

Farmworker

Farmworkers Know Your Rights!

A Guide for Agricultural
Workers in Maryland and
Delaware

Equal Access to Justice: Legal Aid

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MARYLAND
LEGAL AID

Who Prepared this Booklet?

This booklet was prepared by the Farmworker Program of Maryland Legal Aid, a non-profit organization, dedicated to providing high quality legal advocacy to protect and advance human rights. The Farmworker Program provides FREE and confidential legal services to migrant and seasonal agricultural workers (workers at farms, orchards, canneries, pack houses, poultry processing plants, etc.) in Maryland and Delaware.

We want you to know your rights!

This guide contains general information about your rights at work. We do our best to keep this information up to date, but, the law sometimes changes. If you want legal advice about your specific situation, contact Maryland Legal Aid.

Throughout this booklet, **additional** protections for H-2A workers are explained in green. An H-2A worker is an agricultural worker who is in the U.S. on a temporary visa and can only work for the employer that is on their visa.

What is in this booklet?

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What are my basic rights?

You have the right to:

- written description of the terms of the work before you travel
- minimum wage or the promised wage
- pay for all of your work and waiting time
- the amount of work promised
- safe and sanitary working conditions
- safe and sanitary housing
- safe transportation
- free medical treatment in case of injury at work
- freedom from discrimination and retaliation
- legal advice

Details of work in writing

You have a right to a **written explanation** of the details of the work you will be doing (wage, location of the work, type of work, employer's name, etc.). You should receive this from the crew leader or employer who hired you at the time you are recruited.

If you are not given this, ask for it. It is very important. If your working conditions are different from what was promised (if you don't get the amount of work or pay you were promised, for example), you can use this document to prove what was promised to you. However, even if you do not receive a written document, your crew leader and employer must comply with any oral promises they have made to you about the job.

H-2A Contract

If you are a worker under an H-2A contract, your employer is required to fill out a written contract which lists the dates of your travel, the type of work you will be doing, your hourly wage, how many hours a week you will work, and more. You have a right to a copy of this contract. You have the right to get this in a language you understand before getting a visa.



Minimum wage

3/4 Guarantee For H-2A Workers

H-2A workers are guaranteed pay for $\frac{3}{4}$ (75%) of the hours promised in the contract if they stay to the end of the contract period. So, if the employer's crop is bad and you only get half the work promised, your employer must pay you extra so that you make at least $\frac{3}{4}$ of what is promised in the contract.

U.S. Workers at H-2A jobs:

Employers who have any H-2A workers must hire all U.S. worker (citizens or legal permanent residents) job applicants who apply during the first half of the contract period. Employers cannot prefer H-2A workers over U.S. workers.

All U.S. workers doing the same job as H-2A workers are entitled to all the rights and protections in the H-2A workers' contract (wages, amount of work, housing, etc.).

You should always receive at least the federal minimum wage of \$7.25 per hour. Even if you do not have papers, or if you are paid by the piece or by the amount of product picked, your employer **must pay you** a minimum of \$7.25 per hour for your work.

Also, the law requires that your employer pay you the wages you were promised. So, if you were promised a wage of \$9.00 per hour but only receive \$8.15 per hour, your rights have been violated and your employer owes you money.

You should be paid at least twice per month.

Minimum Wage For H-2A Workers

Each year the U.S. government sets a higher minimum wage for H-2A workers. See below for this year's minimum wages for H-2A workers in Maryland and Delaware.



Overtime

Most farmworkers are not entitled to overtime.

However there are two important exceptions.

1) If you work in a chicken or seafood processing plant or packing shed, you are entitled to overtime pay for every hour worked over 40 in one week.

2) If you work in a field in **Maryland** you are entitled to overtime pay for every hour worked over 60 in one week.

Overtime wages are paid at 1.5 times the regular rate of pay. For example, if you regularly earn \$7.50 per hour, your overtime rate of pay is \$11.25 ($\$7.50 \times 1.5 = \11.25).

**Keep track of your hours!
Call us if you have any questions.**

Waiting and travel time

If your employer expects you to be at work at a certain time but there is a wait before you are able to start work, you should be paid for the time spent waiting. If your employer requires you to stay at the worksite, you should be paid for the time, even if you are not working. Also, you should be paid for the time spent traveling between work sites during the work day.

Your employer does not have to pay you for meal breaks if the breaks are **30** minutes or more and you are not required to work at all during the breaks.

Your employer must pay you for any breaks that are less than 20 minutes.

It is very important that you **make and keep your own records** of how many hours you work each day. Do not rely upon your employer's records or your memory. Use the calendar at the back of this booklet.



Paystubs

You should receive a paystub every time you receive pay, even if you are paid in cash. Every pay stub should include: your name and your employer's name; the period that you worked; the number of hours that you worked; and how much you were paid per hour, or, if you work on a piece rate basis, the total number of pieces you picked and how much you are paid per piece. The paystub also must show any deductions made.

Keep your paystubs! They prove where you worked, when, and how much you were paid, in case of any dispute.

All workers, whatever their immigration status, have the right to be paid for the work they have done!

Deductions

Your employer usually must deduct and withhold federal and state taxes and Social Security/Medicare (FICA) taxes from your wages. Your employer must get your written permission to make any other deductions, even for a pay advance or loan. Depending on the circumstances, your employer may be able to deduct reasonable costs of your housing and meals from your pay. However, your employer cannot deduct the cost of tools necessary to do your job or the cost of workers compensation insurance; these must be given to you for free.

H-2A Workers:

All deductions must have been disclosed to you in the contract. They also must be reasonable and may not reduce your earnings below the minimum wage promised.



Transportation

If your crewleader or employer provides you with transportation between work and the labor camp or your home, this transportation must be safe and in compliance with the law. Your crewleader or employer must have adequate insurance on the vehicle used and each person riding must have his or her own seat. You should not be carried in the back of a truck.

Reimbursement for H-2A Workers:

When you complete half of the contract, your employer must reimburse you for the costs of your trip and for meals from where you got the job to the work site in the U.S.

The employer must also reimburse you for expenses related to passports, visa fees, paperwork and recruitment fees and other similar fees you paid.

At the end of the contract the employer should pay for your return transportation and meals to the place you came from, usually your home.

Housing

If your employer provides housing to you, it must:

- be safe, clean, and in good condition;
- have enough room for everyone;
- have electric lights in each room;
- have hot water, a kitchen with a refrigerator and a stove;
- have clean bathrooms and showers;
- have doors and windows with screens;
- have no rats or insects.

H-2A Workers:

Housing must be provided to you **at no cost**. The employer must either provide three meals a day at a reasonable cost or a free kitchen facility where you can prepare meals.



Sanitation and health

Your employer must provide you with clean toilet facilities, cool drinking water and disposable cups, and a place to wash your hands. This should always be within ¼ mile from where you work. Your employer must allow you to stop work and drink water when you need to.

Protect yourself from pesticides. They are very dangerous and can cause illness or death. Always wash your hands before eating, drinking, smoking or going to the bathroom. Do not wash the clothes you wear to work with other clothes.

If you get sick or are exposed to pesticides, you should see a doctor immediately and tell the doctor that you were in contact with pesticides! The symptoms of pesticide poisoning include headache, excessive sweating, nausea, vomiting, diarrhea, difficulty breathing, and skin rash. As with any workplace injury, immediately notify your supervisor of the injury or exposure.

If possible, do not wash the clothes you were wearing when you were exposed to pesticides. Do not wear them again, but seal them in a plastic bag. They may be the only evidence that you were exposed to pesticides.

Workplace injuries

If you suffer an injury at work or in the camp, you must notify your employer immediately. You may also need to file a claim with the Workers' Compensation Commission.

If you are injured while working in **Maryland**, you probably have a right to free medical services and wages that are lost due to the injury. The law requires your employer to cover these expenses. If you are injured while working in **Delaware**, the law does not require your employer to cover medical services and lost wages, but some employers choose to do so. If they aren't covered by the employer, you may be able to sue for injuries you suffer.

[H-2A workers in any state have to be given worker's compensation insurance or its equivalent.](#)

If you suffer an injury at work, please call us to find out more about your rights.



Unemployment Insurance

Unemployment insurance is a government program that provides money to workers that become unemployed due to no fault of their own. In Maryland and Delaware, some farmworkers are eligible for unemployment benefits. If you have been fired from your job because there is no work or for any other reasons that is not your fault, you may be entitled to these benefits.

Discrimination and Retaliation

It is illegal to discriminate against an employee on the basis of his or her race, national origin, sex, age, color, disability, or religion. You have a right to complain about discrimination or other problems at work. It is illegal for your employer, crewleader, or any person to take any action against you (like reducing your hours or threatening to call immigration) for asserting these legal rights.

If you think you may have been discriminated or retaliated against, CALL US. You have a right to seek legal advice or assistance for any reason. Neither your crewleader nor your employer may threaten or punish you for seeking legal advice or assistance.

H-2A Workers:

It is illegal for employers, contractors or recruiters to put you on a blacklist (refuse to hire you in the future) because you have asserted your rights.

Do not let your employer or contractor keep your passport or immigration documents.



H-2A Workers Have a Basic Right to Freedom

- Under the rules of your visa, you may only work for the employer you contracted with, but you always have the right to quit working and return to your country.
- You cannot be arrested and deported just because you leave the job so long as you leave the country by the date indicated on your visa and you do not work for another employer without authorization.
- You have the right to keep your own documents and your employer or crew leader cannot hold your passport, visa, or other documents against your will.
- It is also illegal for your employer to require you to do work by threats or force.
- If you are the victim of forced labor, human trafficking, or certain other crimes, under some circumstances you may qualify for a special four year visa to stay in the U.S.

Take Action to Protect Yourself

- Use this booklet to **write down the hours you worked each day** and the pay you received. Also write down the amount of work you have done if you are being paid by the piece.
- **Keep all of your pay stubs** and any other papers you are given or shown.
- Never sign anything that you do not understand or that is not true.



Important Information

Your full name: _____

Home address: _____

City: _____

State: _____ Postal code: _____

Phone numbers in your home country/state:

Yours: _____

A relative or neighbor's: _____

Name of recruiter in your home country/state:

Recruiter's phone number: _____

Supervisor's name: _____

Supervisor's phone number: _____

Employer's name: _____

Employer's address: _____

Date of first day of work: _____

You should write here:

Names and phone numbers of co-workers:

Expenses paid before arriving at job and purpose of each expense:

Expenses paid to return home after the job ends and purpose of each expense:

Don't work for free!
Protect your rights!
Write it all down!

date/day

start time

end time

lunch break

pieces done

pay received

date/day

start time

end time

lunch break

pieces done

pay received

date/day	start time	end time	lunch break	pieces done	pay received
Oct. 4, 2010 Friday	7:30am	6:15 pm	30min	52 bins	\$78.00

date/day	start time	end time	lunch break	pieces done	pay received

It is illegal for a grower, employer, crewleader or supervisor to retaliate against you for consulting with an attorney about your rights or for taking legal action to protect your rights.

If you have any problems or questions, contact Maryland Legal Aid's Farmworker Program at:

1-800-444-4099 (toll free in the U.S) or
410-546-5511 (call collect from outside U.S.)

or visit our office on the Eastern Shore:

111 High St.
Salisbury, MD 21801
www.mdlab.org

Our services are always FREE and confidential.



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