5482

Information for other ETA regional offices is available on the ETA website (<http://www.doleta.gov/>) or by phoning 800/488-0901.

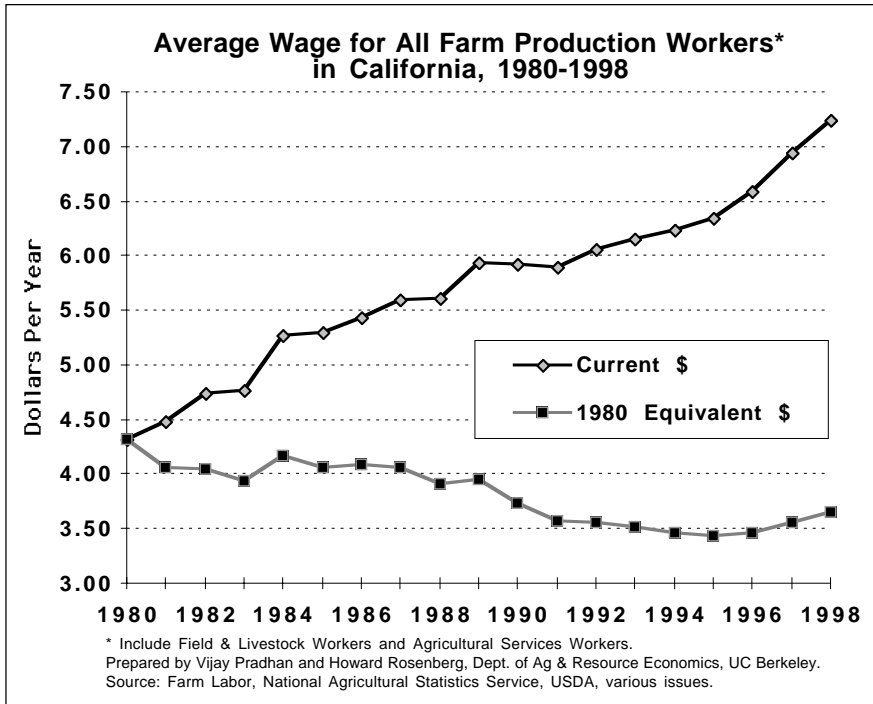
and worker groups, his own outlook of the current labor market, and his assessment of the H-2A program. He outlines the requirements and procedures for obtaining guestworkers under the H-2A program in his article on page 3.

### Recruiting and Workers' Risks

Governmental language and H-2A requirements notwithstanding, an economist may insist that there is no such thing as a labor shortage, only a wrong price. Supply of agricultural labor is not a number but rather a function. The quantity of labor available is elastic with respect to the price (wage and benefits, to a large extent) offered for it. The higher the price, the more units of labor become available, even if by way of moving over from other industries.

So where has the price been? Pretty low, on the whole, according to findings of the USDA quarterly survey of farm employers. The average farm wage rate in California has increased nominally since 1980, but not in real terms (after considering inflation; see graph #1), despite a mild upward trend after 1995. Real wages for field and livestock jobs have declined a bit more than for manufacturing jobs from their 1980 levels (down 14% vs. 11% in manufacturing) but by less than manufacturing from their respective values in subsequent years. Two-point comparisons like this are quite sensitive to the choice of base year. Relative to their 1983 levels, real wage values in 1998 were 4% lower in agriculture and 13% in manufacturing; relative to 1990, the 1998 wage was the same in agriculture but down 5% in manufacturing. Compared to 1995, the 1998 wage values were 8% higher in agriculture and 1% in manufacturing. Despite a trend upward since 1993, the ratio of farm to manufacturing wages in California has remained little more than 1 to 2 for a very long time (see graph #2).

Regardless of the wage averages and aggregate numbers of workers in a region, the key labor market condition to me if I am a business operator is the availability of people to work at *my* farm. If there are a lot of people with few options in the local market, an operator does not have to try hard to get jobs filled. But if not, or if the operator cares about how long employees stay and how well they perform, some planning and effort are needed. A good place to start is to understand who makes up the



workforce, their needs, interests, values and communication patterns.

Ed Kissam presented a description of the current agricultural workforce, identified differences in its composition from previous years, and shared his many insights about the values and motivation of people within the workforce. He reminded us that lenders and business operators are not the only ones in agriculture who have risks to manage. Workers too are interested in avoiding bad or costly things — such as physical injury, indignity, poverty, and uncertainty itself. Dr. Kissam discussed risks and hardships in agricultural employment from workers' perspectives, and he offered suggestions for employers interested in helping workers better control their risks. Among his points is that the existing farm workforce has underused capacity. More effective means to match workers and seasonal jobs could improve stability of both earnings opportunity for workers and labor supply for growers.

### Knowing and Navigating the Rules

Personnel management is not only about dealing with workers anymore, if it ever was. Mainly to protect — or to reduce risks for — workers and society as a whole, the body politic has established a bewildering array of rules affecting terms of employment and interaction processes between employers and employees. Laws and regulations that set boundaries for farmers when they are making labor management decisions are indeed a major source of risk. They are extremely difficult to keep track of, no less to comply with, and have become a virtual obsession for many farmers.

As the California State Labor Commissioner until recently, José Millan headed the Division of Labor Standards Enforcement (in the Department of Industrial Relations) and was responsible for enforcing many of the rules. He did so with at least as much emphasis on education and public information as on the citations and subpoenas. Mr. Millan was instrumental in developing the Targeted Industries Partnership Program, which joins DIR with other state and federal agencies in education and enforcement efforts that carry out this commitment. His comments at the seminar, summarized in this issue on pages 12-13, illuminated how the TIPP operates and provided guidance on how to reduce exposure to penalties emanating from a compliance inspection. (Steve Sutter also offers several specific suggestions in his TIPP preparation guide, published in the *LMD* Winter-Spring 1998 issue [Vol. 7, No. 1] and available at <http://are.berkeley.edu/APMP/pubs/lmd/lmd.html> in the APMP website.

Employers surely can take steps to reduce the risk of incurring fines and other penalties assessed by the government. Fundamental to managing this kind of risk is

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## Considering the Workforce in Risk Management

*Based on the presentation by Dr. Edward Kissam, Senior Research Associate, Aguirre International, San Mateo, CA*

Findings of the National Agricultural Workers Survey indicate that volatility in the California farm labor market has increased, said Ed Kissam at the Seminar on Agricultural Risk Management. Comparing characteristics of farm workers and the farm labor market between 1989-93 and a more recent 1994-97 period, he noted that proportions of workers who are recent arrivals and unauthorized for U.S. employment have continued to grow.

Other key indicators of continuing volatility are that, in the more recent period, there are many more foreign-born workers in their first year of farmwork and not accompanied by family members; fewer of the teenaged and young adult workers say they plan to remain in farmwork for more than 5 years; migration of foreign-born workers is higher; and the share of U.S.-born individuals in the farm workforce is smaller. Moreover, the average number of weeks in which farm workers are employed in agriculture is down — from an average of 33 weeks in the 1989-93 period to 23 weeks in 1994-97. In Kissam's view, the shift toward uncertain reliance on migrant workers who themselves experience higher levels of annual unemployment stems partly from employers' overemphasis on meeting short-term harvest needs without corresponding attention to stability of a "core" labor force.

Harvest hourly earnings of California farm workers showed a modest increase from an average of \$5.66 per hour during the earlier NAWS period to an average of \$6.18 in the later period (about 2% per year), and hourly earnings in pre-harvest tasks had fallen from \$5.24 to \$5.02 [note: data collection for both periods took place before the series of legislated increases that have brought the current minimum wage in California to \$5.75 per hour]. Dr. Kissam argued that increasing pay rates would be helpful but is neither a necessary nor a sufficient measure for growers who want to reduce their risks of falling short on labor to perform critical production tasks. Instead, successful recruitment, retention, and use of the available labor supply require managerial investments in:

- ❑ providing more off-season employment opportunities that enable committed farm workers to earn an annual "living" income in farmwork,
- ❑ coordinating in-house labor deployment to decrease time spent by individual workers in moving from one crop-task to another; and
- ❑ seriously monitoring and seeking to improve the quality of supervision provided by their hired foremen as well as farm labor contractors.



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Efforts to maintain an adequate working environment with fair treatment can keep farm workers from leaving to search for better conditions, even including higher pay rates.

Stabilizing the farm labor force by better managing the workers currently available is likely to be affordable, since increases in productivity and reduction of indirect expense offset costs of improving supervision and arranging for more off-peak employment. But although some agricultural employers have used such strategies very successfully, Kissam sees little evidence that this is likely to become the prevailing approach in California. He argued that labor management practices mutually benefiting employers and workers are increasingly incompatible with prevailing farm labor management trends in California.

Farm workers have their own risk management strategies for dealing with personal risks in an inherently unstable labor market. They tend to seek jobs with growers or labor contractors who provide opportunity for a relatively long stretch of employment and a work environment where they will be treated fairly, not verbally abused, and not cheated out of their due earnings. Newly arrived, inexperienced workers, however, have few options and generally work for whoever will employ them. The NAWS trend data show continuing importance of farm labor contractors; they employ about one-third of farm workers (unchanged from the earlier to the more recent period). According to Kissam, actions that weaken organizational linkages between growers and FLCs, i.e., that “commodify” labor, are likely to exacerbate the current problems of labor volatility and poor work conditions. Agricultural employers can and must find genuine organizational solutions to the problems of seasonality and rapidly moving workers from one crop-task to another. Unfortunately, he noted, efforts to secure legislation that adds to overall labor supply have traditionally seemed more cost-effective than investments in building producers’ labor management capacity.

NAWS data indicate that the average hourly wage paid to farm labor supervisors has fallen slightly more than 1% per year, from \$7.66 in 1989-93 to \$7.25 in 1994-97. Kissam sees this decrease as a lead indicator of further increases in labor market volatility — because it dims the prospect of field workers’ remaining in farmwork to achieve a measure of upward career mobility. At this level of pay (around \$11,000 per year, assuming about 1,500 hours per year of employment) it is very difficult to attract and retain well-qualified supervisory employees. And another sign of declining farm employment conditions is that more workers are paying “raiteros” for rides to work, thus eroding their already modest net earnings.

While the conceptual notion of farm labor problems as mainly attributable to farm workers abandoning ag-

riculture is flawed, said Kissam, there is cause to be concerned about the employment-eligible workforce of the future. NAWS data and other farm labor research show that farm workers are fairly well attached to their occupations. However, formerly unauthorized workers who were legalized under the SAW program (Special Agricultural Worker provisions of the Immigration Reform and Control Act of 1986) had a mean age of roughly 28 years in 1987, and this cohort of immigrant workers is now “aging out” of the California farm labor force. In the year 2000, the average age of those legalized under the SAW provisions will be 42 years.

Efforts to prolong current farm workers’ participation in the agricultural labor market through better management planning and workplace supervision are important among rational strategies to meet California agriculture’s labor needs. At the same time, Kissam foresees that additional farm labor supply will be absolutely necessary, given the aging of the foreign-born labor force and decreasing participation of U.S.-born workers. He does not regard a guestworker program as the answer, though, in part because it would do nothing to address the fundamental issues related to moving workers from one crop-task to another, and in part because it would exacerbate the downward spiral of working conditions and wages for current farm workers, further decreasing participation of available U.S. residents in the labor force. In contrast to the illusory “magic bullet” of a guestworker program, he said, efforts to improve supervision and work conditions would make both short-term economic sense and a lasting contribution to labor force stability. The costs of such efforts are much more affordable than those of recruiting, transporting, and housing workers from Mexico.

In concluding, Dr. Kissam suggested that a conceivable but politically unlikely legislative solution to farm labor supply problems would be a “SAW-2” program, which would offer legal permanent resident status to many of the unauthorized workers currently employed in California agriculture. Such a solution would be more equitable and less costly than a guestworker program. In considering it, said Kissam, Congress should be mindful of a lesson from IRCA experience — that an ungenerous decision to legalize farm workers but not their dependents stimulates shuttle migration and ultimately increases the flow of unauthorized workers. A better course of action in a SAW-2 program would be to provide for family unity from the beginning and to facilitate settlement here. With whole family units more settled in the United States, employers would have a larger, more stable pool of labor to recruit from, and the new residents would gradually attenuate their ties to the Mexican village-based networks through which most illegal immigrants have arrived. □

**Agricultural Risk Management section** *continues on page 12*



## What Kind of Transition Is Necessary to Secure the Future of U.S. Fruit, Vegetable, and Horticultural Agriculture?

Richard Mines

*Dr. Mines is an Agricultural Economist currently employed by the U.S. Department of Labor. However, the opinions and facts expressed here reflect only Mines' views and not those of the U.S. DOL.*

As we enter a period in which the influx of new workers from Mexico and Guatemala into U.S. agriculture is likely to slow, public attention has been focused mostly on the possibility of instituting an expanded guestworker program. However, addressing the future security of U.S. labor-intensive agriculture may require a broader approach. New mechanical technologies, plant cultivars and growing techniques adapted to these mechanical changes, and changed labor management practices may be just as important as the supply of foreign-born workers in securing the future of U.S. agriculture. Some observers believe that without technological change, U.S. agriculture may be vulnerable to other technically more advanced countries.<sup>1</sup> In other words, excessive dependence on a constantly replenished supply of foreign labor could prove to be a strategic mistake. Below, I discuss the point of view of agricultural engineers who, unfortunately, have been viewing debate about these points from the sidelines.<sup>2</sup>

### Research Stagnant

The agricultural engineers agree that research in the mechanical handling of fruit and vegetables in the field has been at a lull for a couple of decades. In 1971 the Agricultural Research Service (ARS) had 23 engineers investigating mechanical methods for deciduous tree fruit agriculture; in 1981 there were four; today only one is left. The ARS has also sharply cut back its citrus and vegetable projects (Peterson 1992).

At the end of the Bracero Program, many policy makers believed that a relative labor shortage would

occur in agriculture, and public support of mechanical techniques increased. In just a few years, these efforts resulted in viable harvesters for processing tomatoes, cling peaches, prunes, and tart cherries (Brown, Peterson, and Levin 1983).

Starting in the 1970s, an increasing influx of undocumented Mexicans into U.S. agriculture coincided with stagnation or decline in real wages. Ample labor supply continued after the Immigration Reform and Control Act of 1986 legalized over a million farm workers without markedly diminishing the continued flow of new unauthorized workers. The quite adequate supply of relatively inexpensive labor clearly slowed and, as shown below, in some cases may have reversed the use of mechanical aids for agricultural production in the United States.<sup>3</sup>

### Two Types of Mechanization

Tasks can be mechanized in ways to save the employer money (*productivity-enhancing mechanization*) or to save the strain and drudgery of the work (*labor aids or task facilitators*). The first is buck-saving, the second back-saving.

Labor aids effectively increase the supply of labor and stabilize the work force by increasing the tenure in agriculture of all workers, especially women and older men, by lightening the tasks. Such aids generally do not reduce demand (or costs) for labor, but they increase the supply of those able to do the work.<sup>4</sup>

In contrast, productivity-enhancing technologies use mechanical methods to replace hand methods, and thus displace some workers. These same techniques, however, may increase the hours worked and the skill level of the remaining workers, resulting in a more stable, though numerically smaller year-round work force. Moreover, since harvest labor demands often

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1. Competitors such as New Zealand, Holland, South Africa, Israel, Italy, Spain, France, Chile, and Argentina are all developing fruit and vegetable technologies. Some of these countries may threaten our markets because of superior technologies in future years. The Dutch, using more advanced techniques, are already exporting cut flowers and green house tomatoes to North America, according to James Thompson, Extension Agricultural Engineer, University of California, Davis.

2. Donald Peterson, Agricultural Research Service/USDA; G.K. Brown, Florida Citrus Association; George Ing, Washington State Tree Fruit Commission; James Thompson; and Donald Linker, private consultant, Salinas, CA. The author is also grateful for useful comments by Bert Mason, Agricultural Economics Department, California State University at Fresno.

3. Peterson and Thompson, particularly, expressed this view.

4. Labor aids or task facilitators can at times increase productivity. One example is a machine used to move plants in the nursery industry. These machines lighten tasks and enhance productivity. However, labor aids such as conveyor belts in row crops or booms in tree crops, tend to slow down workers in a crew to the pace of the slowest worker and cut into the employer's ability to use incentive pay schemes.

peak for short periods, the mechanization of harvest tasks can smooth out the peaks and provide for more year-round work for the remaining workers. As machines displace labor in productivity-enhancing mechanization, production costs may drop. This latter effect occurs only when the cost of labor is high enough to justify its substitution. Table 1 gives examples of currently available technologies in both of these areas.

<b>Productivity-enhancing mechanization</b>	<b>Labor aids or task facilitators</b>
Mature green (bush) tomato harvester	Conveyor belt for row crops to palletized areas.
Tying of cauliflower leaves before harvest	Platforms, booms, derricks for harvesting or pruning trees
Mechanical harvester for fresh market onions	Sleds for hauling strawberries, broccoli, and celery
Pickling-cucumber harvester	Battery-run clippers for citrus harvest
Cling-peach harvester	Deceleration tube for citrus harvest.
Tobacco harvester	Three-legged ladder for citrus

### Processing and Harvest Technologies Tied

When the prospects for mechanization are considered, the packing shed as well as nonharvest field tasks should be included in the analysis. Changes, particularly in packing-house equipment, have been remarkable in recent years and will have major impacts on labor demand. Electronic optical sorting and sizing technologies can already choose fruit and fill boxes in fresh market citrus, apples, pears, stone fruit, and some fresh vegetable packing houses. These same technologies will allow in the coming years for most juice oranges to be picked by machine, taken to the packing shed, and sorted for defects before juicing. This capacity to cull fruit for size, blemishes and color — though controversy remains about its realization and limits — may even lead to the mechanization of the pick in fresh market oranges.

### Some Factors For and Against Mechanization

**For.** Groups promoting improvement of food safety will be supportive of mechanization, since most pathogens are transferred by the handling of food by humans. Also, new trade rules that allow imports from agricultural economies with lower wages and inferior environmental conditions make it difficult for U.S. producers to compete without a technological advantage. (Competing on low labor costs is infeasible given U.S. labor laws and cost of living.) Market trends show increasing popularity of fresh cut (value-added) presentations such as bagged lettuce. Harvest mechanization fits well with this type of product, because damaged produce can be separated out by advanced sorting techniques after harvest.

**Against.** The market in tomatoes is moving away from mature green (bush) varieties to vine-ripened or staked varieties. The latter are much harder to mechanize. Boxed lettuce, which apparently will retain part of the market, is difficult to mechanize. As opportunities for export to Asia, Europe, and Latin America expand, our products will need longer shelf lives, but machine harvesting for fresh market diminishes shelf life. Fruits that are stored, such as apples (CA Storage), cannot be integrated easily into a mechanical system, because damage from machine harvesting reduces storage potential. Acreages are increasing in some fruits, such as strawberries, that present difficult mechanization challenges. Small-scale and older growers may not be willing or able to invest in the changed cultural practices and new cultivars needed to use the new technologies. Another negative is consumer demand for cosmetic perfection in products.

### Overview of Possible Technological Changes

I have organized crop/tasks in table 2 into three groups: already mechanized, nearly or already available, and difficult to mechanize. In general, the already mechanized are either soil vegetables (beets, potatoes) or fruits or vegetables for processing (dried, canned, or frozen). The nearly available include technologies for the remaining soil (root) vegetables and processed products that have yet not been mechanized (such as fresh market onions, raisins, specialty-wine grapes, olives, pickling cucumbers), and some fresh market products that are less susceptible to the adverse effects of machine harvest. These latter include fresh cut (value added) vegetables (e.g., non-boxed lettuce), plus broccoli and cauliflower.<sup>5</sup>

The technology specialists predict that if labor costs for field tasks were to increase by 25 to 50 percent, the *nearly available* technologies could soon be economically feasible. And these nearly available changes imply considerable alterations in demand for labor. Juice oranges alone would probably need some 45,000 fewer workers at peak harvest and significant reductions in year-round staff. Considering also such other products as fresh onions, raisins, specialty wines, pickling cucumbers, and the fresh vegetables, tens of thousands of other jobs and workers would be affected.

Some of this nearly available technology actually exists but is not currently in use. Tobacco and bush tomato harvesters are in the barn. Harvesters for cling peaches and pickling cucumbers have been retired in recent years after widespread use. A rise in labor costs would immediately bring them back out.

Moreover, there are good prospects for other technologies that also imply big changes in labor demand down the road. The possibility of a fresh-market citrus harvester coupled with advanced packing techniques might be just 7 to 10 years from realization.<sup>6</sup> Also only

5. All five informants used these categories. The information about broccoli and cauliflower was from Donald Linker.

6. Estimate by Donald Peterson.

10 years away may be trellising of apples for mechanical harvest and possibly stone fruit harvesting by a bulk robotic system.

It must be stressed, however, that many fresh fruits and vegetables subject to uneven ripening, easy bruising, and fast decay will not be mechanized soon. Strawberries, fresh market cucumbers, boxed whole lettuce, fresh stone fruit and apples, table grapes and fresh caneberries will all require hand harvesting for a considerable time into the future. Production of all will continue to require tens of thousands of workers.

Some of the changes identified in table 2, especially if they are coupled with labor aids, may lead to longer seasons of employment each year for workers. Under such circumstances, they would probably remain in farm work for more years than they typically do now. Dried-on-the-vine raisin production and trellising of deciduous fruit trees are examples of changes that will not diminish hours worked as much as total number of workers needed. They would help to stabilize the labor force at lower total employment levels but with longer opportunities for earning, so that workers could better support themselves. Thus, the mechanization of peak harvest tasks would also provide growers and communities the corollary benefit of smoothing out the demand for labor in our fields and orchards.

### Multifaceted Changes Needed

I believe that several elements should accompany the transition to more mechanized agricultural production technologies:

1. The public (and private companies) should substantially increase investments in mechanization, development of new cultivars and growing practices adapted to mechanical methods, and packing house technologies for fruit, vegetable and horticultural production. Mechanization programs should cover both the productivity-enhancing and labor-aid areas, and they should aim to enhance technologies for small as well as large-scale operations.
2. Employers and their associations should coordinate employment across employers and areas, so that individual workers may maximize their portfolio of farm jobs through the year. These practices should aim to increase the earnings and improve the conditions of farm workers. Government subsidies or other forms of encouragement could be designed to facilitate these practices.

**Table 2. Selected Crop/Tasks, by Availability of Productivity-Enhancing Technologies**

Already mechanized	Already or nearly available	Difficult — 5 or more years away
Tart (processed) cherry pick	Juice orange pick	Strawberry pick
Processing tomato pick	Pick of fresh-cut or shredded lettuce, celery, spinach, etc.	Fresh cucumber and squash pick
Pick of nuts, dates, prunes	Pickling cucumber, and processing cling peach pick	Box-packed lettuce pick
Harvest of beets, sugar beets, potatoes, processed onions, sweet potatoes, carrots, turnips	Garlic, and fresh market onion, green onion pick	Fresh stone-fruit pick, e.g., pears, plums, peaches, apricots
Canned, dried, or frozen vegetable pick	Raisin grape pick (requires changed cultural practices)	Pick of table grapes, prunes
Pick of grapes for wine, juice	Olive pick (requires changed cultural practices)	Pick of sugar prunes, sweet cherries
Harvest of beans, peas, cotton, grains, animal forage	Broccoli and cauliflower harvest	Harvest of fresh caneberries (brambles)
Cranberry harvest	Tying of cauliflower leaves before harvest	Cut flower harvest
Harvest of brambles, blueberries for process market (jams, jellies)	Grape harvest for specialty wines	

NOTE: Table is based on information from all five technology specialists.

3. Enforcement of labor, health, and environmental standards should be beefed up with more inspectors for federally sponsored programs of the Wage and Hour Division, OSHA, and EPA.
4. Transition to a smaller but more year-round labor force would require some years to accomplish. It would be advisable to provide for legalization of some agricultural workers during such a period. Any new legalization program should be limited and strictly transitional, a once-only opportunity for current agricultural workers, numerically capped, and final. No legalization program for the farm community should be permitted thereafter.
5. The INS should continue to apply strong pressure to limit the numbers of ineligible employees working in U.S. fields, orchards, and vineyards.
6. Growers whose conversion to more mechanized technologies would involve great expense (e.g., raisin-grape growers) should be considered for government incentives. Those who lose out to foreign competition should be given public help to make a soft landing.

### References

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*Recognizing and Managing Risks, continued from page 7*

being aware of the rules. Their sheer volume and complexity, however, have added to many growers' urge to throw up their hands and contract with external specialists to obtain and manage labor for farm tasks. About three in five California growers turn to farm labor contractors, custom harvesters, or pesticide applicators to supplement or substitute for workers they hire directly as employees. Practical reasons for engaging labor through contractors stem from farm production technology, with its seasonal variations in the types and amount of work for which people are needed, and from cultural and language differences that compound challenges of growers directly recruiting, selecting, instructing, and supervising workers. But the desire for relief from legal obligations, costs, and exposures to liability has also contributed to the use of contractors.

There are legitimate and increasing doubts about whether farmers actually reduce their legal risks as employers by purchasing labor services from contractors. While noting that growers who do business with poorly equipped or unscrupulous contractors leave themselves open to joint liability for legal violations, Earl Hall illustrated how FLCs who operate properly serve to lessen risks for both growers and workers. He explained the importance of growers' carefully selecting their contractors, clarifying terms of agreement with them, and sticking by those terms, particularly the payment schedule. Mr. Hall's comments and those of Jim Bogart, the next speaker, are summarized by Steve Sutter on pages 14-15.

Concurring that responsible contractors help farm operators control their risks, Mr. Bogart strongly recommended that growers and FLCs put their agreements in writing, both to help avoid misunderstandings and to manifest the independence of the two entities. In addition, he examined intricacies of determining whether employment by the FLC employees is to be considered joint with the grower.

In 1997 the U.S. Department of Labor expanded the range of circumstances under which the FLC's client (i.e., the grower) is deemed a joint employer under the Migrant and Seasonal Agricultural Worker Protection Act. "Economic realities" of the relationship among grower, contractor, and worker now weigh more heavily. Much uncertainty about this new standard remains, and case law over time will better define both its meaning within MSAWPA and its potential influence on the determination of joint employment under other laws.

Not at all uncertain, observed Mr. Bogart, is an upswing in litigation brought by workers against agricultural employers. Most evident to him in the Central

*Continued on page 14*



Electronic counting of units produced lends to efficient and accurate payroll preparation.

## **A Common Sense Approach to Compliance with Labor Laws**

José H. Millan

Chief Deputy Labor Commissioner  
Division of Labor Standards Enforcement  
California Department of Industrial Relations

It isn't all that hard to comply with California labor laws. You may think this is a Labor Commissioner's simplistic and provocative view, but it is quite possible to operate a successful agricultural business while following the rules and minimizing the risk of penalties. Most farm employers do. Where help is needed, we in the Division of Labor Standards Enforcement (DLSE) offer support in the form of education and other assistance to promote understanding and knowledge of the law by employers and employees.

Unfortunately, serious—and avoidable—violations of labor law do occur. The main types that we encounter in agriculture usually fall into the following categories:

- ❑ Failure to comply with minimum wage and overtime requirements and to keep accurate pay records, particularly when the farm worker is paid on a piece rate basis. The minimum wage is a rate equal to \$5.75 per hour, whether employees are paid on the basis of time, output, a combination, or otherwise. Agricultural workers are generally entitled to an overtime premium pay rate of 1.5 times their regular rate ("time and a half") for all hours in excess of 10 in any workday and for all hours on the 7th day of any workweek, and twice their regular rate ("double time") for all hours exceeding 8 on the seventh day of a workweek.

- ❑ Failure to provide itemized wage earnings and deduction statements to workers when they are paid. This is often referred to as a “cash pay” violation, even though payment in cash is perfectly legal as long as it is accompanied by the equivalent of a complete “paycheck stub” — e.g., specific documentation of how the earnings were calculated and what deductions were subtracted from gross wages.
- ❑ Not having workers’ compensation insurance for employees.
- ❑ Illegal use of child labor. These offenses fall under two types: (1) the most serious are violations of restrictions on employing minors in hazardous tasks or conditions, and of limits on employing those under age 16 for more than the permitted number of hours, and (2) less serious infringements of requirements for failing to have work permits for older minors (16 and 17 years old).
- ❑ Obtaining services from unlicensed farm labor contractors. Failure to check that an FLC holds a current state license is itself a violation, and a grower who does business with an unlicensed FLC is subject to liability for unpaid wages and other citable offenses as a joint employer of the workers employed by the contractor.

The number of agricultural firms in violation of state laws has been decreasing, however, since the Targeted Industries Partnership Program (TIPP) began. The TIPP was established in 1992 as a pilot joint effort by state and federal agencies to enforce labor laws in agriculture and the garment manufacturing industry. Educating employers and employees about the laws pertaining to them has been and remains a central component of the program. It has grown since inception, and in 1997, Governor Wilson authorized additional funding to expand TIPP activities into the restaurant industry. The program’s education and enforcement efforts are intended to improve workers’ lives and to enhance fair business competition by targeting noncompliant employers who gain an unfair advantage through violation of labor, tax, and safety and health laws.

In 1997, according to the *Targeted Industries Partnership Program Fifth Annual Report and Retrospective, 1993-1997*, the DLSE and the U.S. Department of Labor (USDOL) together conducted 455 unannounced inspections in agriculture, resulting in 34 cash pay and 31 minimum wage citations, as well as 39 child labor and 26 workers’ compensation citations. In 1998, the total number of inspections conducted was 762. The results of the 1998 inspections were 34 cash pay violations, 17 for failing to pay minimum wage, 72 child labor violations (most of which were for failure to have a valid work permit), and 54 instances of failing to have workers’ compensation insurance.

The inspections conducted in 1997 and 1998 resulted in penalties amounting to \$734,676 and back wages of \$484,036 collected on behalf of farm workers. In the garment industry and agriculture combined, TIPP inspections totaled 1,763 in 1998, and resulted in recovery of \$1.8 million in wages. During the five-year period from 1993 through 1997, in about 6,200 workplace inspections in the garment and agricultural industries, the cooperating agencies issued nearly 5,000 civil citations and more than 300 criminal citations, and collected \$42.4 million in wages and penalties.

But effective enforcement is by no means achieved by sweeps and fines alone. Outreach forums like this one, meetings to discuss specific types of violations found in sweeps, and seminars on labor, safety, and health issues for employers and employees play a large role in the TIPP. We offer several supporting publications, and a video on compliance with labor laws is in production. A toll-free hotline (800/733-3899) staffed by bilingual professionals is available to farm workers who have questions and want to file complaints.

TIPP has been effective because it greatly reduces duplicative efforts among California and federal agencies, and it brings the full force of all applicable laws to bear through a team approach in which we share staff, equipment, and data resources. Despite impressive gains in compliance, some serious legal risks are not well understood by growers. One of particular concern, and I believe likely to come under some form of joint liability rules in the coming year, is responsibility for lost wages and even lives of workers injured while being transported by unlicensed day-haulers, or *raiteros*.

Current state law treats day-haulers the same as farm labor contractors, thus holding them to all FLC license requirements, even though their functions and job qualifications are typically quite different. The law does not fit reality in this situation, and it has probably worked against day-haulers’ becoming legitimate. Under the circumstances, it behooves farm employers to appreciate the real physical risks involved in transporting workers, to be aware of the legal standards for farm labor vehicles and drivers, and to take all possible steps to prevent hazardous transportation of their own and their contractors’ employees. ❑

*Information on employment law, regulations, and resources available through the California Department of Industrial Relations can be found on the DIR website at <http://www.dir.ca.gov/>. The Fifth Annual TIPP report, including tables summarizing five years of TIPP activity, is now posted on that website at [http://www.dir.ca.gov/dir/Labor\\_law/DLSE/tipp1997.htm](http://www.dir.ca.gov/dir/Labor_law/DLSE/tipp1997.htm) or can be obtained in printed form by phoning DIR in San Francisco at 415/972-8844.*

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*Recognizing and Managing Risks, continued from page 12*

Coast area have been complaints of age discrimination, sexual harassment, unsafe work conditions, and failure to pay overtime premiums.

## Managing Beyond Compliance

Finally, Gregory Billikopf reminded us that while dealing with workers is not the whole of labor management, neither is it of minor significance. So after you have complied with everything and you have taken care of all of those many legal exposures, he asked rhetorically, are there any risks left? His affirmative answer came with a rich set of illustrations about type #2 risk outcomes — a tank full of bacteria-infected milk, a new vineyard of rootstock planted upside-down, prematurely baled and rotted hay that would have been worth \$70,000 if left to dry longer, and a family pet dog getting both its ears notched the same as the hogs.

Harmful outcomes like these may be toughest to take because the risk of them occurring is most subject to an employer's control. The management decisions that growers make influence the abilities, motivation, and therefore performance of workers. And their effects, of course, extend to results that have been associated with the other types of risk in this discussion. You cannot do much about the aggregate number of people looking for agricultural jobs at a given time in California, but you definitely can do a lot to attract, retain, and elicit good work from those around your operation.

What labor management choices do farmers face? How to formally engage labor — through direct employment, farm labor contractors and other service providers, or independent contractor agreements — is a basic one. Others are which tasks and duties to combine into jobs, how to group jobs within crews or other organizational units, what rates of pay and fringe benefits to offer, where to recruit for workers, and how to select employees for specific positions and assignments. Once employees are hired, managers and supervisors decide how to orient them to work conditions and expectations, help them to develop skills, tap their effort in farm operations, keep them informed, act on their ideas and complaints, and correct performance problems. Such decisions can be made rather casually or through variously structured methods.

The legal environment is obviously complex and volatile, and prudent agricultural employers try to keep abreast of its requirements. Violations of law can result in embarrassment, wasted time, and costly penalties. In determined efforts to stay within bounds, unfortunately, many growers have adopted a compliance mentality with regard to personnel management. Their policies and practices are influenced disproportionately by legal constraints to the relative exclusion of other important factors. Some perfectly legal mana-

gerial moves, however, can yield very poor outcomes. Farmers, contractors, and other managers of agricultural personnel have to think well beyond compliance if they plan to reduce their labor risks, control their costs, and build high performance into their businesses. □

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## Risks Associated with Farm Labor Contractors

Steve Sutter

Earl Hall, a San Joaquin Valley FLC for 33 years, and Jim Bogart, President and General Counsel of the Grower-Shipper Association of Central California, offered their perspectives on some of the legal risks faced by agricultural employers. They focused most on the potential liabilities for labor law violations that growers may face as joint employers when doing business with contractors.

Regulations issued in 1997 by the U.S. Department of Labor, Wage and Hour Division, purported to clarify the "joint employment" definition under the Migrant and Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. Whether or not clearer than the old definition, in Bogart's opinion, the new one broadens the range of circumstances in which growers are to be considered joint employers of an FLC's employees. The agency maintains, though, that there is no automatic presumption of joint employment between growers and FLCs; situations are judged case by case.

The joint employment doctrine can crop up in litigation beyond wage issues, according to Bogart, and there is no telling for sure when it will apply. Lawyers argue among themselves, and courts with courts, about what constitutes joint employment. The complex of legal theories used to determine it "is a mess," he said. Relationships among the grower, FLC, and worker may be examined with respect to the old "right to control" test, an "economic realities" test, and more. Different agencies sometimes use the same terms to mean different things. Both Bogart and Hall believe that written agreements between growers and contractors, although still uncommon, are wise to have. Bogart pointed out that representatives of regulatory agencies are willing to participate in seminars with industry associations throughout California.

Do factors leading to employee complaints, poor work, high absenteeism and turnover, and government audits stem from within the firm or outside? "Both," said Bogart. Compliance with basic employee-protective regulations goes a long way, though, in keeping many of these problems under control. He mentioned that age discrimination and sexual harassment com-



plaints with the California Department of Fair Employment and Housing have become increasingly frequent.

Growers face increased risks of being penalized for an FLC's failure to pay the minimum wage to workers on their property and for an FLC's record-keeping violations. Farmers should also be aware of potential joint liability for contractors' Cal/OSHA workplace safety and Cal/EPA pesticide safety violations. Hall said, "Growers should make sure their FLCs are knowledgeable about employment laws," including record-keeping requirements for workers paid piece rates. "These workers must earn at least the minimum wage equivalent throughout the payroll period. Calculations can be done by computer programs."

Hall recommended that growers verify contractors' written injury and illness programs and required pesticide safety training by qualified trainers. Growers have the right to spot-check weekly payroll records that FLCs are required to provide them by interviewing a few workers, and in doing so they do not run the risk of being considered to be involved in the contractor's business.

A contractor who is in compliance with employment-related regulations can reduce the risk to a grower-customer to almost zero, Hall asserted. "When they're in compliance, you don't have to look over your shoulder."

Hall stressed the importance of growers paying contractors on time, "because contractors must pay their workers every week." Some contractors have gone to the IRS with complaints about a grower's slow payment, on the basis of this leaving them with insufficient funds to meet the payroll period's employment tax obligation.

Farm worker transportation is an increasingly important area of joint liability potential for growers. Hall estimated that about 90 percent of FLC employees are transported by passenger van. These vans should generally be inspected by the California Highway Patrol each year; and drivers should be licensed and have insurance. Employers should consider offering help to crew bosses who wish to become FLCs or transporters for a fee, Hall said.

Checking on whether the contractor has both a valid state FLC license and current workers' compensation coverage is important. Hall pointed out that some growers mistakenly accept a federal FLC registration certificate as evidence of compliance with the state's more stringent licensing requirements. Risks of joint grower-FLC liability are higher if the contractor does not have a valid state license. To verify that a license is valid, call 415/975-2069. How can growers find "a good FLC?" Hall suggested checking with neighbors, UC farm advisors, and local representatives of the California Labor Commissioner's office. □



Gregory Encina Billikopf

Employee performance is affected by many managerial and supervisory practices.

## Managing People on the Farm

Gregory Encina Billikopf

The connection between risk and labor law violations is direct and obvious. Sometimes not as apparent, but just as vital, is the association between risk and violation of good management principles. Whatever control over production you have at your farm, it is mostly achieved through people. How these people are selected and managed affects your bottom line.

### People Mistakes Can Be Costly

Sometimes the effects of poor training and supervision are palpable. For example, under the direction of an inexperienced supervisor, workers planted the cuttings in a vineyard upside down. The ranch manager discovered the error the following spring, when the vines failed to bud out. Because of the supervisor's error, the ranch lost not only the vine cuttings but also a year of valuable vineyard development.

In another case, a new worker on a kiwifruit plantation applied a highly concentrated fertilizer formulation too close to the plants and burned the foliage. Many plants died. The quality of the fruit that did grow was too poor to be marketable through normal channels.

Yet another worker mistakenly milked a penicillin-treated cow into the main tank. The good milk in the bulk tank was contaminated, and all of it had to be discarded.



Other problems are more subtle. "When I first worked here, I really exerted myself. But now I try to do as little as I can and still keep my job." Another put it this way, "I've learned to give my job the time it deserves, but I no longer give any more of my own time. I've been burned by doing so." A third worker confided, "When I'm mad at the supervisor, I do exactly what I'm asked to do ... even if I know a better way of doing something or have a good reason not to do the job the supervisor's way."

### Avoiding Problems

These human blunders could have been prevented by selecting knowledgeable, skilled personnel or by providing better orientation, training, and supervision. Tapping motivation, building effective personal relationships, establishing and carrying out a constructive disciplinary process, and encouraging worker input in decision making are all part of labor management.

There are a number of options for solving people problems. Employers who are comfortable using only a few management tools may be limited in their response to a challenge. Some, for instance, attempt to use training when faced with almost any adversity, such as tardiness, misuse of tools, and conflict on the job, whereas others believe that nearly all difficulties can be solved with pay.

Even the right management tool, such as incentive pay to motivate worker performance, may be used inappropriately. One farmer, after learning of a neighbor's success with an incentive program, switched the pay system. The grower offered crew pickers a full day's pay — and the right to leave as soon as they finished — if they would pick an additional bin for the day. The pickers were delighted. Most were through before 11 a.m. The grower was thrilled with the increased productivity but, after the initial excitement wore off, began to feel it was not such a bargain after all. Trying to even out matters, the farmer asked for yet one more bin per day. The crew workers, who may have originally accepted the extra bin as a fair exchange, now instead organized and voted for union representation. They felt their employer had broken an oral contract.

The better an employer understands labor management, the more likely he or she is to choose the right set of tools — and apply them correctly — to deal with a given challenge. Time and effort spent on improving management competence pay off. A vineyard manager found it time-consuming to develop a careful employee selection process for pruners but has continued to use the new hiring practice every year. The approach enables the manager to identify the pruners who are considerably faster than others.

Table 1, adapted from an overview of human resource management developed by Howard Rosenberg, shows the external constraints on the workplace in the left column. The center column displays the tools and principles of labor management, and the column to the right indicates potential results or outcomes.

Table 1. Labor Management Influences, Practices, and Results		
Influences and constraints	Practices, decisions, and tools	Results
Tradition	Organizational structuring	Productivity
Competitors	Job design	_ quantity
Laws	Recruitment	_ quality
Labor market	Selection	Waste
Technology	Orientation	Breakdowns
Union contracts	Training & development	Satisfaction
Individual differences	Supervision	Motivation
	Performance appraisals	Absenteeism
	Compensation	Turnover
	Benefits	Strikes
	Safety & health	Grievances
	Organizational development	Litigation
	Discipline	Injury & illness
	Research & evaluation	

Source: Adapted from H. R. Rosenberg, "Management Choices Front and Center," *Labor Management Decisions*, Vol. 1, No. 1 (Spring 1991).

I like to think of the practices, decisions and tools in the middle column as potential filters or magnifiers for the result column. When properly carried out, these processes can help increase positive outcomes and reduce potential risks. In the absence of the middle column, external influences may have a pronounced effect on productivity and other sought-after results. For example, without a careful approach to employee selection, a farmer will often hire the first person who shows up and asks about a job. The quality and potential of the employee is then almost entirely a question of luck. If the farmer uses a systematic selection approach instead, candidates are then filtered so that only those who are most capable surface.

The same is true of the rest of the practices, decisions, and tools column. Each item has the potential to contribute something to increasing positive results and reducing negative ones. While we often focus on the challenges brought about by laws, technology, and other factors, we should not lose sight of the steps farm employers can take to reduce risk and improve management results. □

*This article is adapted from Labor Management in Ag: Cultivating Personnel Productivity (available under "Book" at <http://www.cnr.berkeley.edu/ucce50/7grisha.htm>).*

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## Happening in Sacramento

By no means are pending reorganizations limited to the UC Division of Agriculture and Natural Resources. Now working its way through the California Legislature is a bill that would bring six employment-related entities into a single agency at the cabinet level, akin to the federal Department of Labor and similar agencies in all other major industrialized states. Senate Bill 150 (Solis) would create a Labor Agency consisting of the Agricultural Labor Relations Board (ALRB), the Department of Industrial Relations, the Department of Fair Employment and Housing, the Employment Development Department, the Public Employment Relations Board, and the Fair Employment and Housing Commission. The Labor Agency would be headed by a Secretary appointed by the Governor, subject to Senate confirmation. The Governor also would choose new appointees for key posts in the component entities, as the current terms of all exempt officers and employees would end upon creation of the agency. SB150 was introduced on January 6, 1999, amended in February, and approved (8-2) by the Senate Committee on Governmental Organization on March 24. The bill itself and timely reports on its progress can be accessed from <http://www.leginfo.ca.gov/bilinfo.html>.

Meanwhile, with three of its five seats vacant since late January, the ALRB has been unable to conduct business above the staff level. Among items awaiting Board action are (1) an appeal from an administrative decision to set aside the victory of a local union in a representation election at the Coastal Berry Company last July, (2) a package of regulatory revisions for submission to the Office of Administrative Law, and (3) certification of results of a March 29 election won (63-2) by the Fresh Fruit & Vegetable Workers at Hess Collection Winery. □

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## Social Security Credit for Past Misreported Earnings

If a formerly undocumented worker is now authorized to work in the United States, can he or she get credit for past employment that was reported based on false employment documents? The answer to that question, posted recently on the AG-HRnet discussion group, is yes. As suggested on the net by Steve Sutter and Phil Hull, of the Washington Growers League, the Social Security Administration keeps records of all such earnings indefinitely and makes every effort to ensure that they are properly credited to the right worker's lifetime Social Security earnings record.

By getting the records corrected, the worker may be able to: (1) gain a higher potential retirement benefit,

and (2) qualify sooner for Social Security disability benefit coverage. A good first step is to call the Social Security Administration (800/772-1213). Employers can help by, among other things, filing form W-2c, "Corrected Wage and Tax Statement" with the Social Security Administration to correct the Social Security number and/or name previously reported under an erroneous one. Details are given in the employer's Circular A Tax Guide. The guide and form W-2c are available from the Internal Revenue Service toll-free number (822/829-3676). Taxpayers can request a record of their lifetime earnings through the Social Security Administration website (<http://www.ssa.gov>).

Below is a comment from Bill Brees, Employer Services Liaison Officer, Social Security Administration, San Francisco Regional Office, explaining how the system works to match earnings, names, and Social Security numbers:

Any wages reported by employers on W-2s (the federal report filed with the Social Security Administration every year) are posted to a worker's lifetime Social Security earnings record. That's providing, of course, that both the name and Social Security number on the W-2 were correct and match the person's Social Security record. If there is a mismatch, the earnings are safeguarded in our system, not discarded. The accounting practices on this are rigid. We are a record-keeping agency, and we are proud of the way we do that.

Social Security does a number of things to find the right person's record so that his or her earnings can be posted to it, including writing to the employee at the address on the W-2. But there are always some we ultimately can't post that remain in what we call the "suspense" file (not posted to a worker's record).

If the worker was not legally authorized to work at the time, but now is, then yes, the worker can get credit for those earnings. Here's how it works: In every case I can think of, the worker now has a valid Social Security card with a different number than was first used. The Social Security office is probably aware of the status change and has done its best, with the worker's help, to move the old earnings in suspense to the new record. The wages and taxes were both paid long ago, so the credit can be given now that the legal status problem has been eliminated and now that SSA has set up a valid earnings record for the person. There is no bar to this in law.

Nor is there any time limit to make the correction. In fact, the law specifically provides for adding wages if there is evidence the earnings belong to the person. In these cases, SSA already has the evidence — the W-2 report from the employer that we safeguarded in the suspense file — so the earnings are posted to the new, correct record.

SSA would ask employers who are aware of status changes like this to assist the worker in getting

proper credit. As I said, most likely it has been done already by SSA when the valid Social Security card was issued. But if the employee can't recall employers he or she worked for or names and Social Security numbers used in the past, we may not have been able to do that. If employers are able to help the person recall some of this, the worker can go back to SSA with new information that will help us find the previously reported wages.

Thanks for giving me a chance to explain. The previous suggestion to have the worker call SSA directly was perfect. We'll take it from there. □

*Our thanks to Mr. Brees. For information on subscribing to AG-HRnet and other email discussion groups related to agricultural employment, visit the APMP website (<http://are.berkeley.edu/APMP>) and click on "Discussion Groups" in the left frame.*

## Resources

**Who Works on California Farms? Demographic and Employment Findings from the National Agricultural Workers Survey**, DANR Publication 21583, by Howard Rosenberg; Anne Steirman and Susan Gabbard, of Aguirre International; and Richard Mines, U.S. Department of Labor, provides a broad look at the seasonal agricultural workforce. Based on data collected in the 1995-97 national survey from interviews in California by the Department of Labor, the report finds that the state's most typical farm worker is a 33-year-old, married, Mexican father earning less than \$10,000 a year. The report also reveals the wide range around these typical characteristics, including workers' legal employability.

Published in December 1998 by the UC Division of Agriculture and Natural Resources, the 22-page report is available for \$5 plus 8.25% sales tax (California orders only) and \$2 shipping. Send check or money order payable to UC Regents to Communication Services-Publications, 6701 San Pablo Ave., 2nd Floor, Oakland, CA 94608-1239. Phone: 800/994-8849 or 510/642-2431. Fax: 510/643-5470. Email inquiries: danrcs@ucdavis.edu.

**Farm Labor Contractor: Safety and Health Guide**, a free 65-page handbook for the prevention of ag injury and illness, was produced by the Cal/OSHA consultation service with the help of farm labor contractors, agricultural safety professionals, educators and UC Cooperative Extension. The user-friendly guide for growers and other ag employers, as well as FLCs, provides information on injury and illness prevention programs, worker training, and employers' legal obligations, and includes fact sheets and checklists, a reference list of free services, and photos. A Spanish version is also in production. For a free copy, phone 800/963-9424, fax 916/574-2532, or email Elizabeth Manzo, Cal/OSHA

Engineer, at [emanzo@hq.dir.ca.gov](mailto:emanzo@hq.dir.ca.gov), or write to Manager, Consultation Education and Training Unit 2211 Park Towne Circle, Suite 4, Sacramento, CA 95825. More than 10 copies can be obtained by written request explaining the reason.

**Cal/OSHA Safety Standards online.** Among the useful resources on the California Department of Industrial Relations website (<http://www.dir.ca.gov>) is a search engine and clickable table of contents providing online access to workplace safety and health rules under Title 8 of the California Code of Regulations. Users may search the regulations either by section number or by key words. The Title 8 Cal/OSHA search engine is also accessible from the "California Law & Regs" page on the APMP website (<http://are.berkeley.edu/APMP>).

**Workers' Compensation Reforms, Fifth Anniversary Report, 1993 - 1998** includes a history of the reform effort as well as charts and statistics. According to the report, total premium costs to California employers dropped from a high of \$9 billion in 1993 to about \$6 billion in 1997. The average cost of workers' compensation insurance premiums decreased from \$4.43 per \$100 of payroll in 1993 to \$2.32 per \$100 in 1997. The weekly maximum benefit for injured workers increased by about 45 percent. The report is accessible, in PDF format, through a link to "Workers' Compensation" on the DIR website (see item above).

**Worth noting on the APMP website.** *Public Issues in Ag Labor.* The new page, listed among major links on the APMP site guide (left-side frame of <http://are.berkeley.edu/APMP>), contains a link to a clickable list of news reports describing activity of the U.S. Immigration and Naturalization Service in enforcing employment eligibility requirements. Other links on the page go to information on agricultural work visa programs, invalid Social Security numbers in FICA filings, actions under the North American Free Trade Agreement (NAFTA), and activity under the Agricultural Labor Relations Act.

*Tools for Management Practice.* This section, accessible from the site guide, has links to: (1) sample job descriptions, including ag job information from the Dictionary of Occupational Titles and a newly compiled group of generic job descriptions; (2) a clickable list of online Government Forms and Posters; and (3) a growing list of Other Tools, such as a sample contract between grower and FLC, the database of FLCs licensed by the California Dept. of Industrial Relations, and a sample written injury and illness protection program.

Expanded *Discussion Groups* page. More links have been added to forums of interest to practitioners and observers of personnel management, as well as a link to our new page of *Selected Posts* from those networks. The posts, chosen for their reference value and relevance to agricultural employment, can be reached from the Discussion Groups page or directly from the APMP Site Guide.

**Downloadable Labor Management in Ag: Cultivating Personnel Productivity.** Gregory Billikopf is now offering his 170-page book in an updated version that can be downloaded at no charge from his website (<http://www.cnr.berkeley.edu/ucce50/7book.htm>) onto a hard drive or floppy disk. Previously available in print and website versions, the book includes information on conflict management, employee selection, performance appraisal, incentive pay, interpersonal relations, employee discipline. Also, the latest, slightly revised version of his *Instructor's Manual* is now available in PDF format on his website.

**Bi-monthly newsletter.** *Migrant Health Newslines* is available (by postal mail) at no charge from the National Center for Farmworker Health. Send a request to NCFH, 1515 Capital of Texas Hwy. South., Austin TX, or phone 512/328-7682, fax 512/328-8559, or email Shanda Sansing at [sansing@ncfh.org](mailto:sansing@ncfh.org).

**Video for Employers.** *Handling Your Appeal Before the California OSHA Appeals Board* explains the appeal process and shows a simulation of both a telephonic prehearing conference and an evidentiary hearing before an administrative law judge. The video was produced by the Board with the University of Southern California Schools of Law and Cinema-Television. Copies are available for \$6.00 (by check payable to the Department of Industrial Relations) from the OSHA Appeals Board, 1300 I Street, Suite 940, Sacramento, CA 95814. An updated, free copy of the *Appeal Information* booklet also can be obtained from the Board's Sacramento office (phone 916/322-5080).

**Annual pesticide illness report for 1996.** The Department of Pesticide Regulation's recently released annual report shows 1,580 potential or confirmed cases of pesticide illness in 1996, about 44 percent of which were linked to agricultural settings. According to an accompanying table of numbers of illness cases by type and county, a single drift incident in Kern County accounted for 243 of the 696 illnesses in agriculture. The report is available from DPR's Worker Health and Safety Branch, 1020 N Street, Room 200, Sacramento 95814, phone 916/445-4222, or can be downloaded from the publications section of DPR's website <http://www.cdpr.ca.gov>.

**Research report.** The Chicano/Latino Policy Project (CLPP) has published *Workplace Health-and-Safety Violations in Agriculture: Epidemiology and Implications for Education and Enforcement Policy*, by Stephen A. McCurdy, Don Villarejo, and Maria Stoecklin. The 80-page report describes results and policy implications of a project funded by the University of California Latina/Latino Policy Research Program, which is administered by the California Policy Research Center (formerly the California Policy Seminar), comparing characteristics of agricultural operations that had received notices of violation through the Targeted Industries Partnership Program with those that had not. A summary of the report is on

the website <http://www.ucop.edu/cps/mccurdy.html> or can be obtained by phoning 510/643-9328. The full report can be purchased for \$5.50 from the CLPP; phone 510/642-6903. □

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Dr. Rosenberg, a nationally recognized expert on agricultural labor management, had served DANR as Director of APMP since its designation as a statewide program under the reorganization of 1988. After 10 years in dual roles and with DANR in the process of implementing a new strategic plan, Howard felt that it was time to pass the director's torch.

During his tenure, Howard initiated the publication of this newsletter, which now is distributed to more than 5,800 subscribers nationally. He was also responsible for creating the program's website and for publishing texts that have helped agricultural employers to remain current on labor management practices. In 1994, he established the WPS-Forum, an email discussion group and reference archive that immediately became a national clearinghouse on the Internet for information about the federal Worker Protection Standard for Agricultural Pesticides. Under his direction, temporarily allocable funds have been applied to support programmatic contributions from a broad range of University staff and external collaborators; Howard worked with investigators and reviewers on dozens of these projects, academically as well as administratively, at every stage from project conception to product dissemination.

Cleared of the administrative responsibilities of directorship, Dr. Rosenberg is now focusing more on his own research and extension activities in personnel management and labor market issues. While part of the program through this work, he also remains as an advisor to successive program directors and has agreed to chair one of the workgroups dealing with labor management issues under the new Division structure.

Also effective in July 1998, Brian Linhardt resigned as APMP Farm Advisor for the Sacramento Valley Area to become an Analyst in the Academic and Staff Personnel Unit of the College of Agricultural and Environmental Sciences on the Davis Campus. Based in the Butte County Cooperative Extension office, Oroville, and working primarily in Butte, Colusa, Glenn, Sutter, Yuba and Tehama Counties, Brian collaborated with the other three APMP academic staff members in serving clientele statewide. We wish him well in his new position.

Betsey Tabraham, who has been Program Coordinator and *LMD* editor since 1990, has announced her intention to retire from the University on July 1, 1999. With her retirement, Betsey will end 29 years of distinguished University service, which included an assignment as acting editor of *California Agriculture*, the flagship publication of the Division of Agriculture and



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Natural Resources. On behalf of the program's entire staff and Associate Vice President Henry Vaux, I would like to commend Betsey and express our appreciation for her dedicated service to the program and to the University. She will be missed by many here.

During this transition period it is my pleasure to serve as interim director to guide the program's administrative direction. While the final organizational structure of the DANR and the APMP is in revision,

we will continue in accord with the charge accompanying the Cooperative Extension budget augmentation that created the program in 1981. APMP staff will conduct education and research to help agricultural managers use personnel management practices that both contribute to their business results and meet the standards of labor law and other public policy; to provide public administrators and lawmakers with objective analysis of farm labor issues; and to help agricultural workers understand public policies related to their employment. □

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