

Training Manual for Trainers

Know Your Rights

FLSP RESOURCES



Training Manual for Trainers

Know Your Rights

FLSP RESOURCES

Training Manual for Trainers

Know Your Rights, FLSP Resources

First Edition, July 2024.

U.S. Department of Agriculture

National Alliance of Farmworker Women, Inc.

Farmworkers Without Borders

Farmworker Leaders

Centro de los Derechos del Migrante, Inc.

Production and Editorial Coordination:

Amanda Gutiérrez,

Centro de los Derechos del Migrante, Inc.

Design: Taller de sueños, based on the original by Ixchel Blancas Ochoa

Editorial Design: Gabriela Monticelli

Illustration: Héctor Flores Carranco

Taller de sueños | contacto.taller@gmail.com

This information is accurate as of the date it was written and may change. It is not legal advice—using this material does not create an attorney-client relationship. Anyone facing a labor issue should consult with an attorney.

Funding for (KYRR) United States Department of Agriculture (USDA) Farm Labor Stabilization and Protection (FLSP) Pilot Program Know Your Rights and Resources (KYRR) was made possible by the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service through grant # 12-25-4-4063 . Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the USDA.

Printed in USA


Content

Introduction	5
Module 1 Farm Labor Stabilization and Protection Pilot Program (“FLSP”)	7
Module 2 Recruitment	15
Module 3 Right to housing, food and other aspects of the contract	43
Module 4 Wage and Hour	53
Module 5 Occupational Health and Safety	67
Module 6 Discrimination	93
Module 7 Sexual Harassment and Violence	107
Module 8 Partnership Agreements	127
Module 9 Retaliation	139
Module 10 Adapting this information to the field	147
Glossary and Definitions	166



Know your rights

- _____
- _____
- _____
- _____



If you come across any unknown words, acronyms, or terms, we invite you to review the **Glossary**, found at the end of this document.



Introduction

What do you have in your hands?

This handbook provides fundamental information about the labor rights of farmworkers employed in the United States under the Farm Labor Stabilization and Protection Pilot Program (FLSP). It is serves as a key resource for labor rights trainers who have been hired by Alianza Nacional de Campesinas for the FLSP “Know Your Rights and Resources” (KYRR) training under the United States Department of Agriculture (USDA).

This manual has two main purposes:

1. First, this manual aims to **prepare trainers to deliver KYRR training** to guide agricultural workers who fall within the FLSP program on their basic labor rights, regardless of their immigration status. For this purpose, the manual offers the following resources:
 - a. In Modules 1 through 9, an overview of the fundamental labor rights protections that farmworkers have in the United States under U.S. federal laws and regulations, particularly in the context of the FLSP program. It also explains when it may be important to know additional state and local laws.
 - b. Suggested educational tools and techniques to practice understanding key concepts.
 - c. Module 10 is a practical guide that trainers who will give KYRR workshops can use to prioritize and adapt key information to give guidance to audiences of up to 50 workers during two-hour workshops.

2. Second, this manual is intended to serve as a **resource for KYRR workshop trainers to follow up with agricultural workers employed within the FLSP program** on additional questions and concerns throughout the work season and beyond. For this purpose, the manual recommends additional information and resources that trainers can review or share, and that delve into certain topics beyond the information covered in the manual.

How can I use this manual?

Use this manual as a guide to understand the fundamental protections, benefits, and resources available to farm workers, including those employed by employers approved to participate in the FLSP program. The manual should supplement the information you have about each workplace —such as the contract, employer-selected FLSP commitments, and job location - that will determine the components and level of detail that are relevant to each workshop.

This manual was prepared by Alianza Nacional de Campesinas in collaboration with USDA for the KYRR components of the FLSP program. Its content was developed in consultation with several U.S. government federal agencies, including the Department of Labor - Wage and Hour Division and the Occupational Safety and Health Administration, the Environmental Protection Agency, and the Equal Employment Opportunity Commission, among others, who provided feedback focused on their respective administrative or regulatory competencies. The conclusions and recommendations of this manual may not reflect the official position of all agencies. Comments or questions about the manual can be directed to:

usdagrants@flsp.gov





MODULE 1

Farm Labor Stabilization and Protection Pilot Program (“FLSP”)

OBJECTIVES

This module’s objectives are the following:

- ◎ Know the purpose and model of the FLSP program.
- ◎ Know the structure of the FLSP program and the possible benefits and protections it offers for farmworkers.
- ◎ Identify key stakeholders of the FLSP program.

What is the FLSP and what is its purpose?

The Farm Labor Stabilization and Protection Pilot Program (FLSP) is a new program administered by the USDA. First launched in 2023-2024, the program supports agricultural employers in implementing strong labor standards to promote a safe and healthy work environment for farmworkers employed in the United States, regardless of their immigration status.

The three goals of the FLSP are to:

1. **drive** U.S. economic recovery and safeguard domestic food supply by addressing current labor shortages in agriculture;
2. **reduce** irregular migration from northern Central America, through the expansion of regular pathways; and
3. **improve** working conditions for all farmworkers.

How does it work?

To achieve program FLSP goals, USDA offers incentives to agricultural employers to motivate commitments that improve working conditions for farmworkers. In particular, eligible agricultural employers could apply for a FLSP grant from the U.S. Government; applicants who made more significant commitments were eligible for greater levels of grant funding. Awarded grantees have flexible use of funds: for example, they may use the grant to improve housing conditions for workers, to increase the wages they pay, or for various other operational, administrative needs, etc. Agricultural employers also receive technical assistance from USDA to support them in navigating the H-2A application process and H-2A compliance, as well fulfilling their FLSP obligations.

For agricultural employers, participating in the FLSP program is an optional opportunity. Additionally, not all agricultural employers that applied for an FLSP grant were selected to participate. Thus, every operation whose workers receive the KYRR training took initiative to apply to USDA to receive funds to under the FLSP program, and was selected, via a competitive process, to participate in the program.

What are the levels of commitments that agricultural employers participating in the FLSP program make?

As a key part of the FLSP application process, employers committed to fulfilling commitments that improve conditions for workers. Applicants making more significant commitments were eligible for greater levels of grant funding. Under the FLSP program, there are three levels of commitments: **baseline**, **silver**, and **platinum**.

Here we know the different levels and the required and optional commitments they offer:

Baseline level represents the minimum level of commitment that all employers have to commit to in order to participate in the FLSP program. All employers participating in the program must meet these four minimum requirements:

- 1. Universal protections and benefits:** All commitments made by the employer must be applied universally to all agricultural employees, H-2A or otherwise, whether hired directly, jointly or via a contractor, at each and every work site within the applicant's operation throughout the entirety of the grant performance period. All commitments indicated in the employer's FLSP application must be included in their H-2A Job Order(s) and/or worker contracts.

a training session that lasts a minimum of two hours, and in a conducive training environment. All employers in FLSP agreed to participation in the KYRR component of the program. That commitment includes contacting Alianza Nacional de Campesinas, who is the USDA cooperative partner for KYRR, to schedule a KYRR training session within two weeks of workers' start dates. Each employer agreed to all hired workers participation in a 2 hour in-person KYRR training session, without accompaniment of supervisors or management staff, on-site in a conducive environment. The employer must pay workers for the two hours participating in the training.
- 2. Participation in FLSP research and reporting:** The agricultural employer must participate in research conducted by an external, non-partisan, USDA-selected university partner. Research may include on-site surveys or interviews. Agricultural employers must allow researchers access to their entire agricultural workforce (or contractors) without the accompaniment of management staff.
- 3. Participation in "Know Your Rights and Resources" (KYRR) access and training:** Workers should receive in-person training lasting approximately two hours, which will be offered by a USDA cooperator, scheduled during the first two weeks from the start of their contracts. The agricultural employer agrees to allow training personnel access to all hired workers, in person, without the accompaniment of managers, supervisors, or butlers, during
- 4. Responsible recruitment:** Participating employers attest to using responsible recruitment methods, either through government ministries or through private recruiters who are registered in the country where they operate (if available). In their FLSP application, agricultural employers indicated their recruitment methods for U.S. based workers and foreign workers; if their recruitment methods change, they must update USDA. Employers that use private recruiters or self-recruit (a.k.a. "word of mouth") submitted a Recruiter Partner Letter, with the recruiter's written responses to questions about responsible recruitment practices.

Responsible recruitment	Pay, benefits and working conditions
Silver bundle: recommended but not required	Silver bundle: choose at least two
Platinum bundle: required	Platinum bundle: choose at least three

Applicants' selections can include existing practices or new adoptions, but **must exceed state law** to qualify for Silver or Platinum bundle.

<p>1. Recruitment via Northern Central American Recruitment (NCA) Ministries. Applicant demonstrates an effort to recruit and hire any H-2A workers through government-led recruitment and vetting of workers from <i>Ministries of Labor</i> in Guatemala and Honduras and the <i>Ministry of Foreign Affairs</i> in El Salvador.</p>	<ol style="list-style-type: none"> Overtime Pay. Where not already required by state law, employer offers a guarantee of overtime pay (1.5 times hourly rate) for hours worked in excess of 40 hours/week. Bonus Payment. Employer offers clearly defined bonus payment to all employees transmitted at regularly scheduled intervals throughout the duration of the employee's contract. [They will describe the payment amount, method of implementation, and tactics to ensure transparent payment to employees. This commitment requires a narrative description and may be competitively ranked based on demonstrated implementation plan]. Paid Sick Leave. Employer offers a paid sick leave plan that includes accruing at least 4 hours per (2-week/bi-monthly) pay period, with a minimum of 5 days leave per year. Weekly Housing Maintenance Plan. Employer establishes a weekly plan for maintenance of worker housing, with a responsible entity that fully reviews all units and receives and addresses feedback or concerns from workers. [Employer will describe what they will do and how it will improve the quality of life in housing for employees]. Collaborative Working Group. Employer implements, or demonstrates current existence of, a collaborative working group or workplace employee engagement committee(s) that address(es) workplace issues such as, but not limited to: workplace safety and health (e.g., water and heat breaks), pesticide safety, transportation safety, housing experience, mechanism for reporting grievances or problems, etc. The committee must include at least 50% hired farmworkers, and may include bona fide third-party experts, in addition to agricultural employer management employees. [Employer will describe how they envision the designing the working group, how participants will be chosen, when meetings will take place, whether workers will be paid for meeting time, any external invited participants, and how the committee priorities and action items will be addressed, etc.]. Innovative External Partnership. USDA supports innovative approaches to improve the quality of life for farmworkers. Implement or demonstrate a plan to support improving health, safety, worker representation, professional development, or other benefit or program, and note key partnership(s) that will help facilitate implementation. [This commitment requires that the applicant provide a narrative description and may be competitively ranked based on demonstrated commitment and public benefit. USDA encourages partnerships with community-based organizations and other institutions that have longstanding experience working directly and collaboratively with farmworkers].
---	---

Partnership agreements

Silver bundle: recommended, but not required

Platinum bundle: choose at least one

Applicants' selections can include existing practices or new adoptions, but **must exceed state law** to qualify for Silver or Platinum bundle.

1. **Participation in a Worker-driven Social Responsibility (WSR) program.** If an applicant is already participating in a WSR program, they should note protections already in place, e.g., complaint mechanism, auditing, worker education. If this is a new commitment, they must articulate a plan. [They must provide evidence of participation in good standing].**.
2. **Participation in a Collective Bargaining Agreement (CBA).** The applicant should note protections already in place under any existing CBA, e.g., complaint mechanism, auditing, worker education. If this is a new commitment, the applicant is asked to provide details on where they are in negotiations at the time of application. [They must provide evidence of participation/contract].**.
3. **Committing to Neutrality, Access, and Voluntary Recognition** (where permitted under state law). Neutrality, defined as companies remaining neutral when their employees signal an interest in forming a union. If employees choose representation, management can engage productively with the union and determine what is important to their employees in terms of wages, benefits and working conditions. This includes spending any money, directly or indirectly, including hosting captive audience meetings to discuss the organizing effort. Applicants agree to allow on-site access to their workforce by union members or organizers during non-working hours. In states where permitted, instead of requiring an NLRB-supervised election, employers agree to recognize a union if a majority of employees sign union authorization cards. [This commitment requires that the applicant provides a narrative description and may be competitively ranked based on demonstrated commitment and public benefit]. **

See **Section 3.1, an awardee remains responsible for compliance with and subject to enforcement of all applicable federal, state, and local laws

In addition to committing to the four basic requirements, agricultural employers that applied to the FLSP program had the opportunity to select additional commitments and thus qualify for one of two higher levels, *silver* or *platinum*, which offer them greater benefits.

What can be done in the event of a breach of these commitments?

First, all employers participating in the FLSP program must include FLSP commitments in employment contracts¹ and these commitments must also be included in their H-2A Job Order(s). The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) has the authority to investigate employers who are not providing the wages, benefits, or job conditions set forth in the job order and/or written employment contracts. This may include employers who have included greater and/or additional labor standards than those required by law as a result of participating in the FLSP program.

On the other hand, in situations in which employers do not comply with the terms and conditions of their commitments through the FLSP, including their particular commitments, USDA can take corrective actions: the agency may temporarily suspend a grant, allowing the employer an opportunity to correct the noncompliance under new conditions; bar the grantee from receiving a grant in the future; or terminate the grant immediately, depending on the situation. Employers have the opportunity to appeal this decision.

To report a breach of the FLSP commitments to USDA, Alianza Nacional de Campesinas staff or trainers can send an email to:

usdagrants@flsp.gov



If workers have been promised specific working conditions in the job order or written contract but are not receiving these benefits or protections, please report these violations to **WHD at 1-866-4USWAGE** (1-866-487-9243, select 2 for help in Spanish).



¹ DOL requires employers to provide workers a copy of the job order approved by DOL for purposes of the H-2A program

If faced with a problem at work related to compliance with FLSP commitments, workers can first try to talk to their employer to resolve it, if they feel comfortable doing so, but this is not required. To receive support, workers can also go to either Alianza Nacional de Campesinas trainers or directly to the resources mentioned throughout this manual.

If faced with other problems at work, workers can refer to the information found in the relevant modules below.

Learning and reflection dynamics

I. Stakeholder mapping (15min)

Who is part of the FLSP program, and why are they important?

1. In a large group, the trainer invites the participants gathered to name different groups, institutions, agencies, or people that are part of the FLSP program for five minutes. The trainer writes down the suggestions on a whiteboard, blank sheet, or other format. At the end, the trainer helps supplement the mapping, ensuring, at a minimum, the inclusion of the list of key stakeholders [*USDA, H-2A workers, U.S.-based workers, agricultural employers, unions, universities /researchers, training partners, external association, recruiters, NCA ministries (Honduras, El Salvador, Guatemala)*].
2. Then, the trainer invites the group to divide into small groups of 2-3 people. Invite each group to choose three examples from mapping stakeholders and describe or visualize their relationship to a drawing and contemplate the following questions: How do they relate in the FLSP program? How does each participant in the FLSP program benefit from their collaboration with the other participants?
3. In the end, the trainer invites the groups to exchange their experience with each other (a group of three meets with another group of three).

II. Group Discussion:

Questions to consider:

- ⦿ Why would an agricultural employer apply to participate in the FLSP program? What advantages or benefits does the FLSP program offer for agricultural employers?
- ⦿ Why is it important for workers to know if their employer participates in the FLSP program? What advantages or benefits does the FLSP program offer workers?
- ⦿ What are some differences between baseline, silver, and platinum FLSP award levels? Why is it important to be familiar with the unique commitments at each level?
- ⦿ Are there any commitments you heard that caught your eye? What impact might that commitment have on the experience or well-being of farmworkers?



© Alianza Nacional de Campesinas Inc.



MODULE 2

Recruitment

OBJECTIVES:

This module's objectives are the following:

- ◎ Learn about farmworkers' rights when they receive a job offer, either within the H-2A visa program or outside of it.
- ◎ Identify common problems during the recruitment process in other countries, including fraud (i.e., promising a job that does not exist or with conditions different from those promised), the collection of illegal fees, and discrimination.
- ◎ Analyze the relationship between recruitment abuses and labor rights violations.
- ◎ Identify actions to prevent abuse in recruitment.

Recruitment and the Migration Process

In general:

Many migrants who want to work in the United States must look for an intermediary in order to access a job, since they do not have direct contacts with agricultural employers in the United States or the ability to undertake the necessary migration procedures independently.

Sometimes migrant workers, with or without a visa, are not hired directly by U.S. agricultural producers, but rather, are hired by farm labor contractors. Farm labor contractors are those individuals who recruit, employ, solicit, hire, or transport migrant workers for agricultural work. It is important to know that these contractors must be registered with the U.S. Government and inform workers they hire about the job

when they are offered the job. The obligation to register with the U.S. Government only applies to those individuals who perform agricultural labor contractor activities in the United States, and not to those contractor individuals who operate exclusively outside of the United States.

In the H-2A program:

i. Workers with visas



© Alianza Nacional de Campesinas Inc.



What recruitment structures are you aware of, either from your experience trying to apply for an H-2A visa or from talking to people who have participated in the program?

In the H-2A program, recruitment intermediaries, who help coordinate recruitment activities, become more critical, since the process to apply for an H-2A visa begins with an agricultural employer in the United States.

The process for obtaining an H-2A visa is always begun by a U.S. agricultural employer who needs to hire workers temporarily and requests permission from the U.S. Government to hire foreign workers. So, even if a person truly desires to work, it is necessary to keep in mind that he or she must have a job offer approved by the United States Government before appearing at a consulate.

Once agricultural employers obtain the necessary permits from the U.S. Government, they may use different strategies to recruit workers in other countries who could fill these jobs.

Recruiters can be individuals who previously worked for the same employer or individuals or outsourced companies that serve the same function.



In some countries, such as Guatemala, Honduras, El Salvador, and Mexico, there are government ministries that are also responsible for the process of recruiting workers for the H-2A program. **Employers that commit under the FLSP program to recruit workers through the ministries in Guatemala, Honduras or El Salvador can be eligible for the highest (“Platinum”) FLSP award level.**

The agricultural employer may also seek a contractor who manages work in the field and also recruits workers or outsources this task to another recruiter.

Sometimes employers or recruiters demand payment in advance. Other times, they require the worker to commit to paying a fee when the worker starts working, thus generating an alleged debt. Both types of payments are illegal.



ii. U.S. workers²

U.S. workers also have rights during the recruitment process for the H-2A program.

U.S. workers are: citizens of the United States, permanent residents of the United States, persons with asylum or refugee status in the United States or with another immigration status that authorizes them to perform this work in the United States.

An agricultural employer who wants to hire workers with H-2A visas must first demonstrate to the United States authorities that there are not sufficient able, willing, and qualified U.S. workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire temporary foreign workers (H-2A workers), and that the employment of foreign workers will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Likewise, the agricultural employer must hire qualified, willing, able and available U.S. workers who apply for the job at some point up until 50 percent of the employment contract period has elapsed. Employers may only reject U.S. workers who apply for lawful, job-related reasons.

The advertisement for the job, also called a job order, that is presented to U.S. workers must include truthful and complete information about working

The agricultural employer must first recruit U.S. workers through a process established by DOL using the following mechanisms, among others:

- ④ posting the job order on the government website
- ④ contacting U.S. workers who have previously worked for the same employer and offering them the job
- ④ cooperating with State Workforce Agencies to recruit workers

2 “U.S. workers” is a term defined by federal regulations that govern the H-2A program at 20 C.F.R. §655.103(b). The regulations provide protections for U.S. workers in order to ensure that the employment of foreign H-2A workers does not adversely affect the wages and working conditions of workers in the United States who are similarly employed. In contrast, “U.S.-based workers” is a term used by USDA in the context of the FLSP program to refer to all workers who are covered by an employer’s FLSP commitments but who are not workers with H-2A visas.

conditions, including all commitments that the agricultural employer has made under the FLSP program.

Employers must offer U.S. workers no less than the same benefits, wages and working conditions that they offer, intend to offer, or will offer to foreign workers who are hired with H-2A visas. Job orders cannot impose on U.S. workers any restriction or obligation that will not be imposed on foreign workers who are hired with an H-2A visa. This does not exempt employers from providing to H-2A workers the minimum level of benefits, wages and conditions that must be offered to U.S. workers, to which they are entitled under the H-2A contracts and under the law.

An agricultural employer cannot hire workers with H-2A visas if they have laid off U.S. workers and must offer the job first to U.S. workers fired in the last 60 days before submitting the application to hire foreign workers. Nor can employers hire workers with H-2A visas if their current employees are on strike or are being locked out in the course of a labor dispute



The Rights of Workers During the Recruitment Process:

Access to Employment Contract³

Workers with an H-2A visa: a worker has the right to receive a copy of the employment contract in a language they understand when the worker applies for a visa or, if they are transferring from one H-2A employer to another, no later than the time when the employer makes the job offer. This contract must include all the material terms and conditions of employment, including those related to wages, working conditions and other benefits. The employer may present the worker with the job order that was submitted to DOL for certification for the H-2A visa, rather than another contract.

“Corresponding employment” refers to employment of workers who are not H-2A workers by an employer who has an approved DOL certification in any work included in the job order, or in any agricultural work performed by the H-2A workers, during the validity period of the job order. H-2A employers are required to provide a copy of the work contract to workers in corresponding employment no later than their first workday under that contract. If the employer fails to provide a work contract to workers in corresponding employment, however, there are other ways that workers may become aware that the employer has an H-2A certification. For example, workers may know that the employer has an H-2A certification if they see the required H-2A poster at the jobsite. Similarly, workers may become aware that workers with H-2A visas are employed at the workplace as they may get to know them personally. From there, if workers realize they are performing any of the same activities during the time that the H-2A workers are employed, they can reasonably deduce that they are in corresponding employment. Workers in corresponding employment are entitled to receive at least the same terms and conditions offered to H-2A workers, including the H-2A required wage rate, during the time they are employed in activities included in the job order, or other agricultural activities performed by the H-2A workers.

If someone is hired to perform employment corresponding to the work that a worker with an H-2A visa would perform, they must receive this information no later than the day the work begins.

3 DOL Fact Sheet #26B: Disclosure of the Job Order and Notice of Worker Rights under the H-2A Visa Program (<https://www.dol.gov/agencies/whd/fact-sheets/26b-disclosure-job-order-notice-H-2A>)

For H-2A workers and workers in corresponding employment, the contract must include:

- ✓ **Employer Name**
- ✓ **The start and end dates** of the period of intended employment
- ✓ **Job location**
- ✓ All significant working conditions, including, but not limited to:
 - ⊙ Specific transportation, housing and food benefits
 - ⊙ Location of housing
 - ⊙ Working days and hours during the period of employment
 - ⊙ Description of activities, crop and tasks to be performed
 - ⊙ The hourly and/or piece rate, depending on the task performed
 - ⊙ Any additional payments, such as overtime pay or bonus
 - ⊙ That the worker will receive, without charge or deposit charge, all tools, supplies, and equipment required to perform the duties assigned
 - ⊙ Right to worker's compensation insurance coverage at no cost to the worker
 - ⊙ Any deductions not authorized by law (must be reasonable and specifically included in the contract to be allowed)

Most migrant and seasonal agricultural workers –even those not covered by FLSP program commitments, on H-2A visas or in corresponding employment – must receive information on:

- ⊙ the crops and kinds of activities on which the workers may be employed;
- ⊙ the wage rates to be paid (including a range if applicable) or any piece rate (if applicable);
- ⊙ transportation and any other employee benefit to be provided, if any, and any costs to be charged for each of them;
- ⊙ the period of employment; and
- ⊙ whether state workers' compensation or state unemployment insurance will be provided, and if so, certain relevant information on that coverage, among other items.

Workers should receive this information when they are offered the job (in the case of seasonal workers who live locally) or when they are recruited (in the case of migrant workers, who are required to be absent overnight from their permanent place of residence). The information must be provided in writing (always for migrant workers and only if the worker so requests for seasonal workers).

Likewise, all farmworkers hired by an employer in the FLSP program are entitled to receive information about the FLSP commitments made by the employer. In all cases in the FLSP program, this information must be included in employment contracts or agreements. In the case of workers with H-2A visas and workers in corresponding employment, this information must be included in the job order.

In general, workers under the H-2A program and most migrant and seasonal agricultural workers have the right to fulfillment of the working conditions that were promised in their employment contract. DOL has the authority to investigate instances when the employer is not complying with the terms of the work contract or job order, including the FLSP commitments included therein.

Likewise, the Migrant and Seasonal Agricultural Worker Protection Act prohibits agricultural labor contractors, employers, and agricultural associations from violating the terms of the labor agreements of migrant or temporary workers without justification. There may be a justification for modifying the terms of work if their fulfillment is prevented by an unpredictable event caused by nature (such as an earthquake, for example), or by conditions that the person hiring cannot reasonably control or foresee.



Right not to be discriminated against

Federal laws, as well as many state laws, prohibit employers or recruiters from discriminating against job applicants or employees because of their national origin, race, sex, or other protected characteristics. While we will discuss the right to non-discrimination later, it is important to note that it is illegal for an employer or recruiter to discriminate throughout the recruitment process. However, U.S. agencies charged with implementing these laws have certain limitations on sanctioning or punishing discrimination that occurs in other countries.

Work free of charges or fees

In the H-2A program, it is illegal for agricultural employers or recruiters (including ministries, government bodies, or private recruiters) to charge workers fees for getting or giving them a job, for processing their visa, crossing the border, conducting an interview at the consulate, or for any other services related to recruitment for the job. These fees are illegal, regardless of whether the worker pays a private recruiter, a contractor, the agricultural employer, their agent, a public agency, or any person or organization acting in the capacity of a recruiter formally or informally.

Workers can only be required to pay those expenses that are not solely linked to the H-2A job in question, such as the cost of a passport, which can be used beyond the H-2A program. Likewise, if the worker obtains a service from a third party, totally independent of the employer, in order to facilitate the process to apply for an H-2A visa, the worker may pay expenses for these services as long as the employer does not make this service a condition of access to the job opportunity.

In the event that the worker has paid any expenses related to the recruitment or the process to obtain the visa, the agricultural employer must reimburse all of these expenses to the worker in their first paycheck.

Likewise, in the H-2A program, the agricultural employer must reimburse workers for reasonable costs incurred for transportation to the United States and expenses related to travel. For example, if the worker spends money on food while traveling to the workplace in the United States, the employer must reimburse them. These expenses must be reimbursed once the worker completes half of the time in the work contract, except to the extent that the incurred expenses would effectively reduce a worker's initial wages below the minimum wage, in which case they must be reimbursed in the first work week.

In that case, the agricultural employer must reimburse at least part of the money for these expenses with the first payment, to ensure that the worker's wages would not fall below the minimum wage when the reimbursement is accounted for.

In addition, in general, when the worker completes the work contract or if the worker is dismissed without cause, the agricultural employer must cover the expenses of the worker's trip back to his or her place of origin. The employer must cover the cost of transportation and daily subsistence during the return trip.

Workers in corresponding employment have the same rights to these benefits.

Right to be well informed to prevent fraud

Fraud in recruitment is illegal, and in some cases may even constitute a crime.

Fraud can take different forms.

For example, there are situations in which recruiters promise a job and charge a recruitment fee for a job that does not exist, or that does exist but has not been processed for that worker.

Recruitment fraud also occurs when a recruiter or employer promises or offers certain working conditions, a salary or housing, but when the worker begins the job, the work or conditions are very different from what was offered.

For example, if a recruiter offers a salary of \$14/hour, and people come to the workplace with that expectation, it is fraud if the actual payment is less than \$14/hour.

When these promises are part of a contract, the worker has the right to be compensated for its breach

Right not to be subjected to any form of coercion and to your physical integrity

The worker has the right not to be recruited or transported to work through the use of force, fraud, or coercion.

For example, if the employer withholds a worker’s immigration documents to prevent the worker from leaving the workplace, or if the employer controls the worker’s home and prevents the worker from leaving it, except to work, the employer is subjecting the worker to illegal coercion. This form of coercion can constitute a type of human trafficking.

FLSP Program



By participating in the FLSP program, each agricultural employer has committed to give additional information to USDA about the methods it will use to recruit workers. In case of using a private recruiter, the agricultural employer must also commit to:

- ⦿ disclose the names of all its agents and sub contractors;
- ⦿ provide attestation that any recruiter used is registered in the country in which they are recruiting, if registration is available; indicate their recruitment methods for U.S.-based workers and foreign workers and update USDA if their recruitment methods change after submitting an FLSP application to USDA; and
- ⦿ submit a Partnership Letter to USDA from the recruiter with answers to a series of questions about their H-2A responsible recruitment practices.

This transparency and commitment to responsible recruitment practices aims to prevent some of the most serious abuses that have occurred in the process of recruiting workers for the H-2A program previously.

4 In this context, “U.S.-based workers” refers to all workers who are not H-2A workers and are covered by the scope of the FLSP grant. It does not have the same meaning as “U.S. workers” for purposes of the H-2A regulations

Option through the FLSP

Demonstrate effort to recruit and hire any H-2A workers through government-led recruitment and vetting of workers from Ministries of Labor in Guatemala and Honduras and the Ministry of Foreign Affairs in El Salvador. A commitment to recruit and hire workers via the Northern Central American Ministries helps make applicants more competitive and qualify them for the Platinum level grant award.

The recruitment process via the Northern Central American Ministries is free for both agricultural employers and workers.

Problems and abuses in the recruitment process:

Despite having these rights, we know that migrants often experience issues during the recruitment process. Some of the more serious issues are described below.

i) Fraud

Fraud in recruitment can be very common, and affects the personal, family and collective economy of workers. Workers can protect themselves against fraud, and help others in their communities to protect themselves, by knowing the warning signs and mechanisms for prevention.

What can workers do to prevent fraud in recruitment?

- ⊙ **Verify Information:** Ask for and record all contractor data and job details, such as company, position, visa type, location/ address, pay, hours and dates of work (the format outlined in the next part of the workshop may be helpful in jotting down the essential information).
- ⊙ **Take note and keep copies of all commitments and paperwork** (e.g., employment contract, original receipts for all expenses (food, lodging, transportation, visa, interview, etc.), made by the recruiter or employer's representatives regarding wages and hours, and any other details about working conditions. If these promises are not kept, records can be very helpful in writing down lost wages or taking other legal action.
- ⊙ **Verify the job offer:** All employers who hire people with H-2A visas must first obtain a certification from DOL. All DOL labor certifications can be found at: www.seasonaljobs.dol.gov. Workers may also contact the U.S. Consulate in their home country to verify that the agricultural employer in question has filed a visa application for migrant workers.



In Mexico, the U.S. Consulate in Monterrey has a Fraud Prevention Program dedicated to carrying out this verification can be accessed by calling:

800-108-4724

between 8:00 am and 3:00 pm or by email at:
visasMTR@state.gov

Other resources for researching job postings:



Seasonal Jobs (available in Spanish and English):
seasonaljobs.dol.gov



Contratados⁵:
contratados.org



El Portal Migrante⁶:
elportalmigrante.org/en

- 5 Contratados.org is a digital platform that allows users to discover and investigate the actors and processes within the recruitment of workers for low-wage jobs along the Mexico-United States migration corridor. Contratados.org is a service of the Migrant Rights Center, Inc. (CDM), a non-governmental, nonprofit organization with a 501(c)(3) status dedicated to collaborating with migrant workers to build worker power, advocate for fair labor migration policies, and ensure that borders are not a barrier to justice. CDM is a member of Alianza Nacional de Campesinas.
- 6 The Migrant Portal is a job exchange that tries to empower workers in their search for job opportunities. The Migrant Portal is a service of the Migrant Rights Center, Inc. (CDM), a non-governmental, nonprofit organization with a 501(c)(3) status dedicated to collaborating with migrant workers to build worker power, advocate for fair labor migration policies, and ensure that borders are not a barrier to justice. CDM is a member of Alianza Nacional de Campesinas.

Some warning signs!

Fake recruiters have adopted different modalities to attract people interested in H-2A visas: they promote themselves through fake profiles on Facebook and offer jobs through WhatsApp. They usually resort to one or more of the following situations:

- ⦿ They charge money for signing up workers on a list.
- ⦿ They ask workers to make deposits into third-party or personal accounts.
- ⦿ When asked about job details, they give vague answers.
- ⦿ The dates of departure to the Consulate and workplace change constantly.

Workers can take steps to avoid becoming victims of fraud in recruitment. They must always verify job offers and not give money or identification documents without first being sure that the job offer is real.

To avoid fraud, remember the following:

- ⦿ Agricultural employers must cover the cost of the visa. Some agricultural employers do this before the person begins work, while in other cases, workers pay initially and then must be reimbursed in the first week of work.
- ⦿ If the agricultural employer will reimburse a worker for the cost of the worker's visa, the worker must find out how to pay the U.S. Consulate in his or her country of origin. Workers must ensure that they pay the cost of the visa directly to the consulate – not to the recruiter.
- ⦿ In Mexico, it is common for intermediaries to request that visa payment be transferred to them in convenience stores like Oxxo or banks such as Banco Azteca or Coppel, to name a few. The U.S. Consulates will only accept visa payments paid directly to the designated account at either Scotiabank or Citibanamex.
- ⦿ The Consulate does NOT send letters of acceptance to applicants to inform them that they are eligible for a visa.
- ⦿ There is no requirement to pay for health insurance or immigration records review.

The experiences of workers are also a very important resource! If workers identify signs of fraud, they should share them with other workers who are in the same situation. Workers think someone in their family, friend, or a neighbor is at risk of being misled, help them!

They did not respect these rights. Now What?

If a problem in the recruitment process arises, workers can try to talk to their employer to resolve it, if they feel comfortable doing so, but this is not required. If not, they can go visit the resources mentioned throughout this manual for support and follow up with Alianza Nacional de Campesinas with any follow up questions.

However, anyone who faces or suspects a trafficking situation should never attempt to confront a trafficker directly or alert the victim of these suspicions. Instead, that person can call 911 in the event of an emergency or contact the National Human Trafficking Hotline (“NHTH”). See more information below under **“iv) Coercion and human trafficking.”**

What can a worker do if they paid a recruiter because the worker was promised a job, but never given the visa?

If a worker is a victim of this type of fraud, the worker may report it. Depending on the circumstances, workers may need to make the complaint in their country of origin, where the event occurred. The worker can contact a local migrants’ or human rights organization to receive support in making a complaint.

What should a worker do if they were promised a job with certain conditions, but upon arrival they realize that the working conditions are different?

Workers have the right to be compensated in compliance with contract obligations. They can contact the DOL WHD for compliance with H-2A rules by calling **1-866-4USWAGE (1-866-487-9243)**, select 2 for Spanish). They can also report to USDA at **FLSPgrants@usda.gov** who can investigate employer compliance with the terms of their FLSP grant. In some cases, the worker may find it necessary to speak with an attorney to advance a civil lawsuit on this matter.



It is very common for migrants to come into contact with lawyers and other people who pretend to be lawyers but who are not reliable, do not have a license to practice law, or who charge exorbitant fees.

A list of free legal services organizations ⁷ that receive U.S. federal funds is available at the following link:

www.lsc.gov/about-lsc/what-legal-aid/i-need-legal-help

7 The Legal Services Corporation (“LSC”) is “the largest funder of civil legal aid for low-income Americans in the country. Established in 1974, LSC operates as an independent, nonprofit, 501(c)(3) corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans.” More information can be found at <https://www.lsc.gov/about-lsc/who-we-are>

What should a worker do if he or she was recruited through fraud and is now forced to continue working in conditions that he or she would not have accepted?

The worker may be a victim of human trafficking. Below, we present some resources for people in this situation.

ii) Illegal rates during recruitment

Many times, migrant workers incur expenses before starting work, including payments to the recruiter and transportation or travel expenses related to the trip to the United States. If they do not have money to make these payments, they may have to go into debt as a result of these expenses and carry this debt when they start working.

If the worker paid a fee to a recruiter in their home country, their employer must reimburse all the money on the worker's first payday.



The employer did not reimburse the worker for their expenses. What should the worker do next?

If an employer refuses to cover the expenses of workers' recruitment or the reasonable cost incurred by worker for inbound and outbound travel and subsistence, workers can call WHD of DOL in the United States at:

1-866-4USWAGE (1-866-487-9243, selecting 2 for Spanish).

Further Recommendations

It is important that workers keep documentation of their expenses, such as receipts, during the trip to the United States, if they have them, to be able to deliver them to their employer when requesting reimbursement.

iii. Discrimination in recruitment

Despite federal and state anti-discrimination laws, discrimination against migrants on the basis of their sex, age, racial identity or national origin is common in the recruitment process for an H-2A job in the United States.

For example, we know that some recruiters rule out the possibility of hiring workers over 40, excluding them from the program altogether.

Likewise, some employers or their recruiters only offer visas to women for jobs in certain sectors, with lower wages and worse working conditions. It is also common for women to experience sexual harassment, including forms of sexual violence, during recruitment or at work, even though these practices are illegal under employment discrimination laws.



Now What?

If you believe that a worker was discriminated against because of any of the conditions already mentioned when they were recruited for their job, you can call the Equal Employment Opportunity Commission (EEOC), a U.S. government agency, at the toll-free number:

1-800-669-4000 (select 2 for Spanish)

or send an email to

info@eoc.gov

EEOC has Spanish-speaking staff, so you can leave messages or send emails in Spanish. You can also send a message in your native language and EEOC will find an interpreter to translate. On the other hand, you can use this link to contact EEOC:

[eeoc.gov/initial-consultation](https://www.eeoc.gov/initial-consultation)





More information on filing a charge of discrimination can be found here: eoc.gov/filing-charge-discrimination

EEOC does not charge money for assisting workers.

In many cases, state governments have also formed teams charged with investigating discrimination. To identify if a state has a team charged with these responsibilities, visit the following website:



usccr.gov/files/pubs/crd/stateloc/all.htm

It is important to note that U.S. or state government agencies may be limited in their ability to address issues that have occurred in another country.

iv. Labor Trafficking [Forced Labor]

There are situations in which recruitment fraud, discrimination due to workers' nationality or the vulnerability of migrant workers once they arrive in the United States can create situations of exploitation. Some of these situations can be characterized as labor trafficking, a serious violation of human rights. Trafficking is a crime and a violation of U.S. criminal law.

The H-2A program is the visa category with the most reported cases of trafficking. H-2A visa holders are especially vulnerable to labor trafficking due to factors such as the economic situation in their home countries, lack of knowledge about their rights, and their recent migration.⁸

In November 2021, federal prosecutors in the United States initiated a criminal case against more than 24 people for human trafficking for the purpose of labor exploitation in a case that involved more than 100 onion harvest workers. Workers paid illegal rates for their transportation to the United States, their housing and their food. And although they were hired to do jobs in agriculture, some people were referred to other jobs in construction or gardening. Contractors sold and exchanged workers among themselves. Once they arrived at their workplaces, workers were forced to work in subhuman conditions, under the threat of armed supervisors. Two

8 Human Trafficking During the COVID and Post-COVID Era, Polaris. <https://polarisproject.org/wp-content/uploads/2020/07/Hotline-Trends-Report-2023.pdf>

workers died at work and at least one worker suffered sexual violence. In 2023, some of these workers filed a civil lawsuit for the same case on behalf of more than 200 impacted workers.⁹

Labor trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁰



Some signs that a worker could be a victim of trafficking include the following:

- ⦿ Their employer (or any supervisor, contractor or other management role) prohibits them from leaving home during non-work hours or imposes rules about where they can go when they are not working.
- ⦿ Their employer, supervisor or recruiter withholds immigration or identification documents, such as passport or birth certificate.
- ⦿ Their employer prevents or monitors communication with family or others in order to control their movements, ensuring that workers remain in a state of physical and/or social isolation.
- ⦿ The employer does not allow the person to speak.
- ⦿ They are denied access to food or sleep to subdue and control them.
- ⦿ An employer, supervisor, or contractor uses threats or fear to force people to work, such as the following:
 - ⦿ beatings or physical or sexual abuse
 - ⦿ threats of beatings or physical or sexual abuse

9 November 22, 2021. Human smuggling, forced labor among allegations in south Georgia federal indictment. United States Attorney's Office- Southern District of Georgia. <https://www.justice.gov/usao-sdga/pr/human-smuggling-forced-labor-among-allegations-south-georgia-federal-indictment#:~:text=David%20H.,human%20smuggling%20and%20document%20fraud>

10 Sex trafficking involves a commercial sex act that is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.

- ⦿ locking up or preventing a worker from leaving the workplace or the place where they live
- ⦿ threats of retaliation the worker or his/her family if he/she tries to leave, if a worker complains of being mistreated, informs authorities about his/her situation, or seeks help
- ⦿ threats of possible deportation or arrest if the worker attempts to seek help
- ⦿ threats to or acts of harm to other workers who have tried to leave, complain, report a situation or seek help, or threats that anyone who tries to escape will be found and brought back
- ⦿ threats to blacklist people so they cannot work in the United States
- ⦿ The employer or any of its agents uses threats, emotional abuse or degrading treatment to control the worker.
- ⦿ The employer or contractor uses a debt to force the person to work, changing it over time to make it more difficult to repay.
- ⦿ The employer forces the person to work in a job other than the one that was promised or under conditions different from those that were promised, using deceit and lies.
- ⦿ The employer does not pay the worker, pays them very little, or deposits their payment in an account to which the worker does not have access.

Now What?



If a worker thinks they are a victim of human trafficking and need help, they can call the National Human Trafficking Hotline toll-free,¹¹ 24 hours a day, seven days a week at **1-888-373-7888** or text the line to **“BeFree” (233733)** to speak with a specially trained counselor. The worker can also use the online chat service at:

humantraffickinghotline.org

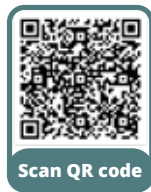
for advice and support. It’s important to note that:

11 The National Human Trafficking Hotline (“NHTH”) is an anti-trafficking hotline operating in the United States and its territories. It is operated by Polaris, a non-governmental, nonprofit organization with a 501(c)(3) status. See more information at <https://polarisproject.org/national-human-trafficking-hotline/>.



- ⦿ the worker can contact the National Human Trafficking Hotline from any state or city in the United States to connect with services in the worker's locality;
- ⦿ the phone line is NOT run by the government or law enforcement and is confidential; and
- ⦿ the phone line offers assistance in Spanish and in more than 200 other languages.

Call the police at 911 (in the United States) if a worker suspects someone is (or they themselves are) in imminent danger. The caller should describe the emergency and identify the caller's location and the phone number they are calling from. The caller may request an interpreter if they do not speak English



When the police arrive, they should show the caller this booklet (travel.state.gov/content/dam/visas/LegalRightsandProtections/Wilberforce/Documents/Wilberforce-SPA-1242017-.pdf) and explain what mistreatment they have suffered.

Many people are afraid of negative immigration consequences if they report these abuses. It is important to know that victims of severe forms of trafficking in persons, who meet certain conditions, may be eligible to apply for a T visa. Similarly, victims of qualifying criminal activities who have suffered substantial physical or mental abuse, and meet certain conditions, may be eligible to apply for a U visa. These types of visas would allow a worker to stay in the United States and work for another employer.

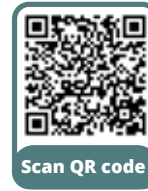
More information on these visas can be accessed here:



For more detailed information about the U visa:



For more information about the T visa:



To find out if a person might be eligible to apply for a U or T visa, it is best to consult with an attorney.

In trafficking cases involving instances of discrimination, it is important to know that EEOC can assist people who allege employment discrimination regardless of their citizenship or immigration status. For undocumented people, EEOC is a “certifying agency” for U and T visas. That means EEOC can help workers who are victims of trafficking and certain other crimes to apply to remain in the United States and continue working while they cooperate with authorities investigating or prosecuting the crime.

To apply for these visas, it may be necessary to have a certification completed by a law enforcement agency about the violations suffered by the person. DOL, Wage and Hour Division and the Occupational Health and Safety Administration (“OSHA”) (information about which is presented in module 5) and the EEOC (information about which is presented in modules 6 and 7) are agencies that can issue these certifications. These certifications may also be completed by a local and federal law enforcement including: federal, state, local, tribal and territorial law enforcement, judges, family protective services and other certifying agencies, including but not limited to, the Equal Employment Opportunity Commission and Federal and state Departments of Labor.



- © For information about requesting EEOC certification for U visas, see the EEOC’s *EEOC Procedures: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases*:

www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-u-visa-petitions-eeoc



© For more information about EEOC's work on trafficking cases and requesting EEOC certification for U or T visas, see the EEOC's *EEOC Combats Human Labor Trafficking | U.S. Equal Employment Opportunity Commission*:

www.eeoc.gov/eeoc-combats-human-labor-trafficking

Even if a worker cannot obtain a U or T visa, in some cases, workers who face labor disputes can request that the government give them a permit to stay in the country,

known as deferred action.¹² Deferred action is a form of discretionary protection granted on a case-by-case basis to allow a person to remain in the country when a labor agency has an enforcement interest in the particular labor dispute in which that person is involved.¹³ More information on deferred action is available here:



www.dhs.gov/enforcement-labor-and-employment-laws

Victims of human trafficking are entitled to services and protection, and could receive some public benefits, such as medical and dental care, mental health care, housing, legal help for immigration and other needs, help obtaining employment, and public benefits. They can contact the National Anti-Human Trafficking Line or an Alianza Nacional de Campesinas trainer with further questions.



- 12 Workers must seek a Statement of Interest from the labor agency investigating the violation to support the worker's request for deferred action from DHS.
- 13 Although deferred action does not confer lawful status or excuse any past or future periods of unlawful presence, a person granted deferred action is considered lawfully present in the United States for certain limited purposes while the deferred action is in effect, and is able to apply for employment authorization if they demonstrate an economic necessity for employment. Individuals who fall within the scope of a labor agency investigation can submit their requests for deferred action to USCIS through a central intake point specifically established to handle requests for deferred action related to labor agency investigative efforts.

Educational Suggestions for Facilitating Group Discussion:

Moment	Objectives	Development
Welcome	Create an environment of trust with the group with confidentiality agreements	Icebreaker Activity
Introduction to the recruitment process	Write down the experiences of the participants with recruitment in agriculture, both in the H-2A visa program and outside of it	Encourage group participation to share what participants know. After listening to their experiences, present information about the recruitment process. Use a visual map/tool to inform the process.
Basic labor rights to be considered during this process	Learn about basic rights to consider during recruitment	Present the information on the rights set out above, encouraging participation. Ask if people knew about these rights; if rights are not respected in their experience; and what tools they think migrants have to assert them.
Fraud and collecting illegal fees as common issues	Know what fraud is and how to recognize it, as well as other problems in recruitment, such as the collection of illegal fees and expenses	Present the detailed information on the subject. To validate the information, you can divide the group into smaller groups and work on the first example in Appendix 2.
Discrimination	Learn about forms of discrimination in the recruitment process	Present detailed information on the subject. To validate the information, you can divide the group into smaller groups and work on the second example in Appendix 2.

Moment	Objectives	Development
		The group can be divided into the same small groups to discuss different discriminatory experiences they have gone through and think about strategies to assert rights against discrimination in recruitment.
Trafficking	Know the definition of trafficking and learn about the signs of trafficking	Present the information on the subject. Discuss how situations of coercion that result in trafficking could occur at work. Ask the group what they think might be possible protective measures against these practices.
A Reflection on Labor Migration	Raise awareness of the consequences of labor migration.	Encourage a conversation about the inequalities that arise between employers, recruiters and migrant workers. What kinds of inequalities exist? How does this affect workers' rights? How and under what conditions do migrants face this situation?
Closing dynamics	Build empathy and trust.	Close the session by thanking the group for their participation and attention. Encourage participants to continue learning about the rights of migrants.

Appendices

1. Questions to write down the experiences of the members on recruitment in agriculture

In general:

- ⊙ Why do you think that migrants look to intermediaries for help in getting a job in the United States?
- ⊙ Do you think that people who do not have documents to work also have rights when they are recruited to work?
- ⊙ What types of abuse do you think farm workers face when looking for work?

- ⦿ How do you think a worker's immigration status may affect their ability to assert their rights?

In the H-2A program

- ⦿ Do you know migrants who worked in the H-2A visa program? How did they come to the program?
- ⦿ What could be some advantages of migrating under the H-2A visa program for a worker? What could be some disadvantages?
- ⦿ What might be the risks of applying for an H-2A visa through a recruiter?

2. Stories for group work

In 2017, a recruitment agency in Guanajuato posted a job opportunity in the pine industry in North Carolina. The agency charged \$3,515 pesos to each of the 80 people in the foreign state interested in the job. Sometime later, the agency acknowledged that there were no longer any vacancies available in North Carolina but assured that they would be placed in a job in California. A month later, the agency placed ten people in an agricultural job in Washington state but failed to provide jobs to the rest. The 70 people who remained unemployed requested reimbursement, but never received a response to their request. Some of the other people who did get a job asked their employer to reimburse them for the cost of recruitment and travel, but the employer refused to do so.

Questions:

- ⦿ What reimbursable expenses correspond to those people who did arrive in the U.S. with H-2A visas?
Reimbursement of recruitment, visa and travel-related expenses (including transportation expenses and daily subsistence).
- ⦿ What could be some of the fears of people who ended up working in the United States when demanding the reimbursement they are owed?
They may be afraid of retaliation, such as being fired by the employer.

- ⦿ **What actions could be taken by workers who asked for reimbursement but did not receive it?**
They could contact the **DOL's Wage and Hour Division ("WHD") in the United States at 1-866-487-9243** (select 2 for Spanish)

Estefanía was recruited to work in the United States by a recruitment agency that worked with several employers in the United States. She was hired along with a group of ten women and 20 men from her village for the strawberry and orange harvest. Seven of the younger women were hired for the strawberry harvest, where they would earn less than in the orange harvest, as they were told that there were no tasks for them in the other fields. The other three, who were older, were given work contracts for the orange harvest equal to those of the men at the time of recruitment. Once they arrived at their work site, however, they put the three of them to work cleaning the men's homes, and they could only work on the harvest once they finished cleaning. Because they worked fewer hours doing the harvesting work, they ended up earning less than the men. In addition, some of their peers made degrading comments to them, harassing them, and their supervisor did not intervene despite being aware of the situation.

Questions:

- ⦿ **What types of discrimination did the women of this village face?**
They suffered discrimination first when they were hired for a job with lower pay. Then, the group that worked on the orange harvest suffered fraud when they applied for a job under conditions different from those promised. In addition, they suffered discrimination in the tasks to which they were assigned. Finally, they were subjected to discriminatory treatment at work as they suffered harassment due to their gender status. We will learn a little more about these forms of discrimination in the modules that follow.
- ⦿ **What might be the difficulties in reversing or modifying this situation?**
 - ⦿ Women in the strawberry harvest might feel that it is not worth reporting the discrimination because they would risk the opportunity to return to work in the United States in the future.

- ⦿ Women in the orange harvest could feel intimidated and depressed by the conditions of harassment. They may also be afraid of losing their job.
- ⦿ **What resources could they have at their disposal to report what happened to them?**
- ⦿ All of these women could contact a migrants' rights organization for support and advice.
- ⦿ They could also contact the EEOC, the federal agency in charge of enforcing employment discrimination laws, by calling the toll-free number **1-800- 669-4000** (select 2 for Spanish) or sending an email to info@eeoc.gov. Migrant workers also may wish to call state or local fair employment agencies. A list of state and local civil rights agencies is available at: State and Local Agencies (usccr.gov).
- ⦿ They could also contact DOL's Wage and Hour Division ("WHD") in the United States at **1-866-487-9243** (select 2 for Spanish) to enforce the terms and conditions of the job they were offered.



© Campesinos Sin Fronteras

MODULE 3

Right to housing, food and other aspects of the contract

OBJECTIVES:

- ⊙ Refresh knowledge of the H-2A visa context.
- ⊙ Learn about the history and industries reached by the H-2A visa program.
- ⊙ Deepen participants' understanding of the rights of farm workers to housing, both for people with an H-2A visa and for other workers.
- ⊙ Identify other rights from the H-2A program that protect workers with H-2A visas and workers in corresponding employment.
- ⊙ Identify resources to report breaches of these rights.

Where does the H-2A program come from and what does it consist of?

The H-2 visa program is a temporary work program managed by the U.S. Government. Its predecessor was the Bracero Program, the first temporary labor agreement between Mexico and the United States, begun during World War II (1942), in which the United States sought Mexican workers to cover mainly agricultural activities. The Immigration and Nationality Act (INA) established a new nonimmigrant visa category, H-2, in 1952, but during the 1980s, it was divided into two categories, which remain today: H-2A visas for farm workers and H-2B visas for non-agricultural workers, such as construction, gardening, maintenance and seafood processing, among other industries.

Today, agricultural employers in the United States who cannot find enough domestic farm workers to meet their seasonal work needs can apply for H-2A certification from the U.S. Government. If approved, agricultural employers may recruit foreign workers to perform temporary or seasonal agricultural work through H-2A visas. Under the H-2A visa program, agricultural employers and their recruiters are required to comply with federal, state and local regulations that provide wage and other working conditions protections to workers.

Every year, hundreds of thousands of people come to work in the United States on H-2A visas. While people from dozens of countries around the world are eligible to apply for H-2A jobs, the majority of H-2A workers are recruited in Mexico, Central American countries, Jamaica, and South Africa. Over the years, the program has grown a lot. In 2022, the U.S. Government approved 370,000 H-2A jobs, more than double the amount approved in 2016. As the program has grown, H-2A workers have become increasingly central to America's agricultural industries and food systems. At the same time, concerns have been raised about workers' well-being. So, for decades, workers, community organizations, unions, employers, and government agencies have debated and tested different ways to improve the H-2A program for the benefit of all parties involved.



— Hi Alfredo! Have you heard about the bracero program?
— Well, yes! My dad was a brace-ro around the 1950s, he worked in an agricultural field, harvest-ing strawberries. The Bracero Program is no longer in place, but there are now other tem-porary work programs in the United States. In those years, working conditions were very unfavorable: ten to twelve-hour working days, low wages and no health and safety protections, all of which the workers of that time had to endure.



Due to the collective struggle of many communities of migrant workers, the govern-ment’s rules (which continue to improve) now have some minimum standards that pro-tect the dignity of workers.

Visas are permits to enter the United States in a documented manner and related to the purpose of one’s travel.¹⁴ In the case of work visas, they serve to enter the United States to perform a specific job.

H-2 visas are for various jobs that do not require professional academic training but do require skills and specialization. They are temporary because they last less than 12 months, although, in some cases, workers can receive extensions to work for up to three consecutive years.

14 Visas. Department of Homeland Security. <https://www.dhs.gov/visa-types#:~:text=A%20citizen%20of%20a%20foreign%20country%2C%20wishing%20to,Visas%20are%20issued%20by%20American%20embassies%20and%20consulates.>

Specific rights of H-2A workers¹⁵

The regulations that guide the H 2A visa program create some specific rights for workers who participate in it. For example:

Workers must receive a **written contract**, in the language that the worker best understands, specifying the detailed information of the employer and the conditions of work. If the worker is outside the United States, this contract must be presented to the worker when he or she applies for an H-2A visa or, if a new visa is not required or the worker is already in the United States and is changing employment to another H-2A employer, at the time of offering the job. Workers in corresponding employment must receive this information no later than the day that work begins.



Workers must receive **reimbursement** for all their travel (including daily meals) and visa expenses.



Workers must be provided with **adequate housing**, at no cost to the worker. Corresponding workers must be provided with housing at no cost if they are not reasonably able to return to their residence within the same day.



Workers must have free and safe **transportation** from home to the workplace.¹⁶



Workers must have a **safe and healthy workplace**.



Workers must have access to **worker's compensation for injuries or illnesses** at work.



Workers must receive at least the **current designated salary for agricultural work**, at least every twice per month at the rate stated in their work contract.



Workers must receive **at least ¾ of the working hours promised in the contract** or the payment corresponding to what the workers would have earned if they had been allowed to work ¾ of the hours promised in the contract.

SPECIFIC RIGHTS of H-2A workers

¹⁵ DOL Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA). U.S. Department of Labor, <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>. This fact sheet provides general information concerning the application of the H-2A requirements to the agricultural industry for H-2A applications submitted on or after March 15, 2010.

¹⁶ Employer-provided transportation must meet all applicable safety standards, be properly insured, and be operated by licensed drivers.

Workers in corresponding employment must receive the same terms and conditions of work as workers with H-2A visas.

In this module, we will focus only on the expenses to be covered by the agricultural employer and on housing standards.

Food

Workers with H-2A visas, as well as those who work in corresponding employment, have the right to have their employer provide three meals a day or give access to free and convenient cooking and kitchen facilities to the workers to prepare their own meals.

The maximum allowable daily meal charge changes annually based on the Consumer Price Index and is published in the Federal Register when the new Adverse Effect Wage Rate (AEWR) is published. Employers may deduct the meal charge only if this charge was previously disclosed in the job order. In addition, any meal charge may not exceed the actual expense of providing the meals. The current daily meal charge is \$15.88 per day.¹⁷

Workers with H-2A visas or in corresponding jobs in grazing or livestock production must receive meals from the employer.

Three-fourths guarantee

Whoever employs workers with H-2A visas and workers in corresponding employment, must guarantee working hours equal to at least three fourths of the workdays offered in the contract, or the payment corresponding to what the workers would have earned if they had been allowed to work $\frac{3}{4}$ of the hours promised in the contract. This obligation begins with the first workday after the arrival of the worker at the place of employment or the advertised first date of need, whichever is later, and ends on the expiration date specified in the work contract or in its extensions, if any. All hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's day of religious observance or Federal holidays) may be counted toward the three-fourths guarantee by the employer.¹⁸

The contract period can only be changed with government approval.

Housing

Employers must provide housing for workers with H-2A visas and for workers in corresponding employment who cannot return to their place of residence on the same day of work. Em-

17 DOL Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA). U.S. Department of Labor, <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A>

18 DOL Fact Sheet #26E: Job Hours and the Three-Fourths Guarantee under the H-2A Program. U.S. Department of Labor, <https://www.dol.gov/agencies/whd/fact-sheets/26e-job-hours-three-fourths-guarantee-H-2A>.

ployers must provide this housing without charging workers rent or deducting it from their paycheck.



Housing provided by an agricultural employer must meet federal standards. Therefore, it must have at least the following:

- ⦿ Walls, a ceiling, and windows that close;
- ⦿ Windows with pest control;
- ⦿ Each habitable room must have at least one window that opens to the outside;¹⁹
- ⦿ Beds and a place to store personal things for each worker;
- ⦿ If people cook, sleep, and live in the same space, that space must contain at least 100 square feet per person for homes built after 1980, or at least 60 square feet per person for older homes;
- ⦿ Drinking water supply;
- ⦿ Access to shared bathroom with a maximum of 15 people;
- ⦿ Access to heating; and
- ⦿ Effective measures to eliminate insects, rats, or other pests or vermin.

19 This is true for housing that was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980. For housing constructed after this time, there are other, detailed requirements related to window space provided at the link below

Federal standards depend on when the home was built.



To see housing standards built before 1980, see this list:
www.dol.gov/agencies/whd/eta-housing-checklist..



For housing standards built after 1980, see the following document:
www.dol.gov/agencies/whd/osha-housing-checklist.

If the employer decides to provide rental accommodations, the employer must pay all housing expenses directly to the owner or manager of the rental housing. This home must meet all local health and safety standards. In the event that local or state laws do not set minimum standards on this issue, the home must meet federal standards.

These federal standards cover: the amount of space per person (50 square feet per person) and the space between beds (at a distance of at least 36 inches); the minimum number of cooking ovens/stoves (at least one for every ten people or at least one for every two families); the existence of heating systems during cold seasons; the supply of water; the minimum number of showers and toilets per person; access to light; and access to waste collection systems.

When the prevailing practice in the region and in the sector in which the employment is located is that employers provide family homes, they must provide them to workers with H-2A visas or in corresponding employment that request it.

Even if a worker does not have an H-2A visa or work in corresponding employment, the federal law that protects migrant agricultural workers requires that those who control the housing of these workers comply with federal and state safety and health laws. Likewise, a written statement specifying the terms and conditions of occupancy

must be displayed at the location of the home, posted where it can be seen, or given to workers.

Elective according to FLSP – Under the FLSP program, employers at some work sites have committed to establishing a Weekly Housing Maintenance Plan, which includes a mechanism for workers to participate in feedback on the maintenance of housing. This plan will be different at each location, depending on the commitment the employer made to USDA.

What if the agricultural employer doesn't respect these rights?

If workers encounter a problem with the rights described above, workers can first try to talk to their employer to resolve it, if they feel comfortable doing so, but this is not required. If not, workers can visit the resources mentioned throughout this manual for support or reach out to Alianza Nacional de Campesinas with any follow up questions.

Both the rules of the H-2A program and the federal law that protects migrant agricultural workers prohibit retaliation against workers who exercise their rights under these standards, including retaliation against workers who make formal legal complaints with government agencies or informal complaints directly with their employer.

The worker can report violations in the following ways:

- ⦿ For labor standards violations: DOL, at **1-866-4US-WAGE (1-866-487-9243**, select 2 for English).
- ⦿ For violations that are specific to FLSP (e.g., any commitments specific to an employer): Email **FLSPgrants@usda.gov**

Educational Suggestions for Facilitating Group Discussion

Moment	Objectives	Development
Introduction to H-2A Visas	Learn about the program and write down the experiences of the members on their history of participation in the program and that of their communities.	Encourage group participation to share what they know about the history of the H-2A visa program.
Present information about the H-2A program and its history.	Learn about basic rights	<p>Present information on these rights, encouraging participation.</p> <p>Ask if people knew about these rights; if rights are not respected in their experience; and what tools they think migrants have to assert them.</p> <p>Point out the similarities and differences between the rights of people with an H-2A visa and those without this visa.</p>
Closing dynamics.	Build empathy and trust.	Close the session by thanking the group for their participation and attention. Encourage participants to continue learning about the rights of migrants.

Appendices

1. Table with basic rights (to be prepared with the designer, repeating the information in the content section)
2. Table to record travel and food expenses (also to be prepared with the designer, using the following as a basis)

Expenses	Date	Who paid	Receipt in attachment
[Ticket to the United States]	Include Date	[Worker, to be reimbursed]	[yes]

MODULE 4

Wage and Hour

OBJECTIVES:

- ⊙ Identify the applicable salary for people in the H-2A program and in corresponding employment whose employers are participating in the FLSP program, including either the hourly or piece rate.
- ⊙ Learn about the federal and state minimum wage, applicable to the majority of farmworkers, whether they have an H-2A visa or not.
- ⊙ Understand how overtime pay is calculated and when it is due.
- ⊙ Know the guarantees established in the H-2A program regarding the working hours that the employer must offer.
- ⊙ Promote the good practice of keeping track of hours worked. Learn about the additional payments that could correspond to the commitments that employers make as part of the FLSP program, including the payment of bonuses, sick leave and overtime pay.

- Hi Rosalía, how are you? I didn't know you were back.
- Good morning, Don Clemente. Well, look, this year I wanted the season to end and to finally come back because the work and the payment were not very good. Before we left, they promised us a salary of \$15 for each hour of work plus overtime pay. But once we got there, there was not much work, they paid \$9 an hour. Let's not even mention overtime, which of course they didn't pay. And I had to send money back home, apart from my expenses! The truth is that it was difficult this season.
- You don't say, but what state were you working in? Remember that each state has established a minimum wage, and that there are higher special wages for people who are hired with a visa. In addition, in some cases you should receive a higher payment if you worked more than 40 hours per week, although this is less common in the H-2A program.
- I was in Georgia, but because there was not much work, we hardly completed 40 hours per week of work. So, you can only imagine how hard this was on us!

Workers' wages and working hours are fundamental conditions of their employment. Every person has the right to be remunerated for their work as promised in their contract, in accordance with the laws applicable in the place of employment and for the type of work they perform. In addition, workers with H-2A visas have the right to receive at least three quarters of the hours promised in their contract or the payment corresponding to what the workers would have earned if they had been allowed to work $\frac{3}{4}$ of the hours promised in the contract.

What wage rights do agricultural workers have?

All workers have the right to receive the wage that was promised to them in their employment contract, regardless of immigration status. There are different laws at the federal, state, and local level that establish a minimum wage for workers, which can vary depending on where worker is located, whether they are working under the H-2A program, and the type of work they perform.



© Campesinos Sin Fronteras

In the H-2A visa program and corresponding employment:

Employers in the H-2A program must pay the highest of the following standards: the federal or state minimum wage; the wage set in a collective bargaining agreement (sometimes known as a collective agreement or contract); the prevailing wage rate, as set by the DOL; or an adverse effect wage rate, also set by the U.S. Government.

Adverse effect wage rate ("AEWR"):

The AEWR is established annually by the federal government of the United States with the aim of ensuring that employment in the H-2A visa program will not have negative effects on U.S. workers. The government establishes a salary

range for herding and range livestock production workers and another for the rest of the agricultural workers. It is possible that in some less common occupations in agriculture (such as heavy truck driving or agricultural construction) workers may be entitled to a higher AEWR, specific to that occupation. In addition, the current wage rate varies according to the state in which the worker is employed.

The wage rates in force for the year 2024 for common agricultural jobs (not herding and range livestock production or specific prevailing wages by occupation) in each state are available at the following link:



<https://www.federalregister.gov/documents/2023/12/14/2023-27435/labor-certification-process-for-the-temporary-employment-of-foreign-workers-in-agriculture-in-the>

State	Rates in US dollars	State	Rates in US dollars	State	Rates in US dollars
Alabama	\$14.68	Maine	\$17.80	Oklahoma	\$15.55
Arizona	\$16.32	Maryland	\$17.20	Oregon	\$19.25
Arkansas	\$14.53	Massachusetts	\$17.80	Pennsylvania	\$17.20
California	\$19.75	Michigan	\$18.50	Rhode Island	\$17.80
Colorado	\$16.63	Minnesota	\$18.50	South Carolina	\$14.68
Connecticut	\$17.80	Mississippi	\$14.53	South Dakota	\$18.32
Delaware	\$17.20	Missouri	\$17.79	Tennessee	\$15.14
Florida	\$14.77	Montana	16.54	Texas	\$15.55
Georgia	\$14.68	Nebraska	\$18.32	Utah	\$16.63
Hawaii	\$18.74	Nevada	\$16.63	Vermont	\$17.80
Idaho	\$16.54	New Hampshire	\$17.80	Virginia	\$15.81
Illinois	\$18.18	New Jersey	\$17.20	Washington	\$19.25
Indiana	\$18.18	New Mexico	\$16.32	West Virginia	\$15.14
Iowa	\$17.79	New York	\$17.80	Wisconsin	\$18.50
Kansas	\$18.32	North Carolina	\$15.81	Wyoming	\$16.54
Kentucky	\$15.14	North Dakota	\$18.32		
Louisiana	\$14.53	Ohio	\$18.18		

Prevailing wage rate:

This standard is established for specific sectors and crops, and sometimes for specific tasks, according to economic surveys carried out by state governments. There are many crops and activities that do not have a prevailing wage rate established by the government. The prevailing wage rates that exist can be found at the following website:



www.dol.gov/agencies/eta/foreign-labor/wages/agriculture

If the prevailing wage rate in the sector is less than the AEWR or another wage rate, the highest rate applies.

In addition, there are other laws that can affect and protect workers' pay, such as the minimum wage established by federal and state laws, union collective bargaining agreements or agreements under a social responsibility program, bonuses (bonus pay) under the FLSP program and overtime pay (either by commitment of the employer under the FLSP program or state laws).

What is the federal minimum wage law and why is it important to know?

In the United States there is a federal minimum wage, currently set at \$7.25 per hour. This minimum wage applies to the entire country and is the minimum that a person must receive per hour of work.

There are few exceptions, for example, for very small agricultural employers or for herding and range livestock production workers.



The minimum wage protects workers even if they are not working with a visa or jobs corresponding to an H-2A job.

The federal minimum wage is lower than what the H-2A program rules establish. However, it is important that both workers without a visa and those who work in jobs with an H-2A visa or in corresponding employment know these protections.

Why? As mentioned in module II, workers' travel expenses to the United States and certain other expenses, such as the purchase of tools, can be considered employer kickbacks from the worker's salary. If these deductions place the worker's net salary below the federal minimum wage, the employer would be violating federal laws.

If employers violate the law that establishes the federal minimum wage, employers may be subject to penalties or required to pay back wages and/or damages.

And what do state laws add?

Many states have their own minimum wage laws, which could include a higher rate than the federal minimum wage. Its scope, both in terms of the type of employers it covers and the protected sectors of work, varies by state.

You can find information about the minimum wage in each state at the following link:

www.dol.gov/agencies/whd/minimum-wage/state#al



As with federal law, these laws may establish rights to receive compensation for back wages and/or damages when a violation occurs, apart from what is established by the H-2A visa program. Therefore, even though the standard that these laws establish for the minimum wage is less than the salary in force in the H-2A program, it is important to know whether the worker can also report a violation of these laws.



(Optional) FLSP commitments

Bonus pay

As part of their participation in this program, some employers committed to a “bonus” payment based on the work performed. This bonus must be clearly defined, must apply to all workers in the workplace in question, and must be paid at least twice monthly.²⁰

Payment established by a collective bargaining agreement or worker-driven social responsibility program agreement

On the other hand, the employer may also have committed to respect an agreement with particular salary benefits through the structure of a Worker-driven Social Responsibility Program (WSR), such as the “Fair Food Program”, or a collective bargaining agreement, which may also establish specific salary benefits. You can find more information about this in the supplementary material.

Paid Sick Leave Plan

Employers may also have committed to offering a sick leave plan that requires at least four hours of paid sick leave for every two weeks worked, with a minimum of five days per year of leave.

Overtime pay

If a person works in the agricultural sector, federal law does not require that they be paid an extra amount for each hour that exceeds 40 hours per week, as it does in other sectors (paid at 1.5 times the usual hourly wage). However, in some situations, the worker may be entitled to receive additional overtime pay under other laws.

It is important to know that the definition of agricultural work in the law that establishes the right to overtime pay is not exactly the same as the definition of

20 *Fact Sheet #26: Section H-2A of the Immigration and Nationality Act (INA)*. U.S. Department of Labor, <https://www.dol.gov/agencies/whd/fact-sheets/26-H2A#:~:text=Guarantees%20to%20All%20Workers%3A%20H,which%20a%20normal%20workweek%20is.> (“Records Required: Employers must keep accurate records of the number of hours of work offered each day by the employer and the hours actually worked each day by the worker. On or before each payday (which must be at least twice monthly), each worker must be given an hours and earnings statement showing hours offered, hours actually worked, hourly rate and/or piece rate of pay, and if piece rates are used, the units produced daily. The hours and earnings statement must also indicate total earnings for the pay period and all deductions from wages.”)

agriculture established by the H-2A program law. So, there are some exceptional cases in which people with H-2A visas or in corresponding jobs may be entitled to overtime pay, such as the packaging of products that derive from several farmers or work in the wood industry.

By commitment of FLSP – optional – In some cases, the employer may have committed to extend the overtime to their workplace, even though the agricultural work generally would not be covered by state or federal overtime law. Thus, workers at these FLSP operations are entitled to receive a “time and a half” payment for each hour worked that exceeds 40 hours a week. For example, if the person earns \$16 per hour and worked 44 hours a week, they have the right to receive \$24 for the four hours they work after 40 hours.

State Legislation

In some states, there are state or local laws that require certain employers to pay an additional amount for hours worked in excess of the usual workday or workweek. However, there are differences as to which employers must comply with these laws, how the usual workday is defined, and how much employers must pay.

For example, in the state of California, farmworkers are entitled to receive overtime pay for each hour worked after 8 hours a day or 40 hours a week. The amount to be paid will be 1.5 times the worker’s regular wage for each hour worked above 8 hours a day and twice his regular wage for each hour worked above 12 hours a day.

In the state of Washington, as of 2024, farmworkers are entitled to receive overtime pay for each hour worked above 40 hours a week.

In the state of Maryland, the state law on the matter covers farmworkers but offers less protection than what is offered to other workers. Agricultural workers are entitled to receive 1.5 times their usual wage for each hour worked above 60 hours per week.

More information about state laws on this subject is available at the following link:

www.dol.gov/agencies/whd/minimum-wage/state



Fulfillment of the hours promised in the contract

Sometimes H-2A workers end up disillusioned with the program because they are not offered the hours promised in the contract. It is important to know that the H-2A program requires the employer to guarantee workers the payment of at least 75% of the hours promised in the contract (this obligation is known as the three-fourths guarantee, was covered in greater detail in Module 3).

What is considered work time?

If the employer controls workers' time, it has to pay workers for the time they are waiting to operate a machine or to receive orders from their supervisor, cleaning time before or after official working hours, etc. Generally, the employer does not have to pay the worker for time spent traveling from his home to the workplace, or for the trip back to his home, unless the worker begins their main work activity before the trip to work or after the trip back. These rules may vary slightly depending on the laws of each state.

Are workers in the H-2A program allowed to be paid by the piece?

Many migrants who work in agriculture receive payment by the piece produced instead of for the hours worked. Despite this payment system, H-2A employers must meet the hourly standards established previously. In this sense, even if paying by the piece, the employer must pay the equivalent of at least the particular hourly wage applicable to the program when a worker's net payment is divided by the hours worked during a week.

Can the employer make deductions from workers' wages?

All deductions not required by law must be included in the worker's written contract. The employer cannot deduct Social Security or Medicare taxes in the H-2A program, but in some cases, they can deduct taxes on a worker's income if the worker did not present a social security number or an individual tax identification number (ITIN) to their employer:



www.irs.gov/pub/irs-pdf/p5144.pdf

Employers cannot deduct the cost of housing, transportation during work or the worker's visa to go to the United States. All discounts must be justified on the pay stub.

Pursuant to H-2A program regulations, workers must be notified in writing of all deductions that are not already required by law. All deductions must be reasonable. Any deduction that is not specified is not allowed.

- ⊙ The employer must provide any tools, supplies, and equipment required for the job at no charge to the worker.
- ⊙ Deductions to pay for things that the worker freely chooses, such as health insurance or union dues, are permissible.
- ⊙ Deductions for certain taxes may also be required, but H-2A workers have no obligation to pay Social Security and Medicare taxes.

How and when should the employer pay the worker?

The employer must pay H-2A workers and workers in corresponding employment at least twice a month, or according to the prevailing practice in the area in which the person is employed, if it is more than twice a month. The employer must state the frequency of payment in the contract.

What can workers do to protect these rights and be prepared to demand compliance with them?

- ⊙ **Keep pay stubs** or any proof of their pay that the employer gives them. Workers should keep these documents even when they return to their country of origin.
- ⊙ **Write down their hours worked per day**
- ⊙ **When they receive payment, compare the total with their notes.** If the payment doesn't match, workers can go with colleagues to talk to the employer or contact an Alianza Nacional de Campesinas trainer for support.

What can workers do in the event of a breach of these laws?

If a worker experiences a problem related to wage and hour laws, they can visit the resources mentioned throughout this manual for support or follow up with Alianza Nacional de Campesinas with any follow up questions.

If a worker prefers to first speak with their employer about wage and hour problems at work, it is important to note that the federal law protecting the right to a minimum wage prohibits employers from taking retaliatory actions against workers for having filed a claim or initiated or caused to be instituted any proceeding related to that law, or for providing their testimony in any proceeding. While courts in many situations interpret this prohibition against retaliation to also protect workers who file internal grievances directly with their employers, this is not the case in all internal grievance cases. The regulations on the H-2A program also prohibit retaliation against workers for making claims to assert their rights under this program, including their wage rights. This protection covers formal claims, consultations with lawyers related to these rights and other informal claims, such as direct complaints to the employer related to the wage rights of workers under the H-2A program.

You can report violations of these rights to the DOL in the United States, at **1-866-4US-WAGE (1-866-487-9243)**

Facilitation Dynamics Recommendation:

STEP 1:

Introduce the objectives of the module and introduce the concept of a fair wage.

STEP 2:

Invite the participants to **reflect on the topic** and share their experiences through a discussion based on the questions in Appendix 1.

STEP 3:

Present the information on the different standards on wages in the H-2A program, the particular commitments under the FLSP program, the three-quarter guarantee, the deductions allowed and rules on the time that should be considered work. Use a flipchart to visualize the different wage levels. Identify the wage in the workplace in question.

STEP 4:

Work as a group on the informative images in Appendix 2, with corresponding questions, to reinforce the information provided in step 3.

STEP 5:

Review recommendations to assert your wage rights and identify a directory and complaint procedure.

STEP 6:

Closing activity – **evaluate what has been learned** by asking people how they could apply this information in their daily work.

Appendices:

Appendix 1:

Questions to make it easier for participants to share their experiences:

What does fair pay mean to you?

Have you had any difficulties at the time of receiving
payment for your work?

Were the expectations you had when coming to the United
States or applying for this job met, regarding how much
you would be earning here?

How has this affected you personally? How has it affected
your family and community?

Appendix 2:

Stories for group work

1. Minimum wage

Rosario works on the harvest of ripe green tomatoes in California. When a recruiter offered her the job in Mexico, he promised her a payment of at least \$19.75 per hour, the AEWL for the area, but by paying her per piece (\$0.70 cents for each bucket of five gallons of tomatoes). One week, she worked ten hours for two days, eight hours for two days, and six hours a day, totaling 42 hours, and received a check with a paycheck of \$798.

i. Could Rosario claim additional money from her employer?

Yes. Rosario's employer paid her only \$19 per hour, which is below the promised salary of \$19.75. In addition, Rosario must receive 1.5 times her wage rate (that is, \$29.63) for the four hours she worked more than 8 hours a day (during the two days she worked

ten hours). So, her total salary should be \$869 $((19.75 \times 38) + (\$29.625 \times 4))$. So, her employer owes her \$71.

It doesn't matter that Rosario is being paid per piece. In any case, the AEW and the laws on overtime must be followed.

ii. What could Rosario do in this situation?

Rosario could contact the DOL to report this situation.

iii. What would you recommend to Rosario to protect herself from this violation of her rights in the future?

Rosario could take good notes of all her hours worked and the quantities she picked to have more accurate and well-documented data when reporting non-compliance.

2. Working time and deductions

Ricardo works harvesting oranges on an H-2A visa. When he received his contract, he was not told, nor was it included in his work contract, that his employer would deduct any expenses. Ricardo starts his day cleaning machinery for an hour a day near his home. After cleaning that machinery for 45 minutes, his supervisor drives him to another area of the field in a van, which is a 15-minute drive away. Then, Ricardo works another 8 hours a day and returns to his home in the same van, which requires another 15 minutes of travel. Ricardo works five days a week. When he receives his pay stub, Ricardo sees that he has been paid for 8 hours a day and that his employer has deducted expenses related to transportation to the main workplace.

i. Can Ricardo claim non-payment from his employer?

Yes. His employer must pay him for the 45 minutes that he was cleaning machinery plus the 15 minutes daily transport to the workplace. Therefore, his employer owes Ricardo for five additional hours of work. Even though Ricardo's total hours exceed 40 hours per week, Ricardo is not entitled to be paid overtime for that time in Florida (unless his employer has committed to pay overtime voluntarily under the FLSP program and it is included in his work contract or stated in the job order).

The employer also cannot deduct transportation costs from his paycheck.

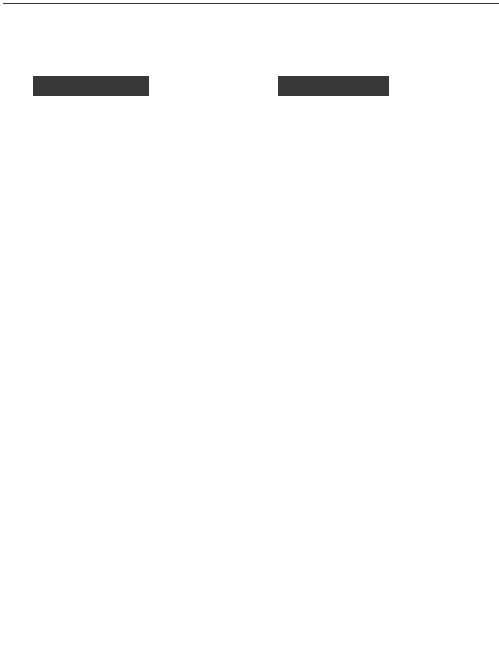
ii. What could Ricardo do in this situation?

If Ricardo is comfortable doing so, he can try to resolve this situation by talking to his employer. Ricardo could also contact the DOL to report this situation.


iii. What would you recommend that Ricardo do to protect himself from this violation of his rights in the future?

Ricardo could take good notes of all his hours worked and travel time between different work activities in order to have more accurate and well-documented data when reporting a violation of his rights.

Appendix 3: Sample timesheet



Appendix 4: Example of pay stub

		Company Name Office address, 123 St., California, USA Tel. +123 345 667	
Received From :		No. : <input type="text"/>	Date : <input type="text"/>
Amount :	\$ <input type="text"/>		
For :	Payment Method :		
Received by :	<input type="checkbox"/> Cash		
	<input type="checkbox"/> Cheque #		
	<input type="checkbox"/> Credit Card		
Received From	Received By	Amount of Balance	\$ <input type="text"/>
		Payment Amount	\$ <input type="text"/>
		Balance Due	\$ <input type="text"/>


MODULE 5

Occupational Health and Safety

OBJECTIVES

- ⊙ Know the basic obligations of employers and workers in terms of safety and health in the workplace.
- ⊙ Learn about the specific laws that protect agricultural workers from the risks they often face, such as pesticides and heat illnesses, transportation safety and field sanitation.
- ⊙ Analyze the relationship between work and mental health and identify steps to protect mental health.
- ⊙ Identify what steps to take in the event of a risk to health or safety at work and in the event of an accident at work.

- What Now? What happened to you? Why do you have that cast?
- I got hurt at work! I've been with this for a week, and I don't feel any improvement.
- Oh, I'm sorry! What happened?
- I hadn't been working for even three days when one of the machines fell on me. I couldn't move my leg, so they took me to the hospital the next day. But it hurts a lot, and I don't perform well at work because I can't stand to do the work as I used to.



All workers have the right to health and safety at work. This right is so fundamental that it applies to all workers, regardless of immigration status or the type of work the worker performs. Workers have the right to work in a place that does not put their lives at risk and that allows them to return home every day, with their family, safe and healthy.

Educational Content:

What are workplace risks and hazards?

A hazard or risk is a situation that could potentially harm someone, physically or mentally, in the workplace. It usually involves a condition or activity that, if left unchecked, can cause injury or illness, or death. Identifying hazards helps to avoid and prevent injuries and/or illnesses, or death for workers.

In general, employers are responsible for the following:

1. **Providing a safe and healthy workplace**, free of identified hazards that may cause death or serious physical harm and complying with applicable OSHA standards.

2. **Placing in a visible place the official OSHA poster**, *Occupational Safety and Health: it is the law*, so that workers can obtain information about their rights and responsibilities.

Signs that an employer provides a safe and healthy workplace include:



1 **Continuously examine** the workplace and its conditions to ensure that the risks are controlled.



2 **Provide workers with the appropriate equipment and tools**, and in good condition, to carry out their work.



3 **Use mechanisms to warn workers of potential dangers**: color codes, posters, signs or whatever is necessary to reduce risks.



4 **Provide training** that allows workers to carry out their work safely and learn to recognize and prevent the risks involved.



5 **Establish or update procedures** and communicate them appropriately.



What is OSHA?

The **Occupational Safety and Health Administration (OSHA)**, a part of the DOL, is responsible for enforcing occupational safety and health standards. OSHA conducts inspections and may fine employers who fail to comply with the Occupational Safety and Health Act (“OSH Act”) or OSHA safety and health standards.

The OSH Act covers most private sector employers and workers, and some public sector employers and workers in the 50 states and in certain territories and jurisdictions. These jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act.

There are twenty-two OSHA-approved State Plans covering both private sector and state workers, and seven covering only state and local government workers. In states with state plans, the state agencies receive complaints and inspection requests from workers. States assuming responsibility for their own occupational safety and health programs must have provisions at least as effective as those of Federal OSHA, including protection for workers’ rights.

The following 22 states or territories have OSHA-approved state programs that cover both private sector workers and those of state and local governments: • Alaska • Arizona • California • Hawaii • Indiana • Iowa • Kentucky • Maryland • Michigan • Minnesota • Nevada • New Mexico • North Carolina • Oregon • Puerto Rico • South Carolina • Tennessee • Utah • Vermont • Virginia • Washington • Wyoming



You can view a map of the states at the following link: <https://www.osha.gov/stateplans/> To find contact information for the nearest federal office or State OSHA Plan, call 1-800-321-OSHA (1-800-321-6742, selecting “2” for Spanish) or visit www.osha.gov/stateplans.

Likewise, WHD of DOL is responsible for enforcing OSHA’s field sanitation standard and standards related to housing safety for migrant farmworkers.

What can workers do if they find themselves in a risky situation at work?

When facing a problem related to workplace health and safety, workers can **first try to talk to their employer to resolve the issue**, if they feel comfortable doing so. If not, they can **reach out to Alianza Nacional de Campesinas trainers** or directly to the resources mentioned throughout this manual.

It is important to note that the **OSH Act protects workers from retaliation by their employer** for having filed a formal complaint with OSHA, for having made an informal complaint about a workplace safety or health risk directly to their employer, for participating in an OSHA inspection or for reporting a work-related accident or illness to their employer. In certain circumstances, after having asked his or her employer for other working conditions where possible, a worker has the right to refuse to perform a task that he or she considers so risky to his or her health or safety that it could cause death or serious physical harm, without suffering reprisals.

If a worker believes that their workplace is unsafe, they can file a confidential complaint with OSHA or DOL's WHD (in case there is a violation of field sanitation standards, explained later in this module). Workers can anonymously report unsafe or unsanitary conditions to request an inspection of your workplace. During an investigation, neither OSHA nor WHD-DOL may share the worker's name or identifying information with the employer.

The worker may contact OSHA using the following information:



They can use OSHA's online complaint form
www.osha.gov/form/osha7



They can complete the following form:
www.osha.gov/sites/default/files/OSHA7.pdf

and email or mail it to the local OSHA office. The contact information of the local offices can be found at the following link:



www.osha.gov/contactus/bystate.



They can call **1-800-321-OSHA (1-800-321-6742)** (select 2 for Spanish) or the local office, whose information can be found at the link above.



They can visit the field office in person.

In states with state plans, local agencies receive complaints and inspection requests that workers want to submit.



A map of the states that have a state occupational safety and health agency is available at the following link:
www.osha.gov/stateplans/



The worker can contact WHD of the DOL by calling
1-866-487-9243 (select 2 for Spanish).

What is worker's compensation and when is it required by law?



- ⦿ Accident insurance (also known as “workers’ compensation”, or “worker’s comp”) is insurance, paid by the employer, that must cover the worker’s medical expenses when a work-related injury or illness occurs, and the worker submits a claim to the insurance company. This form of insurance is regulated by the laws of each state, not OSHA.
- ⦿ In general, insurance must cover expenses related to both accidents at work and illnesses or disabilities that are aggravated at work. The policy generally covers medical expenses and the wage that the worker stops receiving due to the accident or illness, up to a certain limit. In the event that the accident results in a permanent disability, it must also generally cover compensation for this.
- ⦿ The insurance plan must cover the aforementioned situations regardless of who caused the accident or illness.
- ⦿ The existence of this insurance in general prevents workers from litigating a claim against their employer for a work accident in court.
- ⦿ While in many states, state laws do not require employers of farmworkers to have this insurance, the federal regulations governing the H-2A visa program do require employers of farmworkers with H-2A visas to have that insurance. So, employers of workers with H-2A visas must have this insurance to cover the medical expenses of H-2A workers and workers in corresponding employment in the event of a workplace accident.
- ⦿ The insurance is paid for by the employer and is free for the worker.

What should a worker do if they get hurt or sick because of work?

- ⦿ Notify their employer as soon as possible, preferably in writing or in the presence of another worker.
- ⦿ If it is an emergency, dial 911 for an ambulance to go. If it is not an emergency, go to a health care facility or clinic if their employer does not want to take them.
- ⦿ Tell the doctor or staff caring for them that their injury or illness is work-related.
- ⦿ Keep all the documents given to them by the medical staff.
- ⦿ If they want to make a claim to their employer's worker's compensation insurance, call a lawyer immediately (because there are claim deadlines). Many times, lawyers in these cases can take the case without an advance payment. It is better for the worker to remain in the United States while their problem is resolved.

If the worker has already suffered a workplace accident and suffers a disability, do they have the right to continue working?

- ⦿ Yes, although specific obligations vary depending on the circumstances of the worker's disability and his or her employment. In general, federal law requires that employers not discriminate against people with disabilities. This means that, if the person can fulfill the essential functions of the job with a reasonable accommodation, the employer must offer the worker that accommodation so that the worker can participate in the job on an equal basis with other workers.
- ⦿ In general, if the medical personnel who treat a worker after an accident indicate that their work tasks must be more limited than before the accident, an employer cannot force that worker to perform contraindicated tasks. If they do, this could be considered retaliation for their disability. This retaliation can be reported in the same way as other forms of employment discrimination.

Health insurance under the H-2A program and for other workers

Medical care in the United States can be very expensive, and there is no completely free option for migrants. Personal health insurance is used to cover expenses for illnesses and injuries that occur outside of work, or to treat pre-existing conditions, such as diabetes. It can also be useful in situations in which it is difficult to demonstrate the link between the worker's health condition and work, such as in some mental health conditions.

Workers with H-2A visas have the right to enroll in low-cost health insurance under the Affordable Care Act (ACA), although that right does not cover relatives or dependents in other countries. Undocumented people also have the right to ACA health insurance under federal law.



There are community organizations and clinics that can support workers in the registration process. Workers may also call **1-800-318-2596** (select option 8) to speak with a specialist who will provide guidance in Spanish, or visit www.healthcare.gov/ or scan the following QR code.



If the person is unable or unwilling to enroll in a health insurance plan, they can look for nearby health centers for migrant populations or community health centers with bilingual services for people who have low incomes. You can search for one on this website:

findahealthcenter.hrsa.gov or scan the QR code.



Commitments under the FLSP program

Optional – Paid Sick Leave Benefit Plan – In some cases, FLSP employer agreed to offer a sick leave benefit plan that guarantees workers at least four hours of paid sick leave for every two weeks worked, with a minimum of five days per leave each year.

Field Sanitation Standard

Any agricultural establishment that has employed 11 or more workers on any day during the previous 12 months to perform “hand labor” in the field, including hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops, including mushrooms, and the hand-packing of produce in the field into containers, whether performed on the ground, on moving machinery, or in a shed, must comply with the following regulations²¹:

- ⦿ Provide potable drinking water, sufficiently cool and in sufficient amounts, offered in single-use cups or by fountains, placed in locations readily accessible by all employees
- ⦿ Provide a toilet and handwashing facility for every 20 employees, located within a quarter of a mile if walking, or if this is not feasible, at the point of closest vehicular access. This is not mandatory in the case of employees who perform field work for three hours or less a day
- ⦿ Notify workers of these water and toilet facilities and allow them reasonable opportunities to use them during the workday
- ⦿ Maintain these facilities according to public health practices. Water should be changed daily or more frequently if needed, and kept in containers that maintain water quality, lidded and cleaned regularly. Toilets must be maintained in clean and sanitary condition. Handwashing facilities should be refilled with potable water as needed and maintained in a clean and sanitary condition.
- ⦿ Inform workers of the importance of good hygiene practices, and their importance in the face of relevant health risks in field work, such as heat illnesses, pesticides and communicable diseases.

The DOL’s WHD is responsible for enforcing these standards nationwide except for Puerto Rico, Arizona, California, Hawaii, Maryland, Michigan, New Mexico, Nevada, North Carolina, Oregon, Tennessee, Virginia, Vermont, and Washington. In those states, state agencies with agreements with OSHA are responsible for enforcing this standard.

While the federal regulation on this issue only applies to employers that have employed 11 or more workers on any day during the previous 12 months, all employers that applied to the FLSP program were required to describe their health and safety practices in the field and the minimum standards they have to meet under the terms of their grant.

21 DOL Fact Sheet #51: Field Sanitation Standards under the Occupational Safety and Health Act. U.S. Department of Labor, <https://www.dol.gov/agencies/whd/fact-sheets/51-osh-act-field-sanitation>.

Transport safety standards:

Farmworkers who drive or are transported in vehicles during their employment have certain safety protections. For example, employers are required to comply with the following regulations:

- ⦿ Vehicles must comply with applicable federal standards and state laws, including state seat belt laws.
- ⦿ Vehicles must have seats for each working person, working brakes, lights, windshields, and tires with sufficient traction.
- ⦿ Each driver must have the corresponding license to drive the vehicle used to transport workers.
- ⦿ All vehicles used to transport farmworkers must have adequate accident insurance.

If a worker has doubts about or observes possible violations related to vehicle safety at work, they can consult the following resource:



www.dol.gov/agencies/whd/agriculture/transportation-safety

Some observable violations include excess passengers, missing or inoperable seat belts, worn tires, inoperable windshield wipers or lights, and lack of medical coverage in the event of an accident.

Risks of heat illnesses:

- I haven't seen Rosalía for days, it's very rare because she never misses the orange cutting season.
- Didn't you know? A day ago, she became very ill and was taken to the hospital. She has not been able to return.

— I didn't know! Why? What happened?

— She fainted from the heat. That day the sun was not so hot, but the day before, it was. We all ended up very tired, and I think she came to work with discomfort. She worked very hard because her crew came in late, and they wanted to catch up with the others. She was sweating and sweating, but she didn't stop hurrying until she fainted.

— You don't say so! That's very serious, they shouldn't have to work like that. And no one said anything to the others, and there are people who have been very worn out. Last week the sun was very strong.

— Well, yes, but these are the down sides of this trade.

— Um... I don't know. I think this job is hard, but that doesn't mean we have to risk our safety. There are ways to take care of ourselves-- these things don't need to happen. Every job has its dangers, but everyone knows that the field demands a lot from you.

Working outdoors can have significant risks for workers, especially if the climate changes constantly. Hot seasons directly affect a worker's health, especially for those who work outdoors and in the sun.

In a hot environment, when a person is physically active, the human body depends on its ability to remove excessive heat (thermal dissipation) to maintain a healthy internal temperature. Heat dissipation occurs through perspiration and increased blood circulation to the skin. Workers lower their body temperature more quickly if their external environment cools and their physical activity decreases.

Below, we share information about

- ⊙ heat illnesses and their symptoms,
- ⊙ steps to prevent heat illnesses, and
- ⊙ immediate actions.

What are heat illnesses?

They are the conditions or alterations that occur when a person's body is not able to cool down. This can occur because it is not possible to reduce the body temperature generated by physical work and the heat of the environment. It can result in serious diseases or even cause the death of the worker.

Why do heat illnesses occur?

In many situations, weather conditions are the main source of heat for people who work outdoors.

It is common for people in agricultural fields to work on a contract basis (by piece rate) or by the hour. This generally implies that, to achieve a wage sufficient for their needs, people are forced to work very fast, without breaks, and under stress.

How does one recognize heat illness? What are the symptoms?

There are important symptoms for each "stage" or phase that can affect a person.

The earliest symptoms are:

- thirst
- headaches
- cramps in legs, thighs, toes, arms, or hands

Then there's heat stress or heat exhaustion

- weakness
- excessive sweating (wet skin)
- blurred vision
- vomiting
- nausea
- dizziness

And finally, the most serious symptoms and impacts of **heat stroke or sunstroke** (a medical emergency) include:

- dry, hot skin without sweating
- fainting or physical collapse
- anxiety
- mental confusion
- seizures or fits
- death



What to do if a worker has these symptoms?

If a worker presents with symptoms, they should take the following steps:

- Advise a supervisor to seek medical help.
- Ensure that someone always stays with the affected person until they are assisted.
- Call 911 for care. If emergency medical personnel are delayed, and the person has symptoms of heat stroke, call the hospital emergency room and ask for additional instructions, as this is a life-threatening emergency.
- Stop the activity and rest.
- Move the affected person to the shade and, if possible, somewhere with a fan or air conditioning.
- Loosen the affected person's clothing and remove clothing that is not necessary.
- Cool the person quickly using any available method. For example, submerge the person in a bathtub with cold water; apply ice; place the person under a cold shower; spray them with cold water with a garden hose; give them a sponge bath with cold water; or, if there is low humidity, wrap them in a wet, cold sheet, and fan the person vigorously. This is especially important if the person has symptoms of heat stroke. In that case, try to monitor the body temperature and cool it until its temperature drops to 101-102°F (between 38 and 39°C).
- Give the affected person water, but in small amounts, so that they do not vomit.

Does it affect all people equally?

Some individual factors that make people more vulnerable include:

- ⊙ health conditions: age, if pregnant, physical condition, weight.
- ⊙ heart disease, diabetes, high blood pressure
- ⊙ risk factors: not hydrating enough, drinking more coffee, alcohol or sugary drinks than water
- ⊙ medications (Some medications may cause the worker not to feel the hot conditions or not to sweat, so the symptoms of heat stress may not be evident.)

Some external factors might include:

- ⦿ workplaces: Areas with more extreme weather conditions, such as deserts or places with high heat or high humidity.
- ⦿ type of work: Outdoor agricultural work.
- ⦿ quantity of work and physical demands
- ⦿ not being used to working in the heat
- ⦿ the protective clothing or equipment used by the worker can contribute to the risk of suffering a heat illness.
- ⦿ seasons of the year: Warm seasons, such as spring or summer
- ⦿ start of work season: Most heat strokes occur in the first 14 days of work because the body is not yet acclimated to heat. That period is the most dangerous, especially if the worker is coming from a different climate or if he is working outdoors and has not worked this way during the previous months. It is important to start working outdoors slowly, for example, two hours at the beginning and add a couple of hours each day. If a worker stops working for more than a week, they will have to acclimate to the heat again.

What does the law say?

First, the law prohibits retaliation against workers who complain about unsafe or unhealthy conditions, such as heat stress conditions.

Federal law has no specific regulation on heat, but OSHA made recommendations for protection. Even though there is no specific OSHA regulation for heat hazards, OSHA can still fine employers if workers are exposed to heat stress because employers have an obligation to protect their employees from hazards that can cause harm or death. And being exposed to high temperatures can cause serious physical damage and death.

Some states, such as Washington, Colorado, California, and Oregon, have specific regulations for outdoor work. For example: the law in Oregon says that when the heat index is more than 32 degrees Celsius (90 degrees Fahrenheit), employers have to provide breaks in the shade every two hours. The state of Minnesota has regulations for heat in indoor workspaces.

Best Practices

Employers can apply best practices to prevent stress or heat stroke in workplaces or workplace housing is to implement a heat illness prevention program. Elements of a heat illness prevention program include the following:

- ⦿ Training for workers which consists of how to recognize symptoms, how to contact emergency medical services, the importance of having processes to protect workers who are not yet accustomed to the heat; and protocols to ensure that workers receive immediate first aid if they suffer from heat illness, among other issues.
- ⦿ Sufficient rest periods at work: if the work is difficult and it is very hot, the employer should give more breaks, or move teams around. A safety and health professional can help establish a work and rest schedule in high temperature conditions.
- ⦿ A cool place to rest - for example, an area with shade or refreshing air.
- ⦿ Provide sufficient cold drinking water for all workers. This is also a mandatory requirement under field sanitation standard.
- ⦿ Carry out work at the coolest hours of the morning to avoid working in strong sun.
- ⦿ Develop a buddy system, in which workers team up to monitor each other for signs of any heat illness.

Employers receiving FLSP grants must provide certain information to USDA about their heat illness risk practices. If a worker is experiencing working conditions related to heat illness prevention that he or she believes are inadequate, they may contact USDA at:

flspgrants@usda.gov
for more information.



© Campesinos Sin Fronteras

Pesticides

Using a pesticide in a manner inconsistent with its label qualifies as a breach in federal law. When a pesticide that references Worker Protection Standards (WPS) is used, applicators must comply with WPS requirements under CFR Title 40, Part 170. If you fail to comply with WPS requirements, you are using the pesticide in a manner inconsistent with its label and it is considered breaking the law.

What is the Worker Protection Standard?

The Environmental Protection Agency's (EPA's) Agricultural Worker Protection Standard (WPS) aims to reduce pesticide poisonings and injuries among agricultural workers and pesticide handlers. It requires employers of agricultural establishments that grow and harvest fruits and vegetables on farms, timber and trees in forests and nurseries and plants in greenhouses and nurseries for commercial purposes, among others, to take steps to protect agricultural workers and pesticide handlers from the risks resulting from occupational exposure to pesticides.

How can workers protect themselves from pesticides and other chemicals?

Pesticides are poisonous and can cause very serious damage to workers and their families.

Agricultural workers have the right to receive annual training on the dangers of pesticides, how they can protect themselves, and information about the pesticides they are applying in the field where they work.



What does the law say?

Workers have the right to obtain information on these products, and this should be available in a central location with respect to their workplace and during working hours on the following topics:

- ⦿ The names of the pesticides they are applying in their workplace, and their health effects on people
- ⦿ When and where pesticides are applied
- ⦿ When it is safe to return to the field where the pesticide was applied
- ⦿ How to protect against the effects of pesticides
- ⦿ The names, addresses, and telephone numbers of the nearest health care facilities

EPA requires that certain pesticides contain an “Agricultural Use Requirements” box under “Directions for Use” that reference the WPS. The Agricultural Use Requirements box requires certain practices intended to reduce or eliminate worker and handler exposure from pesticides. The box includes restricted-entry intervals (REIs), personal protective equipment, and the notification requirement for pesticide-treated areas. Examples of such boxes are available at the following link:



www.epa.gov/sites/default/files/2014-04/documents/pr95-5.pdf

Employers are obligated to offer emergency assistance in cases of illness or poisoning by pesticides, guarantee the transport of the person to a health care center and provide information on the pesticides to which the worker who suffered the illness may have been exposed.

Employers must generally refrain from directing or allowing workers to enter or remain in a treated area until the REI has expired and all warning signs are removed or covered, except in a few narrow circumstances, in which special protections are required.

If the worker is in charge of applying or mixing pesticides, their employer must give them the appropriate personal protective equipment (“PPE”) according to the instruc-



© Alianza Nacional de Campesinas, Inc.

tions in the “Agricultural Use Requirements” box on the pesticide label. Examples of required PPE could include: coveralls over long-sleeved shirt and long pants; chemical-resistant footwear plus socks; protective eyewear; chemical-resistant headgear for overhead exposure.

Employers should clearly inform workers when it is safe to enter the area after an application.

How can workers protect themselves from pesticides and other chemicals?

Workers should always take a shower when returning home after working with pesticides in the field and before hugging or having contact with another person (such as children, spouse, etc.). Workers should also wash their hands after working on the fields and before drinking, eating, or smoking.

When possible, workers should wear clothing that covers their skin well. Long sleeved shirts, long pants, shoes and socks are considered baseline attire for all farmworkers.

Are workers protected from retaliation by the WPS?

Yes. Agricultural employers, commercial pesticide handler employers, or others cannot intimidate, threaten, coerce or discriminate against, prevent, discourage, or fire any worker or handler from complying or attempting to comply with the WPS. Additionally, the agricultural employer cannot retaliate in any manner if:

- ⦿ Any worker or handler refuses to participate in any activity that the worker or handler reasonably believes to be in violation of the WPS,
- ⦿ Any worker or handler has, or is about to report WPS noncompliance to appropriate authorities for enforcement of WPS provisions, or
- ⦿ Any worker or handler agrees to provide information to the EPA or any duly authorized representative of a Federal, State or Tribal agency about WPS compliance, or assists or participates in any manner in an investigation, proceeding, or hearing concerning WPS compliance.²²



More information on federal standards can be found here:
www.epa.gov/pesticide-worker-safety

Workers can also refer to EPA's Pesticide Worker Protection Standard "How to Comply" Manual, available at:

www.epa.gov/pesticide-worker-safety/pesticide-worker-protection-standard-how-comply-manual



Medical Monitoring

Some states, such as California and Washington, require that workers who are exposed to certain neurotoxic pesticides be medically controlled through blood tests to avoid excessive exposure. This makes it possible to detect when the level of exposure is risky to workers' health before workers present symptoms of intoxication.

22 Environmental Protection Agency and Pesticide Educational Resources Collaborative. "How to Comply with the 2015 Revised Worker Protection Standard for Agricultural Pesticides: What Owners and Employers Need to Know," 2017, available at: <https://www.pesticideresources.org/migrated/wps/htc/htcmanual.pdf>

What should the worker do if the employer does not respect these guidelines and exposes him/her in a dangerous way to pesticides?

The worker can report pesticide poisoning to the Environmental Protection Agency (EPA) by calling **1-800-222-1222** (select 2 for Spanish).

This line can guide you to understand what to do if the worker shows symptoms of poisoning.

Likewise, to make queries about pesticides, the worker can call the Pesticide Information Center (NPIC), by calling **1-800-858-7378** from Monday to Friday from 8am - 12pm (Pacific time). A Spanish option is available. This organization has a team of experts who can help with any pesticide questions. You can visit their website here:



npic.orst.edu/

In general, it is important to call **911** immediately if someone has difficulty breathing, faints or loses consciousness or has seizures after contact with pesticides.

Workers can also report this to OSHA by calling **(800) 321-OSHA (1-800-321-6742)** (select 2 for Spanish). Likewise, many state workplace health and safety agencies have competent areas in this matter.

Does the worker have any additional protection if they are pregnant?

Yes, employers must provide reasonable accommodations at work for any pregnant worker. While the federal law establishing this obligation is recent, it includes protections for the prevention of heat illnesses and exposure to pesticides.

In some states, state laws provide additional resources. For example, in California, pregnant people have the right to not work during their pregnancy if work unduly exposes them to pesticides, and to collect state insurance equivalent to 70% of their wages.

Mental Health

Although there is still a lot of stigma around this issue, mental health is an important part of overall health. It is completely normal for a worker to have feelings of anxiety, loneliness, etc., especially when the worker is outside their community of origin, away from their family and the people they love.

When people feel sad, tired or depressed, it is very important to seek help. This does not mean being weak and it is not a shameful action, but one that takes courage and a lot of self-awareness.



How can I tell when I'm not feeling well emotionally?

If a worker experiences feelings of frustration, apathy, extreme tiredness, weakness and sadness, it is very likely that they are emotionally exhausted and need support to revitalize themselves.

There are many ways to take care of oneself, such as staying in touch with friends, watching a favorite TV show, making sure to get enough sleep, eating healthy food, etc. A self-care plan can be a useful tool for those who are feeling stressed, isolated, or have other similar feelings.

There's always help

In the United States, workers can always call the Suicide and Crisis Lifeline by dialing **988**. They can also go to community health centers.

If they have health coverage, workers may seek professional psychological or psychiatric support that accepts their insurance.

Can the mental health of workers be linked to work? Can the employer be responsible for this?

Yes, this is an important factor in the health of workers. OSHA has developed a manual of recommendations to create a work environment that supports the mental health of workers, available here:



www.osha.gov/workplace-stress/outreach-materials²³

In some cases, abuse or harassment at work leads to a deterioration in workers' mental health. When these mistreatments are due to factors such as the sex of the worker, their nationality or race, among other criteria, this situation could be considered a form of discrimination that can be reported to the government agencies in charge of these issues. We'll learn more about discrimination and how to report it later.

Facilitation dynamics

STEP 1. INTRODUCTION

Present initial informative image and the general framework of the right to safety and health. Ask what it means "to be healthy" or "to have health" and "to be safe" or "to be secure".

STEP 2. PROVIDE INFORMATION ABOUT THE GENERAL RIGHTS OF MIGRANTS

Share information about the right to occupational health and safety; OSHA and State Plans; worker's compensation; health insurance and

23 This page is available in various languages (including Spanish), which can be selected from the menu at the top of the page.

access to community health; protection against disability discrimination; commitments under the FLSP.

- ☉ Can pass out worksheets and read in a group and then present to the group.

STEP 3. PROVIDE INFORMATION ABOUT HEAT ILLNESSES, PESTICIDES, FIELD SANITATION AND MENTAL HEALTH

Present information with the informative images. You can present them as skits or simply present the information, depending on the openness of the discussion.

- ☉ Identify steps to act on these risks.

STEP 4. REINFORCE THE INFORMATION WITH PRACTICAL CASES

Divide the participants into groups. Distribute sheets with informative images of different types (in appendices).

Appendices

1. Heat Illness

Joaquín works in the peach harvest. He usually works in the heat and is used to working long hours. One day, however, he begins to feel very tired and weak. He sweats a lot and gets very thirsty. A bad headache. He tries to keep working, even though he feels disoriented, and his pulse is racing. When his peers ask him what is wrong with him, he talks in a confused manner.

i. What could be happening to Joaquín?

Joaquin has symptoms of heat exhaustion.

ii. What can your peers do?

- ☉ Advise a supervisor so that he or she can seek medical assistance.
- ☉ Tell Joaquín to stop the activity and rest.
- ☉ Move Joaquín to the shade and, if possible, somewhere with a fan or air conditioning.
- ☉ Loosen his clothing and remove clothing that is not necessary
- ☉ Cool Joaquín quickly using any available method. For example, submerge him in a bathtub with cold water; place him under a cold shower; spray him with cold water with a garden hose; give him a sponge bath with cold water; or, if there is low humidity, wrap him in a wet, cold sheet, and fan it vigorously.
- ☉ Give him water, but in small amounts, so that he does not vomit.

iii. What can Joaquín do?

He can talk to his supervisor to implement some of the practices listed above.

If the supervisor does not implement these, and Joaquín feels that he continues to be at risk of suffering heat exhaustion, he can report it to OSHA. He can consider whether any element of the field sanitation standard was violated or breached in this case and report the situation to DOL if it was.

If a worker suffers any medical consequences from heat exhaustion and needs to seek medical help, they may file a workers' compensation claim.

2. Pregnancy

Catalina is four months pregnant. She works in the lettuce harvest in California. Her employer has informed her that the pesticide that is applied early in the morning carries certain risks, particularly for pregnant people. In addition, both the posture required by the harvest and the heat have aggravated the nausea she suffers as a result of pregnancy. She has not yet commented on the pregnancy to her supervisor because she fears that he will not want to hire her again in the future if he finds out.

i. What could Catalina do to improve her work experience?

It is important for Catalina to know that her employer cannot take action against her because she is pregnant, and to notify her employer of the pregnancy in order to seek reasonable modifications to her duties. For example, she could suggest changing her schedule to avoid more exposure to pesticides in the morning, finding some other harvest-related task that doesn't expose her as much to heat, more water breaks, and support systems, such as a place to sit, that she can use during the harvest. It is important for Catalina to know that her employer has an obligation to find such modifications in good faith, unless doing so would cause undue hardship to the employer.

ii. What resources could Catalina access for counseling?

Catalina could obtain a note from a medical clinic that recommends some modifications to her tasks and write a note to the employer with these recommendations.

She may also contact the EEOC by calling **1-800-669-4000** (select 2 for Spanish) or emailing: info@eeoc.gov, or using this link to contact the EEOC:



Scan QR code

web.archive.org/web/20230329010104/www.eeoc.gov/es/initial-consultation.

She can also contact Alianza Nacional de Campesinas with additional questions.

iii. What can Catalina do if her employer does not accept any reasonable modification to her job and she fears for her health and that of her future baby?

Catalina may report non-compliance with federal laws requiring these reasonable modifications to the EEOC.

Under California law, Catalina may also access a leave of absence in which she would get 70% of her wages if there is no possible modification that protects her from risks to her health.



MODULE 6

Discrimination

OBJECTIVES:

- ⊙ Recognize and share the different situations of discrimination in employment that migrant workers may face.
- ⊙ Learn about employment discrimination on the basis of sex, race or color, nationality, age, and disability.
- ⊙ Learn about the protections offered by the H-2A program against preferential treatment for people with visas.
- ⊙ Identify what to do if faced with discrimination.

Hello! I am Raquel and today I want to tell you a little about me. For several years I was a worker with an H-2A visa. I worked in the strawberry harvest. Generally, it is women who do this work, and we work long hours with few breaks, because unlike other jobs in the United States, in this type of work we are paid per piece and not per hour, so we have to work quickly and non-stop, to pick more quantities and earn a little more money.

Yes, I faced discrimination at work just because I was a woman. I was paid less than my male colleagues in other harvests, who received their wages by the hour and not by the piece, like us.

Even today, and after several years of looking for new job opportunities, I continue to face gender discrimination. Just because I am a woman, employers have not wanted to hire me to work in the orange harvest, as I would have liked, because they tell me that "I can't stand it" or "I will only go to find a husband." But that has got to change!



Introduction

For many years, deep inequalities were normalized or accepted. It was normal to see differences in treatment or access to opportunities because of one's sex, differences because of one's age, differences because of the color of one's skin, because of one's language, because of one's physical characteristics, because of one's customs and culture. For a long time, we have believed that this is normal.

It is time to completely break with these inequalities and to stop conceiving them as normal; discrimination must disappear from people's beliefs.

Today, the great goal is for all people to be treated with dignity and have access to the same opportunities.

Educational Content

What is employment discrimination?

Employment discrimination is the difference in treatment in employment at work for reasons that are not related to workers' job performance, but that are instead due to certain protected characteristics. Employment discrimination typically occurs when an employer intentionally treats an employee differently because of their race, color, religion, national origin (because they are from one country, because they speak another language, or because of their ethnicity or accent), disability, sex (including pregnancy, gender identity and sexual orientation) or age (against people who are 40 years or older), in any of the phases of hiring, discipline, performance of work tasks or dismissal. These bases of discrimination identify protected classes, groups of individuals who are protected against discrimination under federal laws. But discrimination also occurs when some employer practices that do not have the conscious purpose of discriminating result in unequal working conditions for its employees in one of these protected classes and the employer cannot demonstrate that the practice is work-related or justified by a business need.

On the other hand, there are situations in which not offering different working conditions to some workers in order to favor their labor inclusion can be considered a form of discrimination. This occurs, in some cases, when a worker requires an accommodation to working conditions or tasks due to a disability or pregnancy.

Employment discrimination can occur at any time, even during the process of applying for a job. For example, a person may be discriminated against during an interview or when initially consulting for a vacant position because of their race or the accent with which they speak.

What workplaces are governed by national law?

National laws that prohibit discrimination apply to employers with 15 or more employees. Some state laws also prohibit these forms of employment discrimination and apply to smaller employers with fewer than 15 employees.

What constitutes a discriminatory act?

A discriminatory act is any unfavorable treatment that has to do with work, including in the context of the decision to hire, fire, assign tasks, promote a worker, offer professional training or other benefits, and any other term or condition of work.

Harassment or mistreatment is a form of discrimination when it generates a hostile or offensive work environment for the worker.

The person who commits the discriminatory act can be the employer, supervisor, co-worker, or client of the employer.

Frequent forms of employment discrimination in the H-2A program:

Women have historically been underrepresented in the H-2A temporary work visa program.²⁴

24 United States Government Accountability Office, H-2A and H-2B visa programs, Increased Protections Needed for Foreign Workers, March 2015 (reissued May 30, 2017) (noting there are approximately three times as many women given H-2B visas compared to H-2A), available at: <https://www.gao.gov/assets/690/684985.pdf>. (“Of those workers who entered the country on H-2A visas, almost all were men—96 percent or more for all five fiscal years” between 2009 and 2013).

Likewise, there has been documentation of different types of sexual harassment and abuse for women and sexual minorities. This is also a form of discrimination, which we will discuss in more detail later.

Additionally, many workers in the H-2A program have reported that they suffer different types of abuse at work, often insults related to their nationality, or racial or ethnic identity.

Prohibition of preferential treatment of workers with H-2A visas: In the H-2A visa program, the job order offered to U.S. workers must offer no less than the same benefits, wages and working conditions that the employer will offer to workers with H-2A visas. Job orders may not impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2A workers.

U.S. workers are citizens of the United States, permanent residents of the United States, persons with asylum or refugee status in the United States or with another immigration status that authorizes them to perform this work in the United States.

What are the conditions under which discrimination is not permitted?

Non-discrimination on the basis of sex:

Discrimination based on sex or gender is prohibited under federal law and many state laws in the United States. An employer cannot treat workers differently in making decisions related to hiring, promotion, wages, benefits, evaluations, or dismissal, based on the worker's sex (which is defined to include gender identity, sexual orientation, and pregnancy).

Unequal treatment based on gender stereotypes is a form of discrimination based on sex. For example, if an employer fires a woman because she does not behave in the way the employer considers women should behave, this would be a form of discrimination prohibited by a national law.

Unequal treatment based on sexual orientation or gender identity or expression is also a form of discrimination based on sex.

As we will see in the next module, sexual harassment is another form of discrimination based on sex.

Examples of **discrimination on the basis of sex** include the following:

- ⦿ A potential employer asks discriminatory questions based on a person's gender in the interview process, such as asking a woman why she has not had children;
- ⦿ An employer does not hire women, or only hires women for certain jobs with lesser benefits;
- ⦿ An employer authorizes unequal pay based on gender for the same work; and
- ⦿ An employer is responsible for sexual harassment or abuse of an employee because of their sexual orientation.

Can an employer take action against a worker or treat them differently due to a pregnancy or the birth of their baby?

No. Discrimination on the basis of pregnancy, birth, or medical conditions related to pregnancy or birth is prohibited. This includes conditions such as breastfeeding and the need to express milk at work, or abortion. Employers must give their employees a reasonable accommodation during their pregnancies, when they have a known limitation related to the pregnancy, childbirth, or a related medical condition and request the accommodation, except when this involves undue hardship to the employer. These accommodations may include additional or longer breaks to drink water, go to the bathroom, or rest; limit exposure to pesticides that could affect pregnancy; changes in work schedules; and a shift to less physically demanding tasks, among other possibilities. In addition, more than 30 states have laws that protect pregnant people at work.

Although workers have the right to request these reasonable accommodations, they also have the right to work for as long as they want, as long as they have the physical capacity to do so safely.

It is also important to know that the employer has the obligation to give their employees reasonable time and a place that is shielded from view and is NOT a bathroom, to express breast milk when they request it and if they need it for up to one year after the child's birth.²⁵

25 DOL Fact Sheet #73: Break Time for Nursing Mothers under the FLSA. U.S. Department of Labor, <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>.

Discrimination on the basis of race/color:

Race discrimination is treating an employee or job applicant unfavorably because they are of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain features). Color discrimination is treating a person unfavorably because of their skin color complexion.

Racial discrimination can occur or be generated by the supervisor, a supervisor from another area, and even co-workers, and occurs in different situations, for example:

- ⊙ offensive or derogatory comments about a person's race or color
- ⊙ drawings, cartoons, symbols, or gestures offensive to race
- ⊙ prohibiting or preventing promotions at work due to the person's race
- ⊙ assigning lower positions to workers on the basis of their race
- ⊙ other physical or verbal behaviors based on a person's race

Discrimination on the basis of national origin:

National origin discrimination is unfavorable treatment of a working person because they are from another part of the world, because of their ethnicity, language, or accent, or because they appear to be of a certain ethnic origin, even if they are not. It can also happen by marrying a person of another national origin. It is still considered discrimination even if the person who commits the act of discrimination is of the same nationality.

If the employer requires a worker to speak English, although English is not an essential requirement of the job, this could be a form of discrimination based on nationality.

Age discrimination:

US federal laws protect workers of at least 40 years of age against discriminatory acts based on their age.



Disability discrimination:

This form of discrimination occurs when an employer treats a person unfavorably because of their disability. In this context, a disability is broadly defined as any physical or mental impairment that substantially limits a major life activity (such as walking, talking, seeing, listening, learning, etc.) or a major bodily function (such as brain, musculoskeletal, respiratory, circulatory, or endocrine function). It does not need to be a permanent or long-term condition.

Employers are required to provide a reasonable accommodation to a qualified employee or applicant for employment with a disability, except when such accommodation would cause an undue hardship.

In certain circumstances, it is illegal to require an individual to answer certain medical questions or to undergo a medical examination to give them a job.

Discrimination on the basis of religion:

This type of discrimination occurs when an employer treats a person unfavorably because of their religion or that of people close to them. The word “religion” encompasses not only traditional religions but also other belief systems.

Employers are required to provide a reasonable accommodation for religious requests from workers, such as having the possibility of going to church, as long as it does not impose an undue hardship.

It could be discriminatory conduct for an employer to require a working person to participate in a religious activity or for the employer to harass an employed person for being an atheist or for not participating in a religious activity.

What can be done in the event of employment discrimination?



If workers face a problem related to discrimination at work, they can consider speaking with their employer first, if they feel comfortable doing so. If they choose to do so, it is important that the worker try to identify if the employer has a policy that designates a person or department responsible for receiving these kinds of complaints and, if so, use this complaint mechanism.

In certain cases, if a worker doesn't report discrimination internally first, it is possible that the worker may face some limitations to their rights under federal laws. It is important to note that federal laws that prohibit employment discrimination also prohibit employers from retaliating against workers for opposing or reporting unlawful discrimination or harassment. This includes notifying the employer of an unlawful discrimination situation. It can also include resisting or rejecting discriminatory acts directly, either against themselves or a colleague.

State laws on the subject may include additional requirements regarding how discrimination must be reported, as well as greater protections.

For support, workers can visit the resources mentioned throughout this manual for support and follow up with Alianza Nacional de Campesinas with any follow up questions.

These cases may be reported to the EEOC, generally if the employer had 15 or more employees for at least twenty weeks during the past year, although there are exceptions (e.g., discrimination on the basis of age (over 40), some forms of national origin discrimination and certain types of pay-related discrimination based on sex do not have the same employer size limitations). On the other hand, many states and local governments have anti-discrimination laws that apply to employers with

fewer employees. If such a law exists in the state in which the worker is employed, the worker can report the situation to the corresponding agency in their state. If you have any questions about whether the EEOC can conduct an investigation for discrimination committed by your employer, you may contact the EEOC to inquire about this issue.

Employment discrimination must be reported to the EEOC within 180 days of the last discriminatory event, except if there is also a local rule prohibiting the same type of discrimination.



To report to the EEOC, the worker can call **1-800-669-4000** (select 2 for Spanish) or send an email to **info@eoc.gov**. EEOC has Spanish-speaking staff, so it's okay for you to leave messages or send emails in Spanish. You can also send a message in your native language and EEOC will find a translator to interpret it. On the other hand, you can use this link to contact EEOC:

[web.archive.org/web/20230329010126/https://www.eoc.gov/initial-consultation](https://www.web.archive.org/web/20230329010126/https://www.eoc.gov/initial-consultation)



More information on filing a charge of discrimination can also be found here:

www.eoc.gov/filing-charge-discrimination

EEOC does not charge money for assisting workers.

EEOC can assist people who allege employment discrimination regardless of their citizenship or immigration status. For undocumented people, EEOC is a “certifying agency” for U and T visas. That means EEOC can help workers who are victims of trafficking and certain other crimes to apply to remain in the United States and continue working while they cooperate with authorities investigating or prosecuting the crime.



When someone calls the EEOC, they should be prepared to give the following information:

- ✓ name, address, and telephone number of the person reporting
- ✓ name, address and telephone number of the employer and the number of workers it employs (if known)
- ✓ a brief description of the facts they want to report, with any documentation they have
- ✓ the dates on which the events occurred
- ✓ the name, address and telephone number of any person who has witnessed the events
- ✓ information on whether a report was also made with a local agency
- ✓ the name, address and telephone number of a person who can contact the person reporting

If the person does not have all of this information at their disposal, EEOC may investigate the facts anyway.



Workers can also report to state agencies with similar responsibilities. In particular, many states in the United States have local agencies that are called 'Fair Employment Practice Agencies.' You can find a local agency here:

<https://www.usccr.gov/files/pubs/crd/stateloc/all.htm>

To report cases of preferential treatment towards workers with H-2A visas, you can call WHD of DOL by calling:

1-866-4USWAGE (1-866-487-9243) (select 2 for Spanish).

What is the process for investigating and reporting employment discrimination?

An attorney is not required to file a complaint with the EEOC or local agencies with similar responsibilities. Sometimes EEOC will be able to resolve a worker's claim without litigating the case. If an individual decides to move forward with a legal complaint in court for violations of national laws with an attorney, it will be necessary to first file a complaint with the EEOC.

There are time limits for filing the claim. Therefore, it is important to file the claim as soon as possible.

In complex cases, workers can consult with a Trainer from the National Farmworker Women's Alliance, who can refer their case to a trustworthy lawyer if they determine that the person requires further legal advice.



Facilitation Dynamics Recommendation:

STEP 1:

Introduction with informative image

STEP 2:

Invite the participants to reflect on the topic and share their experiences through a discussion based on the questions in Appendix 1

STEP 3:

Presentation of educational content

STEP 4:

Work in groups with examples and questions in Appendix 2

STEP 5:

Closing Discussion: solicit group perspectives on the obstacles and benefits of filing discrimination complaints

Appendices

1. Discussion Questions

Do you think all workers in your state/locality are treated in the same way?

If not, what factors could those differences be based on?

Why do you think these differences arise?

What are the consequences of these differences in treatment?

2. Stories for group work

Discrimination on the basis of national origin

A group of men from Mexico with H-2A visas were working in a grape field. They were all from the Mixtec people and spoke that language to each other, although most also spoke Spanish. Their supervisor was of Mexican origin but born in the United States. When they began to work, the supervisor denigrated them, insulting them in English by calling them “beaners.” When they asked to go to the bathroom, he always forced them to continue working for a while, saying that if they took a break, they could “just go back to Mexico.” After a few weeks, when the supervisor realized that they spoke in Mixteco amongst themselves, the supervisor prohibited the use of that language, both in the fields and in employer-provided housing. One day, a son was communicating with his father in Mixteco, since his father could not speak Spanish. When the supervisor realized it, he became angry and began to insult both workers. When the son told him that he could not treat his father like this, the supervisor said that he would talk to the employer to have them both fired.

i. Did these workers suffer discrimination? What type?

- Ⓒ Yes, the entire group suffered discrimination on the basis of their national origin.
- Ⓒ The son and his father also suffered retaliation for resisting that discrimination.

ii. What could you do in this situation?

- Ⓒ They could talk to the employer to report the situation to the supervisor.
- Ⓒ In the event that nothing improves, or they suffer any retaliation, they could report this discrimination to the EEOC or the state agency, depending on the state.





MODULE 7

Sexual Harassment and Violence

OBJECTIVES

- ⊙ Recognize sexual harassment and violence in agricultural work.
- ⊙ Identify laws that protect workers against these facts.
- ⊙ Analyze the relationship between domestic violence and discrimination at work.
- ⊙ Analyze reporting sexual violence and harassment as a component of a safety plan.
- ⊙ Learn about other resources that can help people going through these processes, such as health, economic and migration resources.
- ⊙ Learn about existing reporting mechanisms, their value and limitations.

- Hi Cecilia, how are you? Hey, are you thinking about going back to work this year in wine grape farming in the United States? My aunt told me that you went last year and made good money.
- Well, yes, the truth is that it was worth it financially but unfortunately, I will not return. I felt very lonely and sad when I was there, and I do not think that it would be safe to return.
- Why is it not safe? Didn't you go with a visa?
- Well, yes, but the truth is that bad things happened to me with my supervisor when I was there. It is not something that I like to talk about, and I no longer think that working in the fields in the United States is a safe place for me as a woman. I wouldn't recommend it to anyone else.
- I'm so sorry. That does sound very difficult, and I understand that you do not feel comfortable sharing much more. I hope you can find the resources to heal and seek justice



Sexual violence in the fields is very common, but it can be very difficult to talk about the issue because of the trauma involved. Many times, it happens in hidden places and is not made visible, since people going through that situation may feel a lot of shame, sadness or fear of talking about it. But it is never the victim's responsibility or fault. Therefore, it is important that we can talk about what to do in these situations and some points to take into account to protect our safety at work, as much as possible.



Educational Content

What constitutes sexual harassment at work?

Sexual harassment is a form of discrimination that consists of bothering a person at work because of their sex. While the law does not prohibit an isolated comment or fact of little seriousness, repeated or consistent or very serious comments are illegal if they create a hostile work environment or if they have negative effects for the worker, such as being fired.

Harassment can include acts of a sexual nature, such as unwanted sexual proposals, or offensive comments based on a person's sex. Examples of sexual harassment at work include the following:

- ⊙ Vulgar jokes about a person because of their sex
- ⊙ Pornography at work
- ⊙ Unwanted communications, either in the form of email, text, WhatsApp, or in person
- ⊙ Asking a worker for sexual favors

Common questions

My supervisor constantly harasses another colleague. One day he showed her sexual photographs in front of everyone. Is this also sexual harassment towards the rest of the co-workers?

Yes, they all may be experiencing sexual harassment. Harassment does not need to be focused on a single person in order to be considered unlawful. Anyone who is affected by the sexual harassment of one person towards another at work can be a victim of this form of discrimination.

The person who harasses me says not to take it so seriously, that he's just trying to be funny and that I don't understand his sense of humor. Is it still illegal?

Yes, it may still be illegal. It does not matter if the intention of the person harassing another is to be funny or to praise another person. It is only necessary that the harasser's behavior is not desired or welcomed by the harassed person.

The person who harasses me is of the same sex as me. Can it be illegal anyway?

Yes, the person who is a victim and the victimizer can be male or female. They do not need to be of opposite sexes.

I felt harassed and went through moments of anguish and stress, but fortunately I did not suffer any other economic consequences at work as a result of sexual harassment. Is it illegal anyway?

Yes. Sexual harassment does not need to cause material or economic harm to the person being harassed in order for the conduct to be unlawful.

Is it only illegal if it is the boss who harasses?

No. The harasser can be a supervisor, an agent of the employer (such as a contractor), a supervisor in another area, a co-worker, or a person who is not an employee of the same employer but who commits this harassment in the work context. Employers are responsible for taking steps to prevent harassment by their supervisors, employees, and agents, and to address it immediately when necessary.

What is workplace sexual violence?

Sexual violence is a broader concept, encompassing sexual harassment but also including other more serious conduct, such as sexual assault or rape, which are considered crimes under different state and federal laws. As sexual violence is not prohibited by a single law, but by many different laws, it does not have a single legal definition.

It includes the violation, with or without genital access, of the right of women to voluntarily decide about their sexual or reproductive life, through threats, coercion, use of force or intimidation.

Some forms of coercion include:

- ⊙ threats of deportation
- ⊙ threats that the individual will be reported for some other improper reason
- ⊙ physical harm to one's person, another loved one, or their belongings
- ⊙ not being hired or getting fired from a job.

Sexual violence, including rape, is a type of sexual harassment prohibited by the law against discrimination on the basis of sex at work.



Sexual violence based on sex, whether at work or in domestic life, is not an individual problem. It is a form of violence that is repeated in society because it corresponds to stereotypes and social consensus. Through this and other forms of violence, hierarchies between genders and between different sexual orientations and gender identities are established and perpetuated. This is why inequality often spreads.

Sexual harassment and violence in the H-2A program – complaints and common practices

Sexual harassment and violence have been widely reported in the H-2A program and in the agricultural industry in general. These types of acts may be crimes, as well as violate discrimination laws, and they can be committed by people who are supervisors, co-workers, and employers.

80% of farmworker women who were surveyed for a study in 2010 reported having experienced some form of sexual violence at work.²⁶ Farmworker women reported the following examples of workplace harassment and violence:²⁷

A California woman reported that a supervisor at a lettuce production company had raped her and warned her to “remember that it’s because of him that [she] had this job.”



A woman from New York said that a supervisor had a habit of touching the breasts and bottoms of women who collected potatoes and onions in the field. If they tried to resist, he threatened to call immigration.

Four women who had worked together at a cauliflower packing plant in California said a supervisor would often show them their private parts and make vulgar, sexual comments. When they tried to defend a young woman whom this supervisor treated in a particularly abusive manner, he decided to fire the entire group.

What laws protect workers from sexual harassment and violence?

Sexual harassment as a form of discrimination

The federal law against discrimination on the basis of sex protects against sexual harassment at work. Many state laws that prohibit discrimination on the basis of sex also consider such conduct to be a form of discrimination.

26 Irma Morales Waugh, “Examining the Sexual Harassment Experiences of Mexican Immigrant Farmworking Women,” *Violence Against Women* 16(3) (2010): 241.

27 Human Rights Watch. “Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment.” (2015), available at https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and#_ftnref77.

Sexual harassment and violence are also a crime

While laws vary by state, many forms of sexual violence are also crimes and can be punished by the criminal justice system, including with jail time.

Some forms of sexual violence that are considered crimes are:

- © Sexual assault: is physical contact or sexual conduct that occurs without the consent or explicit permission of the victim. It may include attempted rape, sexual groping without consent, forcing the victim to perform sexual acts on the victim's body, and rape.
- © Rape: is a specific form of sexual assault. You can access the definitions of rape under the criminal laws of the different states here:

https://apps.rainn.org/policy/?_ga=2.142855989.1003507238.1715843840-1201827495.1715843840 .



Domestic violence based on sex also affects the world of work

In addition to suffering very high levels of sexual violence at work, many farmworkers also suffer forms of domestic violence based on gender. One study found that about one in three rural women experience domestic violence.

Domestic violence is a form of violence (including threats or attempts of violence) committed by the victim's spouse, a person with whom the victim has a child, a person who shares or has shared the home with a victim, or by a partner who has characteristics similar to a spouse. Under some state laws, the list of people who can commit domestic violence is broader. Domestic violence applies to a pattern of coercive (manipulative) behavior that aims to gain power and control over the perpetrator's current or past intimate partner. It may include physical, sexual, psychological, or emotional violence, such as forms of economic control, isolation, or verbal abuse.

In many states, being a victim of gender-based violence cannot be a reason for unequal treatment at work and may require reasonable accommodations by the employer. For example:

- © ***In California*** an employer may not discriminate against a working person who is required to take time off work to request an injunction, such as a contact restriction order, or judicial assistance to protect their safety and health or that of their children. In some cases of larger employers, they can also not discriminate against the person because they need time from work to protect other rights, such as psychological assistance or housing.
- © ***In New York***, victims of domestic violence are a category protected by the state's anti-discrimination laws and also have the right to take time off work to take safety measures.



© Alianza Nacional de Campesinas Inc.

What could be the consequences for a worker of committing acts of sexual harassment or violence against another worker?

If a worker commits an act of sexual violence against their co-worker, this can be grounds for dismissal for cause. Depending on the circumstances, they may also be criminally charged and possibly sentenced to prison. A criminal proceeding of this nature can also limit the possibilities of the victimizer (aggressor) to apply for work visas in the future.

What can a person who suffers sexual violence do?

If faced with a situation of sexual harassment at work, workers can try to talk to their employer to resolve it, if they feel comfortable doing so. If so, it is important that the worker tries to identify if the employer has a policy in this regard that designates a person or area as responsible for receiving these complaints, and that they channel the claim through that channel if it exists. Under the federal law that prohibits sexual harassment, the employer has the obligation to correct this situation when they know that a worker is being harassed. On the other hand, in some circumstances, it is possible that a worker's failure to report harassment through the appropriate means to his or her employer could limit his or her rights under federal law prohibiting sexual harassment. In those cases, state laws may provide greater protection.

The worker can report this situation in writing – preserving a copy of the communication in a safe place – or verbally, taking notes of the conversation later, to ensure that there is proof of their internal claim in the future.

It is important to note that the federal law prohibiting sexual harassment also prohibits employers from retaliating against workers for opposing unlawful discrimination or harassment. This includes making or accompanying an internal report of sexual harassment. It can also include resisting or rejecting an act of sexual harassment directly, whether against the same worker or a colleague.



In cases of more serious sexual violence, while it is important to keep these considerations in mind regarding federal sexual harassment law, it is also important to know that there may be other laws, including state criminal laws, that protect people in this situation.

In all cases, it is important to consider the physical and emotional safety of the worker before defining how and where they should report a situation of this type.

1. Reporting may be imperative to change workplace practices, but it is important to recognize that it is only one component of a plan to protect yourself. It may not be the best or only solution in all cases. That is up to each affected worker.
2. It is also important to think about the emotional, social, economic and migratory needs of the victim and their family.



© Campesinos Sin Fronteras

Steps to Protect Safety

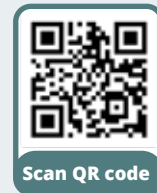
It is important to think first about the safety and well-being of the person experiencing sexual violence or harassment. Some strategies that survivors of sexual harassment and violence have shared include:



asistahelp.org/wp-content/uploads/2019/04/Stop-Workplace-Sexual-Violence.pdf

ASISTA is a non-governmental, nonprofit organization with a 501(c)(3) status that provides immigration assistance to survivors of domestic and sexual violence.

More information at
asistahelp.org



- Ⓢ **Knowledge.** Workers should try to avoid being alone without notifying a colleague who can check on them if necessary. A worker can notify other people about their location and movements so that they can confirm that everything is fine in case they take more time than expected to do something.
- Ⓢ **Peer system.** A worker can develop a plan with a peer to confirm from time to time that both are fine while working.
- Ⓢ **Document an incident.** If it does not pose a greater security risk, a worker can record, take photos or talk to witnesses about what happened. A worker can also write down what happened in a personal journal.
- Ⓢ **Report when safe.** A worker may consider making a report about a supervisor to the employer, to leaders of a union or organization of workers, or to the authorities, depending on the information provided below.
- Ⓢ **Report anonymously** when a report is unsafe.

Reporting sexual harassment or violence at work

Resources to Report:

Sexual harassment is a form of employment discrimination, for which the employer can be subjected to a civil procedure that results in the obligation to pay damages (money) and/or legal expenses of the victim, and in civil orders that prohibit certain forms of discrimination in the future.

These cases may be reported to the EEOC if the employer has 15 or more employees. It must be reported to the EEOC within 180 days of the last discriminatory event, except if there is also a local rule prohibiting the same type of discrimination.

To report to the EEOC, the worker can call **1-800-669-4000** (select 2 for Spanish) or send an email to **info@eoc.gov**. EEOC has Spanish-speaking staff, so it's okay for you to leave messages or send emails in Spanish. You can also send a message in your native language and EEOC will find a translator to interpret it. You can use this link to contact EEOC:



www.eoc.gov/initial-consultation

More information on filing a charge of discrimination can be found here:



www.eoc.gov/filing-charge-discrimination

EEOC does not charge money for assisting workers.

EEOC can assist people who allege employment discrimination regardless of their citizenship or immigration status. For undocumented people, EEOC is a "certifying agency" for U and T visas. That means EEOC can help workers who are victims of trafficking and certain other crimes to apply to remain in the United States and continue working while they cooperate with authorities investigating or prosecuting the crime.

You can also report to state agencies with similar responsibilities. In particular, several states in the United States have local agencies that are called "Fair Employment Practice Agencies." You can find a local agency here:

www.usccr.gov/files/pubs/crd/stateloc/all.htm





EEOC callers should be prepared to give the following information:

- ✓ the name, address, and telephone number of the person reporting
- ✓ the name, address and telephone number of the employer and the number of workers it employs (if known)
- ✓ a brief description of the facts they want to report, with any documentation they have
- ✓ The dates on which the events occurred
- ✓ The name, address and telephone number of any person who has witnessed the events
- ✓ information on whether a report was also made with a local agency
- ✓ The name, address and telephone number of a person who can contact the person reporting

If the person does not have all of this information at their disposal, EEOC may investigate the facts anyway.



Sexual violence can also be a crime. For assistance in reporting other forms of sexual violence, you can contact the National Sexual Assault Hotline, managed by the Rape, Abuse & Incest National Network (“RAINN”),²⁸ at any time, by calling **1-800-656-4673 (HOPE)** (select 2 for Spanish).

centers.rainn.org

28 RAINN is a non-governmental, nonprofit organization with a 501(c)(3) status that offers free support to survivors of sexual violence and their loved ones. See more information at rainn.org/es.

Protection from retaliation:

As with other types of discrimination, the employer may not retaliate against a worker for reporting sexual harassment or violence at work. These acts of retaliation can also be reported if they occur.

Defamation lawsuits as a retaliation mechanism:

In some cases, perpetrators have initiated civil lawsuits against victims who make complaints. This is also a form of retaliation. There are also state laws that prohibit this type of legal claim.

If the perpetrator files a lawsuit against the victim, it is important that the victim contact a lawyer to be able to defend themselves.



Reporting sexual violence outside of work

A person experiencing domestic violence may contact the National Domestic Violence Hotline.

The hotline can be accessed via the national number **1-800-799-SAFE (1-800-799-7233)** (select 2 for Spanish) or TTY **1-800-787-3224** or **206-518-9361** (deaf-only video phone).

Other Resources:

As already mentioned, reporting acts of sexual harassment or violence, whether in the civil or criminal sphere, is not always the only or best strategy to protect someone's safety. In many cases, the reporting process could be intimidating for an individual going through these forms of violence. It may also be necessary to first think about guaranteeing an individual's basic rights, such as the right to health, housing, and economic survival, and then address the harm that sexual harassment or violence has caused them.

In many states, there are advocates for victims of sexual violence. These individuals may come from the criminal justice system or community organizations. Many times, they are not attorneys, but people who are knowledgeable about local and community resources.

Although specific services available vary by location, services are confidential and may include the following:

- ✓ legal defense
- ✓ accompaniment during medical examinations and interviews with the authorities
- ✓ education and support to put together a safety plan
- ✓ follow-up services
- ✓ references to other resources, such as housing and public assistance resources



Here is a list of local organizations that offer those resources:

www.nsvrc.org/organizations²⁹

Protections for migrants or immigrants

It is important to know that crime victims can, in some cases, apply for specific visas, such as U nonimmigrant visas for victims of crime in general or T nonimmigrant visas for victims of trafficking. There is also the possibility of requesting deferred action in some cases, as we mentioned in other modules. Finally, the Violence Against Women Act (VAWA) also allows some forms of immigration relief for people who suffer gender-based violence, usually in the domestic sphere. To learn more about these options, it is important to speak with an attorney.

Confidentiality Rights

Rights defenders have different obligations to preserve the confidentiality of the information shared by individuals who have experienced sexual harassment or violence. If the victim chooses to share personal information with another person, whether from a civil or criminal agency or an advocate, it is important that they ask what information they would share with another and why, with whom, how they could document their information and who is responsible for preserving the security of their information.

29 The National Sexual Violence Resource Center (“NSVRC”) is a non-governmental, nonprofit organization with a 501(c)(3) status dedicated to “providing information and tools to prevent and respond to sexual violence.” See more information at <https://www.nsvrc.org>.

Facilitation Dynamics Recommendation

STEP 1:

Introduction with informative image

STEP 2:

Invite the participants to reflect on the topic and share their experiences through a discussion based on the questions in Appendix

STEP 3:

Presentation of educational content

STEP 4:

Work in groups with examples and questions in Appendix 2

STEP 5:

Closing discussion: solicit group perspectives on the obstacles and benefits of filing discrimination complaints

STEP 6:

Closing activity

Appendices

Appendix 1:

Questions for reflection

What are the conditions that create the greatest risks of sexual harassment and violence in agricultural work?

Do you think that sexual harassment and violence generate power imbalances at work? How?

Do you think that sexual harassment and abuse respond to or are a consequence of inequalities in our society? How?

Appendix 2:

Stories for group work

1. Domestic violence and employment discrimination

Violeta and her husband went together to work on the apple harvest in New York with H-2A visas. When they arrived, a coworker began to make comments every day to Violeta about her body. The coworker talked about how good her breasts looked with her work clothes and “how tasty” she looked. A couple of times the coworker made these comments in front of Violeta’s husband, who got very angry. At night, her husband insulted her and yelled at her, blaming her for provoking her co-worker. Violeta tried to talk to the supervisor about the colleague’s comments, but the supervisor did not pay attention to her. In the middle of the season, Violeta realized that she was a couple of months pregnant. She notified her supervisor to see if her employer could make some modifications to her tasks due to her nausea. Instead of giving her those modifications, the employer punished her. Her husband was again angry with Violeta and spent the whole night yelling at her, telling her that all of this was her fault and that she was “provoking him.” When Violeta was late for work the next day, she explained to her supervisor what happened with her husband. Within hours, her employer fired her.

i. What kind of violence and discrimination is Violeta suffering?

- ⊙ Violeta is experiencing sexual harassment at work, a form of sexual violence in the workplace.

- ⦿ She also suffered discrimination on the basis of her pregnancy, as she was fired, and her employer did not attempt in good faith to make a reasonable accommodation to her tasks.
- ⦿ Under New York law, her employer may also be held responsible for having fired her because of the domestic violence that Violeta went through.
- ⦿ Likewise, Violeta is experiencing a gender-based domestic violence situation with her husband. Although he does not hit her physically, denigration, insults and shouting are also psychological and emotional violence

ii. What could Violeta do in this situation?

- ⦿ Violeta could try to contact a local victim advocate service to help her access other services to first put together a safety plan. Among other issues, Violeta may first have to speak with an attorney to resolve her immigration status, since her employer has fired her, and her visa is tied to the employer. The attorney will be able to discuss whether there are any possibilities under VAWA or whether Violeta is eligible for deferred action to remain in the country.
- ⦿ Likewise, she may need another home to get away from her husband and continue with her case for discrimination, as well as other mental and physical health resources due to the pregnancy and the trauma suffered from experiencing violence. The advocate can help Violeta see what social resources exist locally in her case.
- ⦿ On the other hand, Violeta can report pregnancy discrimination and sexual harassment to the EEOC and discrimination for being a victim of domestic violence to the anti-discrimination agency of the state of New York.

2. Sexual Violence

Ruth came to work in the tobacco harvest in North Carolina. She was one of the few women working in the field. On several occasions, a supervisor proposed that she come to his house after work, and she turned him down. The supervisor got very angry and told her that she was going to pay dearly. One day, when she was working apart from the rest of the workers, that supervisor grabbed her hand and neck and forced her to walk with her head down to another part of the field, without anyone seeing them. There, the supervisor raped Ruth.

i. What rights were violated in this situation?

Ruth was a victim of sexual harassment and violence at work. This is a form of employment discrimination that violates federal anti-discrimination laws. She was also a victim of a serious crime, rape.

ii. What could Ruth do in this situation?

- ⦿ Ruth could report her supervisor to the EEOC and/or to the police, although she is not obligated to do so.
- ⦿ It is important that Ruth first find resources on which to lean socially and emotionally to face that process. Therefore, it would be advisable for Ruth to talk to a victim advocate at the local level to put together a safety plan and see what social and economic resources she can access if she needs to leave the field.
- ⦿ She may also be eligible for a U nonimmigrant visa and deferred action to modify her immigration status if needed. For this, and to receive further advice on the possibilities and ways to report, it is important that she contact a local lawyer.





MODULE 8

Partnership Agreements

OBJECTIVES

- ⦿ Explain the types of FLSP Partnership Agreement commitments employers can make as part of this pilot program, and how they relate to existing legal structures or organizations that address worker rights and responsibilities.
- ⦿ Define and understand the key terms and concepts related to these commitments.
- ⦿ Identify the rights of agricultural workers under federal and state specific laws that are related to these commitments.

Educational Content:

What commitments have some agricultural employers made under the FLSP program?

As part of the FLSP Partnership Agreement options, employers may have chosen any of the following three options:

- 1. Participation in a Worker-driven Social Responsibility Program (WSR):** some employers have committed to participating in a human rights program created to protect workers at their workplaces. The following are examples of key aspects of a WSR program:



- a. **A Code of Conduct**, that is, a list of human rights, based on the experiences and priorities of the workers themselves.
- b. **Education/Training** for workers about their rights under the WSR Program; workers' time during the training is compensated by their employer. WSR trainers have also worked in agriculture, so they are familiar with the problems and concerns that workers may have.
- c. **A complaint system** managed by the WSR Program, where workers can call 24 hours a day, 7 days a week to register complaints or make confidential inquiries. In some programs, the complaint line is answered by the same investigators who conduct investigations and resolve complaints; the investigators speak the predominant language(s) of the worker communities (i.e., Spanish, Haitian Creole, some indigenous languages). They respect workers' confidentiality.
- d. **Program audits** are conducted by investigators who visit farms and ranches to speak with workers in the fields and at their housing. The interviews are confidential, and the information is used only to monitor and enforce compliance with the WSR Code of Conduct.
- e. **The Program protects** workers from retaliation for exercising their rights, including the right to report problems to auditors and/or for registering complaints.

- 2. **Collective bargaining agreement (CBA):** some employers have agreed to respect a collective bargaining agreement (or contract), which establishes specific obligations for many terms and conditions of employment. This agreement does not replace labor laws or allow their breach but establishes a higher floor of labor conditions. These employers must take into account the protections already in place under any existing collective bargaining agreement, e.g., grievance mechanism, audit, training of workers.
- 3. **Neutrality, Access & Voluntary Recognition:** some employers committed to not interfering with the processes of union organization of workers, including "neutrality, access and voluntary recognition. Like all FLSP commitments, employers' commitment to neutrality must be explicit in contracts for H-2A and U.S.-based workers.

- a. **Access** – The employer must tell workers that they can invite union members or organizers onto their worksite during non-working hours to speak with the workers.
- b. **Voluntary recognition of a union** – some employers committed to recognize a union as representatives of workers and to negotiate with the union without the need to have a formal election if the workers establish that they have formed a union. You can read more about this topic on DOL’s website: <https://www.worker.gov/form-a-union/>
- c. **Neutrality** – Employers who chose the “Neutrality” as an FLSP commitment detailed their plan to support neutrality in their application forms, including:
 - i. their plan for communicating to workers that they will be able to decide freely and fairly whether they want to form or join a union;
 - ii. their plan to ensure the responsibilities of supervisory staff in maintaining neutrality; and
 - iii. their plan to ensure that representatives of unions or organizers have reasonable access to their workers in the workplace during non-work hours.



Examples of what employers should not do if they chose neutrality:

- i. organize mandatory meetings in which the employer or their agent(s) express an opinion for or against workers joining or forming a union.
- ii. post any signs, materials, or distribute any messages in which the employer or their agent(s) express an opinion for or against workers joining or forming a union.

In order to understand these commitments, it is important to understand certain fundamental concepts.

In the best-case scenarios, all workers are treated with respect and dignity at work and all of their human rights are respected. There are laws in place to support this and many employers have plans in place to support this mission. However, when either government enforcement fails to protect workers or employer requirements fail, there is a gap that can leave workers vulnerable. Worker organizations of various kinds have developed unique approaches to balance employer interests with the needs of workers. Under FLSP, a couple approaches have been recognized under the Partnership Agreement options due to their longstanding, demonstrated effectiveness in providing workers with improved working conditions. Here, we provide some additional background information on these approaches.

History and Background of Worker-driven Social Responsibility Programs

A WSR involves binding agreements between a worker organization and retailer(s), with producers (i.e., agricultural employers) as active participants in the WSR program. Retailers (i.e., buyers, often consumer-facing brands) commit to sourcing preferentially from producers (i.e., growers/employers) that maintain compliance in a WSR program, and commit to shifting purchases away from producers that fall out of compliance. These types of programs began to develop in the U.S. in the mid-2000s in response to working conditions in agriculture. To influence conditions, workers approached buyers at the top of the supply chain, who typically set the purchase

price for agricultural goods. Due to their economic purchasing power, retailers can often set requirements of producers in their supply chains.

In collaboration with worker organizations, workers designed the structure of the WSR programs and developed essential codes of conduct, which function as base requirements for their working conditions. The worker-led design of the program and code of conduct, as well as worker-activated complaint resolution mechanisms, are why they are known as a Worker-driven Social Responsibility (WSR) programs. Employers that enroll in WSR programs commit to following WSR Codes of Conduct, lest they fall out of the compliance and lose preferential purchasing preference from participating buyers in the program.



© Alianza Nacional de Campesinas Inc.

History and Background on Collective Bargaining and Neutrality

Two additional options for Partnership Agreement include 1) Collective Bargaining and 2) Neutrality, Access and Voluntary Recognition (in states where permitted under state law) in the event workers on a farm decide to form a union. In the United States, the freedom of association and the right to form or join a union has often been contentious as it deals with the needs and rights of workers and those of employers. This section provides legal context for existing legal rights for agricultural workers.

The National Labor Relations Act (NLRA) provides certain workers certain rights to join together to improve their wages and working conditions, with or without a union, in the United

States. The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative.

In addition to granting workers' rights, the NLRA also determines rules for both employers and labor organizations. For employers, the NLRA forbids them from interfering with, restraining, or coercing employees in their choice to exercise their rights related to forming or joining a union. For labor organizations, it forbids them from restraining or coercing workers as they exercise their rights.



Because the NLRA excludes farmworkers from federal protections related to joining a union, states must proactively grant those rights. To date, fourteen states have affirmatively granted farmworkers the right to form or join unions, and to collectively bargain a contract with their employers. These states include Arizona, California, Colorado, Hawaii, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, New York, Oregon, Washington, and Wisconsin. The remainder of the states remain silent on the union-organizing rights of farmworkers.

State laws vary in terms of the rights unions have to access the workplace to communicate with workers about forming or joining a union, and the consequences for employers who interfere in these processes. In general, when a state has granted agricultural workers collective bargaining rights, an employer may not dismiss or discriminate against a worker for having undertaken protected collective activity.

What is collective action?

Collective action is when two or more coworkers work together to address issues at work. Some examples of what collective action looks like includes: talking with one or more co-workers about your wages and benefits or other working conditions, circulating a petition asking for better hours, participating in a concerted refusal to work in unsafe conditions, and joining with coworkers to talk directly to your employer, to a government agency, or to the media about problems in your workplace.

Some examples of this concerted activity include the following:

- ⦿ Workers speak with a representative of an employer on behalf of a group of workers to request a salary increase.
- ⦿ Workers talk to other workers about changing specific working conditions.
- ⦿ Workers meet with union representatives outside of working hours, such as during a break, during lunch, or at the end of the day.
- ⦿ Workers share pamphlets from a union and encourage other workers to join a union.

What is a labor organization (union)?

A labor organization, often called a union, is an organization of workers who join together to negotiate for things like wages, benefits, safety and health, job training and/or other work-related issues. They are democratic organizations, and the members of the unions elect their leaders.

What is the collective bargaining process?

Collective bargaining occurs when a group of workers negotiate with an employer, after they have formed or joined a union, to establish or improve employment conditions such as: wages, schedules, and breaks, among others. The result of this process is a contract or collective bargaining agreement (CBA).

Per the NLRB, if a majority of workers want to form a union, they can select a union in one of two ways. For more information, see NLRB Conduct Elections page here:

www.nlr.gov/about-nlr/what-we-do/conduct-elections



In FLSP, collective bargaining agreement was a selectable option available to employers under the Partnership Agreement supplement commitment options. Employers only qualified for the CBA commitment if 1) workers at their operation had already negotiated a contract and it was already ratified, or 2) workers and the employers were in the midst of bargaining a contract. Either way, the employer had to provide evidence of the union with which they were under contract or negotiations.

What is neutrality?

Neutrality is defined as employers remaining neutral when their employees express an interest for or against forming a union. This is one of the voluntary commitment options under the FLSP program. If the employer has selected this commitment on their FLSP application, their employees can form or join a union if they wish, with the understanding that their employer must not express an opinion for or against the workers joining a union.



Are there other organizations of farmworkers?

Yes, there are other organizations of workers that also monitor and/or support farmworkers' rights, including workers with H-2A visas. The difference is that, unlike labor organizations, these organizations do not have collective bargaining rights with employers but instead seek other ways to support workers in protecting and expanding their labor rights. Their structures vary - some have internal elections for leadership positions while others do not.

How to report a violation of collective bargaining rights?

Workers who face problems at work regarding collective bargaining rights can first try to talk to their employer to resolve them, if they feel comfortable doing so. If not, they can visit the resources mentioned throughout this manual for support or follow up with Alianza Nacional de Campesinas with any questions.

In the states that have provided farmworkers collective bargaining rights, the state has its own process for reporting violations of those rights, often called Unfair Labor Practices (ULPs).

Facilitation dynamics

STEP 1:

Invite the participants to reflect on the topic and share their experiences through the interactive questions in Appendix 1

STEP 2:

Presentation of educational content

STEP 3:

Closing Discussion: solicit group perspectives on the potential obstacles, challenges or benefits of participating in collective organizing processes

Appendices

Appendix 1:

Interactive questions

Trainer instructs everyone to stand up and walk to the middle of the room.

Question 1- Do you know what a Worker-driven social responsibility program is?

- ☉ [Trainer]: Walk to the right side if you have heard of it; walk to the left side if this is new to you.

[Trainer poses follow up questions]:

- ☉ Can you explain what you know about this if you have heard of it?
- ☉ If you haven't heard of this concept, what do you imagine it could potentially mean?

Question 2 – Do you know what a labor organization is?

- ☉ [Trainer]: Walk to the right side if you know what a union is; walk to the left side if this is new to you.

[Trainer poses follow up questions]:

- ☉ Have you ever had to express a concern or file a complaint at work? How did you do this and how did it feel to do so?
- ☉ Did you raise it alone or did you talk to your coworkers about it?

Question 3 – Have you ever been in a situation where everyone in the room is talking about a particular subject, but you have tried really hard to not get pulled into the conversation?

- ☉ [Trainer]: Walk to the right side if this has happened to you; walk to the left side if this is not at all something you have experienced.

[Trainer poses follow up questions]:

- ⦿ What did you do or not do to try to avoid getting involved?

Question 4 – We all have invited people to visit us in our homes before.

[Trainer]:

- ⦿ Walk to the right side if you coordinate (to confirm an “okay”) with the people you live with before you invite people to your house; walk to the left side if you just do what you want, when you want.
- ⦿ Walk to the right side if you have ever had someone tell you that you cannot invite people to your home (could be your permanent home or your home when you work in the U.S. while on H-2A); walk to the left side if that has never been a problem.

[Trainer poses follow up questions]:

- ⦿ What kind of consideration would you expect from your housemates (or family) before they invite anyone over to your home?
- ⦿ What are reasonable hours that you would be okay to have company over?
- ⦿ If you have worked and lived on a farm before, has your employer ever told you that you are or are not allowed to have guests in your living quarters? How did this make you feel?



MODULE 9

Retaliation

OBJECTIVES:

- ◎ Identify retaliation, punishments or “adverse” actions against workers for taking action or defending their labor rights.
- ◎ Understand the most common types of retaliation and some strategies to combat them individually and collectively.

- Good morning, what a miracle to see you here right now! I thought you would already be working in the United States.
- No, they didn't call me this time. I am worried because it is the first time they failed to contact me; I have been traveling seasonally to the U.S. for 13 years; I have never stayed back.
- How strange! Maybe there was a problem with your passport.
- I don't know. I am concerned because last year several colleagues got sick due to pesticides, and I joined with others to ask the employer to support us to seek medical attention. I'm thinking that maybe he didn't like that and didn't want to hire me anymore.
- But that's no reason not to hire you. Why do you think that?
- Well, they say that when you talk or ask for things, employers don't like it.
- No, well, if that was the reason, it's very bad, because you can't be punished for asking for your basic rights.



Educational Content:

Some working conditions are not favorable for workers. Even though employment laws establish basic rights, many workers are not motivated to demand compliance because they feel they do not have the power to change their working conditions. They decide to stay silent or put up with it, because they are worried that their employers will react in a way that hurts them. These “adverse” actions against workers for taking action, are known as retaliation.



Unlawful retaliation occurs when the employer treats a worker differently because the worker asserted their labor rights. Actions that are protected by law in this regard may include, for example:

- ⦿ Talking to managers or employers about health and safety issues, wage and hour issues, a work-related accident or illness.
- ⦿ Reporting concerns or violations to certain government agencies, such as OSHA (workplace health and safety issues), EEOC (discrimination issues), DOL-WHD (wage and hour issues), or the state's Compensation Commission (workers' compensation).
- ⦿ Participation in a discrimination investigation or trial.

Common forms of retaliation may include:

- ⦿ Deny promotions or opportunities to advance at work
- ⦿ Reduce pay or reduce working hours
- ⦿ Termination of employment
- ⦿ Intimidation or threats
- ⦿ Deny rehiring



- ⦿ Put the worker on “blacklists” that affects them with other future employers
- ⦿ Remove responsibilities or possibilities for growth in the workplace.

H-2A program rules prohibit discrimination and forbid retaliation against program workers for:

- ⦿ program workers for:
- ⦿ Initiating a claim or proceeding to assert their rights under the H-2A program
- ⦿ Giving testimony in relation to that proceeding,
- ⦿ Consulting with an attorney or a legal aid program, or
- ⦿ Exercising any rights guaranteed by the H-2A program (specific rights of the program may include, for example, the right to the AEWR wage, the right to have three fourths of the contract hours promised, or the right to free housing, among others.)

Against whom do the prohibitions against illegal retaliation apply?

Under H-2A program rules, employers, as well as their agents, recruiters, agricultural associations, and contractors, are prohibited from retaliating.

Other federal laws prohibit such acts by different actors. For example, under the federal law on minimum wage and overtime pay, anyone is prohibited from retaliating as a result of, among other actions, filing a claim under that law. In contrast, laws prohibiting retaliation for opposing forms of discrimination apply to certain employers who must comply with the same anti-discrimination laws, employment agencies, labor organizations, and certain bipartisan committees that manage training programs.

How can we respond to retaliation?

Personal empowerment and collective organizing. One source of personal empowerment is knowledge: knowledge of the situation, of one's rights, knowledge of other people, and self-knowledge. It is particularly important for a person to know themselves and their personal strengths. With that knowledge, a person will have the ability to advocate for themselves to produce a change that improves their conditions and those of their coworkers.

Generally, workers have more security against retaliation when acting together with their co-workers and with witnesses. It is important to speak up and act when there are injustices at work, as it is the only way to make changes and create a work environment that is fair and safe.

What rights do farmworkers have in the face of retaliation?

If an employer retaliates against an employee, the worker has the right to be paid for their lost time due to unjustified dismissal, to return to their job, and to end the unfair conditions created in retaliation.

Protections against retaliation may depend on the right that was initially violated or breached, for which the person was punished or received unfair treatment. Depending on the situation, the complaint for retaliation must be filed with different authorities:



If the worker was punished for claiming wage issues, asserting their rights under the H-2A program, Migrant and Seasonal Agricultural Worker Protection Act, or the OSH Field Sanitation Standards, they can report the retaliation to the DOL, by calling **1-866- 487-2365** (select 2 for Spanish) or using the following online form: **<https://webapps.dol.gov/contactwhd/Default.aspx>**. There is a two-year limit to report to the DOL, but it is best to do so as soon as possible.

If the worker suffered retaliation after claiming discriminatory treatment, they can report the retaliation to the Equal Employment Opportunity Commission (EEOC) at: **1-800- 669-4000**. In most cases, there is a 180-day limit for reporting to the EEOC, but it may vary by state.

Retaliation for claims of discrimination based on citizenship or national origin should be reported to the Department of Justice by calling **1-800-255-7688** or by email (IER@usdoj.gov) or by mail (Immigrant and Employee Rights Section; Civil Rights Division; U.S. Department of Justice, 4 Constitution Square; 150 M Street, NE, Room 7000; Washington, DC 20002).



If the worker suffered retaliation for having reported the violation of safety standards at work, they can report it to OSHA by calling **800-321-6742 (OSHA)** or through the website: **<https://www.osha.gov/form/osha7>**

There is a 30-day limit to report retaliation to OSHA.

Are there any immigration protections if a worker gets fired for making a retaliation claim?

In some cases, workers who face acts of retaliation for a labor conflict can request that the government give them permission to stay in the country, known as deferred action. This process requires a federal or state government agency charged with implementing labor laws to issue a Statement of Interest about a worker's case. Workers can consult with an attorney for further information about submitting a request for deferred action.

Likewise, some workers who experience certain types of retaliation, such as threats of violence in the face of basic labor claims, may themselves be victims of a crime or trafficking. There are some categories of nonimmigrant visas (T and U, specifically) available for people in this situation. Workers can consult with an attorney to evaluate whether they can apply for these types of visas.

Facilitation Dynamics Recommendation:

STEP 1:

Introduce the objectives of the module and introduce the concept of retaliation.

STEP 2:

Invite the participants to reflect on the topic and share their experiences through a discussion based on the questions in Appendix 1.

STEP 3:

Present the information on what constitutes retaliation, who commits retaliation, and what rights people have in the face of retaliation, including possible immigration consequences.

STEP 4:

Work as a group on the informative images in Appendix 2, with corresponding questions, to reinforce the information provided in step 3.

STEP 5:

Review resources to report retaliation.

STEP 6:

Closing activity – evaluate what has been learned by asking people how they could apply this information in their daily work.

Appendices:

1. Questions to prompt discussion

What are fears that people in the H-2A visa program might have when any of their rights are violated?

Have you ever had any rights violated and remained silent? Why?

What do you think is important to know to assert labor rights?

2. Stories with examples of retaliation

A. Wage and hour

Juan is working on the harvest of tomatoes in Florida. He paid his recruiter \$300 dollars to get an H-2A visa and then paid his transportation expenses, for which he had to take out a significant debt in Mexico. Knowing that his employer should reimburse these expenses, he requested this reimbursement from his supervisor. Not only did the employer not give him the money, but the following week the employer cut his hours, so he earned less than expected to be able to pay his debts and expenses.

i. What could Juan do in this situation?

This is a form of retaliation that Juan can report to the DOL.

ii. What risks and fears could Juan face in this case?

Since he was already a victim of retaliation, Juan could feel that there is a risk of additional retaliation if he reports this to the DOL. In any case, it is important to document the retaliation in case he wants to make the complaint later, when he is no longer working. Retaliation for reporting a violation of the law to DOL WHD is also unlawful.

B. Sexual harassment

Carla works harvesting pears in Oregon. During the season, a supervisor made comments about her clothes and asked her to visit him at his house after work. When she refused, he told her that this would be her last year working in the country. On one occasion, he touched the back of her body and approached her closely, talking into her neck, making her feel afraid.

i. What can Carla do in this situation?

Carla can report the situation of sexual abuse and harassment, as well as the threat that she will not be hired again in the future, to EEOC and Oregon authorities. She can also look for victim advocates to accompany her in the process.

ii. What risks and fears could Carla face in this case?

Carla may be afraid to report her supervisor before the end of the season. It would be advisable to write down the dates and the precise facts of the harassment and abuse in a diary to have documentation or a record, and to talk to possible witnesses who could help her in case she may want to report later. Everyone should be aware that there is generally a 180-day limit for reporting these kind of harassment cases, counted from the day of the last act of harassment.



MODULE 10

Adapting this information to the field

OBJECTIVES:

- ⊙ Understand the key steps to organize a training.
- ⊙ Be able to adapt key concepts of the curriculum for a two-hour training in the field.
- ⊙ Locate key local tools and resources to tailor complementary information and materials to the local context.
- ⊙ Identify tips and best practices for anticipating and addressing common challenges during a KYRR training.

Facilitation Suggestions

Notes on the role of the trainer

One of the central tasks of a meeting or workshop facilitator is to design an appropriate methodology to guide participants' reflection on the topics, circumstances, contexts or problems of interest, having all the necessary information and documentation prepared. During each KYRR session, the trainer is responsible for creating spaces that are conducive to respectful and open interaction and communication between the participants.

The KYRR session trainer should facilitate individual and collective knowledge-sharing but should not act like she or he knows more than others, since this hinders the participatory learning process and sharing of collective awareness. On the contrary, the KYRR trainer is responsible for paving the way and prompting each participant in the group to build on their own strengths and experiences to transform their own reality.

It is up to the trainer to prepare their sessions, anticipate informational needs and stay up to date on the contents of each topic. It is not convenient, nor will it be effective, to review the materials only moments before a workshop begins. The descriptive boxes integrated in this guide cannot replace each trainer's creative approach to thoughtfully study the basic concepts and address the issues.

Get to know the group

The best way for the trainer to get to know the group is through empathy, active attention, openness to what participants want to share and communicate, willingness to accompany the training process without slowing down or discouraging initiative and understanding that each person in the group is beginning an educational journey.

Promote active group participation

The group's integration and participation are the key points of departure and landing during popular education processes, which requires participants to contribute their own social and political perspectives. To use a participatory methodology, the trainer must have the necessary tools to build trust with and among the group as well as integrate and respect the diversity of personalities, perspectives and positions.

There are currently a variety of educational tools, which are very useful to facilitate participation and coexistence between the workshop or meeting participants. Below is a small compilation of some dynamics that Alianza Nacional de Campesinas trainers can use during their workshop sessions and/or during face-to-face meetings, which we borrow from methodologies and manuals on participatory techniques.

Be aware of adapting language and vocabulary

For the purposes of training for the FLSP program, it is important to recognize the diverse experiences and approaches that farmworker-serving organizations bring. It is normal to encounter diverse identities, languages, and perspectives. It is challenging to find a common language in which all people feel totally comfortable.

Nevertheless, we will suggest some concepts that can help us to articulate our work while giving each person the freedom to use the vocabulary or words with which they feel most comfortable.

The central task of a trainer (also known as a promoter, facilitator, outreach worker, etc.) is to build trust with the community. Trust is the key to opening the door of communication, regardless of the subject. It doesn't matter how much of an expert you are: if you don't have people's trust, they will hardly listen.

Language is one of the most fundamental tools a trainer has to build community members' trust. Language is complex and goes beyond knowledge of the community's preferred language (e.g. Spanish). Language also includes tone of voice, clarity, word choice and vocabulary spoken. The more a trainer can adapt their language to the preferences and customs of the community they are addressing, the more likely they are to generate the trust they need to be able to communicate effectively and ensure that community members listen, understand, and internalize the information they share.

In the FLSP KYRR program, there is a great diversity of farmworkers. They come from different countries as well as from different regions and cultures within those countries. They are people of different ages, sexes, and genders. They have different education. They have lived different migration experiences. Some are serious and some like to joke around. Some people have been living in the United States for years, while other people are setting foot in the U.S. for the first time. All this diversity of characteristics and experiences influences how people express themselves in their preferred language - in vocabulary, in being formal or informal, in the sayings and expressions they know, even in the tone of voice.

This diversity is also present among you, the trainers who are responsible for teaching the contents of the FLSP KYRR program. It is possible that some of the words found in the manual are different from those you are accustomed to using in your daily lives and work, or in your organization's methodology. Recognizing your own diversity and adapting your language will be valuable and necessary when replicating the trainings with workers.

To build trust with a group of different farmworkers - for example, in the context of a workshop or orientation - it is important that trainers adapt to the language and cultural preferences of the audience whenever possible. This can be done by listening to the way people speak and trying to prioritize the words and expressions they use.

It's not a perfect science! A single group can be very diverse, and it's not going to be possible to cater to everyone's preferences and needs at once. However, there are some things the trainer can do to facilitate communication and build trust:

- ⦿ Introduce yourself to the group and acknowledge the importance of language diversity:

Hello everyone, I'm [NAME]. I come from [PLACE OF ORIGIN]. Before I begin, I want to recognize that we are a group of diverse people, and that my priority is to be able to communicate clearly and respectfully with each and every one of you. However, we may be used to communicating differently from one another. For example, in my culture, our custom is to refer to a group of people as "y'all." In my (country/culture/family), one (word/expression) we use a lot is "(example of a word or expression)" to say "(explanation)." If at any time I say a word or phrase that you do not understand, please raise your hand and let me know so that I can find another way to say it, or you can suggest one to me. I would love it if we could each learn something new today.

- ⦿ Actively listen and adapt: When you get to introduce yourself, or during dialogue or questions, write down what type of language people use, for example, their vocabulary, expressions, formality or informality. From there, try to incorporate those elements into your own dialogue. For example:

We were just talking about paid time off due to illness- also commonly called "sick leave."

- ⦿ Prepare to use different vocabulary options or common expressions to communicate and prepare to explain terms that may be poorly understood. For example:

- ⦿ If a person wants to know their rights in the "litigation" process - you can also say "claim" or "legal complaint."
- ⦿ If you work in the production of "blueberries" - sometimes called "bilberry" or "huckleberry" - it may be necessary to wear gloves...

Here are some examples and options of linguistic diversity that might be helpful to consider:

Language Diversity Chart

You might say...	while others might say...	You might say...	while others might say...
Trainer	Facilitator Outreach Worker Promoter Educator	Guestworkers	Contracted workers Visa holders H-2A workers
Participatory dynamics	Exercises Group activity Teaching Activity	Salary	Payment Check Stripe
Skits	Plays Acted scenes	Overtime	Time and a Half
Employer	Boss Business Company Owner Rancher	Amount	Quantity Amount due
Supervisor	Manager Foreman Boss Field Walker Mayordomo	Grocery store	Shop Convenience store
Recruiter	Intermediary Contractor Processing agent Recruitment agency	Legal Complaint	Dispute Claim
Allowances	Benefits Rights	Retaliation	Reprisal Revenge Punishment Harmful act
Leave (e.g. sick leave)	Benefits	Discuss	Talk Debate
Field	Field Ranch Farm	Note down (e.g. hours)	Record Jot down Keep record of
Farmworker	Farm Laborer Agricultural employee		

Recommendations:

1. Before you start:

- ⊙ **Familiarize yourself with the content of the training:** thoroughly review each module before starting a workshop.
- ⊙ Focus the content on the specific context of the place of employment, especially of the unique workplace and FLSP commitments corresponding to that employer: it will be necessary to adapt the content and approach of each training. All the information you provide must be relevant to the workers on that farm or place of employment. It will not be possible to cover everything, and time is limited - so think carefully about priority information and resources, avoiding irrelevant or non-applicable information.
- ⊙ Leave time for questions: make sure you leave enough time in your plan to address questions from the public. In the event that you do not have time to answer all the questions, the participants will be able to follow up with you using the contact information you share with them.
- ⊙ **Feel free to innovate:** the descriptive tables do not replace the creativity of each trainer; they serve as a dynamic group facilitation guide.
- ⊙ **Prepare materials in advance:** make sure you have all the supplies you need on hand for the session to be successful. If possible, give each participant a nametag; this will help to address people by name and create an environment of familiarity.
- ⊙ **Anticipate information about each FLSP KYRR training group and the space you will use:** Sometimes it is difficult to know in advance who will participate in the training, but it is important to think about a minimum and maximum number of participants. It is not the same to prepare materials for 5 people as you would for 50. The dynamic changes depending on whether people will be standing, sitting, if you will have the opportunity (or not) to use electricity for a projector and computer.

2. During the session:

- ⦿ **Actively listen to people and encourage everyone's participation:** avoid making judgments about comments or questions: all questions are valid, and all experiences are equally important.
- ⦿ **Use a defined language and tone of voice:** create rules to maintain order and respect among the group and do not shy away from asserting them throughout the session.
- ⦿ **You don't have to address all questions, problems or comments:** if questions or concerns arise that you can't solve, don't worry. You can jot down the hard questions and move on to the rest of the content. At the end, you can return to the questions that were left unanswered and try to establish a way to provide information later. It is much better to say "I don't know, but I will try and find out" than to provide uncertain or misleading information.

Educational suggestion to address the informative modules

Objectives:

- ⦿ Have an appropriate methodology to guide reflection on the contents of the modules, so that you can transmit the essential information to farmworkers.
- ⦿ Prioritize strengthening workers' knowledge of their rights, focused on their life and work experiences.
- ⦿ Exercise the use of descriptive tables, which are a useful and basic tool to organize and plan participatory workshops in the limited time available.
- ⦿ Implement techniques that prioritize workers' participation and build trust.

Number of participants: up to 50 people

Duration: up to two hours, including question time

Example of a descriptive chart for workshop development

Time	Moment	Objectives	Detail	Materials/Supplies
5 minutes	Introduction/Welcome and workshop objectives	Create a space of trust from the start; share the overall objectives of the training	<p>The trainer introduces themselves by sharing three basic facts:</p> <ul style="list-style-type: none"> ⊙ Your name, place of origin and their organization. <ul style="list-style-type: none"> → As another option, you can share something related to agricultural work. For example, the first time you visited a field, what you like most about agriculture, among others. <p><i>Example: Good morning, everyone. I appreciate the time you are giving me to listen to what I have to share. I am Guillermina Martínez, I was born in California to a Guatemalan mother and father. I have been working as a trainer at the Alianza Nacional de Campesinas for a year. My family and I have worked in agriculture for many years. I think it is a very beautiful job because food is something that all people need to live, although the work is not as appreciated as we would like.</i></p> <p>The trainer presents the basic information of the training space, the objectives and topics that will be addressed.</p> <ul style="list-style-type: none"> ✓ This training is part of the FLSP program that seeks... and which I will be discussing later on. ✓ The purpose of this training is to share with you the fundamental rights that farmworkers have and the mechanisms available to assert basic rights. ✓ This training will address some topics that we will develop over the next two hours. ✓ We need your support to make this a participatory, safe and respectful space, so don't hesitate to participate and prepare your questions. 	<p>Visuals (PPT)</p> <p>Copy of training manual</p> <p>Personal notes</p>

5 minutes	Icebreaker Dynamics	Create an environment of trust and understanding among participants	<p>The trainer explains the dynamic: "I'm going to mention a few phrases, and I ask that people respond with a movement." The movement will depend on the space available in the session: if everyone has chairs, you can ask them to get up from the seat or raise their hand. If they are all standing, you can ask them to step forward or form a circle.</p> <p>Example: - <i>Raise your hand if...</i></p> <ul style="list-style-type: none"> → I like to dance → I am from Mexico → I like listening to music → I like coffee in the morning → I know that this farm is participating in FLSP → I have had accidents at work. → I know what my labor rights are in the United States. → I have received information about trafficking → I have felt discrimination at some point in my life → I have worked or work on an H-2A visa <p>If the trainer observes that there may be people from different countries, they can ask what countries they are from.</p> <p>You can also invite workers to propose a phrase that others respond to with the movement, or to propose a different movement. For example: <i>What movement do you want to make now to respond?</i></p>	Flash card with key phrases
-----------	---------------------	---	---	-----------------------------

20 minutes	Module 1: The Farm Labor Stabilization and Protection Pilot Program (FLSP)			
20 minutes	Module 1 Presentation: FLSP	Share with the group why we are here, what is FLSP.	<p>Clearly present the core information of module I</p> <p>1) What is the FLSP program? Explain the purpose and model of the program</p> <p>2) Who is part of the FLSP program, and why are they important? Describe the different stakeholders that are part of the FLSP program. It will be important to share with the group the program's significance as an opportunity to strengthen working conditions.</p> <p>A. Review the four required commitments that all employers participating in the program must meet:</p> <ol style="list-style-type: none"> 1. Universal protections and benefits 2. Participation in FLSP research and reporting 3. Participation in "Know Your Rights and Resources" ("KYRR") access and training 4. Responsible recruitment <p>B. Highlight the supplementary commitments made by the particular employer. <i>Be sure to allow sufficient time to cover these commitments in enough detail!</i></p> <p>Connect the general explanation of the commitments with a discussion /reflection on how workers can evaluate their compliance.</p>	<p>Visuals (PPT)</p> <p>Flipchart with basic information prepared</p>
5 minutes	Module 2: Recruitment			
5 minutes	Rights during recruitment	Know the rights workers have during this process	The trainer clearly explains the rights that people have in the recruitment process, including for H-2A visas.	Flipchart with basic information prepared

10 minutes	Module 3: Rights to housing, food and working time			
10 minutes	Basic rights	Share the information on basic rights in section 3.2 of module III.	<p>Present the information on the rights indicated, encouraging participation.</p> <p>Agricultural workers in corresponding employment must receive at minimum the same terms and conditions of work as workers with H-2A visas.</p> <p>Each and every worker has rights related to their contract.</p> <p>The first thing you should know is that you have rights related to the expenses you incurred while traveling to the United States, and specifically to the place(s) where you will live during your work season.</p> <p>A) Expenses to be covered by your employer.</p> <p><i>Your employer must cover the expenses of the visa, transportation to the United States and expenses related to travel. For example, if the worker incurs costs, such as purchasing of food, during the time traveling to get to their workplace in the United States, the employer must reimburse them.</i></p> <p>A) Housing</p> <p><i>H-2A employers must provide housing for workers, without charging them or deducting housing costs from their paycheck.</i></p> <p><i>Housing provided by the agricultural employer must have at least:</i></p> <ul style="list-style-type: none"> → <i>Walls, ceiling, and windows that close.</i> → <i>Beds and a place to store each worker's personal effects.</i> → <i>Drinking water supply.</i> → <i>Access to a bathroom shared by 15 people or less.</i> 	<p>Visuals (PPT)</p> <p>Flash cards with key concepts</p> <p>Additional visuals (Example: template for recording travel expenses)</p>

			<p>Dynamic: The trainer has a couple of cards that describe different scenarios.</p> <p>Pause after reading each card to see if the workers think it is something unfair, or whether it is something not only unfair but illegal.</p> <p>For example: <i>“So-and-so is an H-2A worker who has to pay \$16 per day for his food. Is this unfair or unfair and illegal?”</i></p> <p>The person facilitating explains that it is unfair and illegal, because H-2A workers can only pay \$15.88 per day for their meal.</p> <p>Then, the facilitator mentions additional food-related rights. The facilitator then continues with other rights:</p> <ul style="list-style-type: none"> → Receive a written contract, in the language that the worker best understands, detailing employer-specific information and working conditions. This contract must be presented to the worker no later than when the worker applies for an H-2A visa or, if a new visa is not required, no later than the time that the worker is offered the job. The contract must be presented to any U.S. worker in corresponding employment on the first day of work, at the latest. → Refund of travel expenses. → Adequate housing, at no cost to the worker. → Free transportation from their housing to the workplace. → Safe and healthy working conditions. → Compensation for injuries or illness at work. → Receive at least the current applicable agricultural wage, at least every 15 days. 	
--	--	--	---	--

			<ul style="list-style-type: none"> → People employed with the H-2A visa are not required to pay Social Security and Medicare taxes. → Workers with the H-2A visa must receive at least ¾ of the working hours promised in the contract or the pay corresponding to that time. <p>Once the information on workers' rights is presented, the trainer asks the group: <i>Did you know that you have all these rights?</i></p> <p><i>Recommendation:</i> <i>Write down all travel and food expenses. Remember that there are resources to take action if your rights are not respected. We will provide you with important information in a moment.</i></p>	
10 minutes	Module 4: Hours and Salaries			
2 minutes	Introduction	Start the conversation about wages; emphasize that while there are some protections in terms of wages, there are also some core components of, and limitations to, the definition of a "fair" wage.	<p>The trainer asks workers: "What does 'fair pay' mean to you?"</p> <p>If there is paper, write down what comes up and facilitate a group reflection of what elements constitute a "fair" wage.</p>	<p>Flipchart with basic information prepared</p> <p>Markers</p>
5 minutes	Basic rights / Wage protections	Know the fundamental guarantees established by the H-2A program and in the minimum wage laws regarding the working hours that the employer must offer	<p>The person facilitating explains that there are certain rights and limitations that have to do with the wages of the H-2A program. For example:</p> <ul style="list-style-type: none"> → The AEW and minimum wage in the state of employment → The salary of U.S. workers who work in "corresponding employment" → The ¾ guarantee → What is considered time worked → Overtime pay → Deductions allowed / not allowed 	<p>Visuals (PPT)</p> <p>Flash cards with key concepts</p> <p>Flipchart with basic information prepared</p>

3 minutes	Particular rights/ protections in the FLSP program	Indicate the applicable salary and wage-related benefits for workers in the FLSP program, either by hour or by piece	The trainer explains what specifically applies to this employer as part of the FLSP program. For example: <ul style="list-style-type: none"> → FLSP bonus payment (if applicable) → Overtime pay (if applicable) → Sick leave benefits (if applicable) 	Visuals (PPT) Flash cards with key concepts Flipchart with basic information prepared
10 minutes	Module 5: Health and safety at work and accident coverage			
5 minutes	Introduction	Identify collectively the risks that workers generally face in the workplace	The trainer invites workers to share a health or safety risk they have faced at work. While several people are sharing, the trainer points everything on a flipchart or large sheet if available (or if not, the trainer verbally repeats the aforementioned risks). Once finished, the trainer repeats the risks, inviting participant reflection on awareness of risk and on the importance of protecting workers' health and safety.	Visuals (PPT) Flipchart with basic information prepared Markers
5 minutes	Exposure	Ensure that workers recognize their right to health and safety in the workplace	The trainer explains what it means to have the right to work in a safe and healthy workplace, free of identified hazards that may cause death or serious physical harm. Read the definition of hazard in the workplace and the guarantees that an employer must comply with to ensure a safe and healthy workplace. Explain that there are specific standards with protections against pesticides, field sanitation and risks from heat exposure. Mention that OSHA is the government agency in charge of monitoring health and safety conditions at work. The trainer also explains that H-2A workers have the right to receive health insurance under the Affordable Care Act, which covers illness or injuries that do not occur on the job. If they are harmed at work, their employer has to cover the expenses associated with their treatment and/or recovery through Workers' Compensation.	Visuals (PPT) Flipchart with basic information prepared Flash cards with key concepts Visuals: Informative image about heat illnesses

BREAK (5 minutes) - Stretching

10 minutes	Module 6: Employment Discrimination!			
5 minutes	Definition of discrimination and its different expressions	Recognize and share different forms of workplace discrimination that agricultural workers should be aware of	<p>Explain clearly what an act of discrimination consists of and examples of what discrimination looks like in real life.</p> <p>After sharing the definition and general examples, the trainer reads an example of discrimination based on national origin. Then ask the group: <i>Did these workers suffer discrimination? What type?</i></p>	<p>Flipchart with basic information prepared</p> <p>Flash cards with key concepts</p> <p>Module VI - Stories for group work</p>
5 minutes	Let's confront discrimination together	Encourage the participants to work together to combat different forms of workplace discrimination	<p>The trainer expresses the importance of valuing each person - not only in agriculture, but in the work system in general - and the need to defend the dignity of all people, regardless of their characteristics, conditions or preferences.</p> <p>Mapping activity: who/what are responsible for protecting people against acts of discrimination at work?</p> <p>Here are the resources available to report discrimination.</p> <p>Emphasize that not all acts of exclusion are protected by law as acts of discrimination in the United States.</p>	Resources to report discrimination at work
10 minutes	Module 7: Sexual harassment and violence in the workplace			
5 minutes	What is sexual harassment?	Recognize sexual harassment and violence in agricultural work	<p>The trainer shares the definition of sexual harassment at work with the group. Also shares some examples:</p> <ul style="list-style-type: none"> ⊙ Vulgar jokes about a person because of their sex ⊙ Pornography at work ⊙ Unwanted communications, either in the form of email, text, WhatsApp, or in person ⊙ Asking a worker for sexual favors 	Flash cards with key concepts

5 minutes	Sexual Violence in the Fields	Learn about the laws that protect workers against, or in the aftermath of, sexual violence incidents	<p>How sexual violence is experienced by farmworkers. We have heard many experiences of sexual harassment and violence at work, for example: Read story for group work "Violeta and her husband..."</p> <p>After reading the story, ask the group: <i>What kind of violence and discrimination is Violeta suffering?</i> <i>What could Violeta do in this situation?</i> Encourage the group to express their ideas.</p> <ul style="list-style-type: none"> → We cannot normalize these situations, it is a crime, it causes stress, anxiety and many other consequences that cannot be allowed anymore. <p>Are migrant workers protected from sexual harassment perpetuated by employers or others in the workplace? Yes, mention existing resources.</p>	<p>Flipchart with basic information prepared</p> <p>Flash cards with key concepts</p>
Module 8: Partnership Agreements				
5 minutes	Introduction of key concepts	Define and understand the key terms and concepts related to FLSP program Partnership Agreement commitments	<p>The trainer briefly explains the concepts of collective bargaining, worker-driven social responsibility programs, and unionization in the context of agricultural work in the U.S., prompting discussion among the group on the following:</p> <ul style="list-style-type: none"> ☉ What have you heard about these concepts and their relationship to working conditions for farmworkers? ☉ What are some potential challenges or benefits of participating in collective bargaining, worker-driven social responsibility, or unionization processes? 	<p>Flipchart with basic information prepared</p> <p>Flash cards with key concepts</p>
5 minutes	FLSP commitments related to partnership agreements	Review any relevant FLSP commitments and details applicable to the particular employer .	<p>If applicable, review FLSP commitments related to:</p> <ul style="list-style-type: none"> → Participation in a Worker-driven Social Responsibility (WSR) program → Participation in a Collective Bargaining Agreement (CBA) → Committing to Neutrality, Access, and Voluntary Recognition <p>Trainer asks workers to share expectations or questions.</p>	<p>Flipchart with basic information prepared</p> <p>Flash cards with key concepts</p>

10 minutes	Module 9: Retaliation			
5 minutes	Introduction with definition of retaliation	Learn to identify reprisals or “adverse” actions taken in retaliation against workers for defending their labor rights.	<p>The trainer presents on retaliation in the workplace in various situations. Retaliation is when the employer gives different treatment, which harms an employee, as a result of a complaint about unfair working conditions, or because the worker sought to improve employment conditions.</p> <p>Prepare cards with some of the most common forms of retaliation:</p> <ul style="list-style-type: none"> → Deny proper overtime pay → Deny promotions → Deny benefits → Reduce pay or reduce working hours → Termination of employment → Intimidation and threats → Deny rehire → Put workers on “blacklists” that affect opportunities with future employers → Remove responsibilities or possibilities for growth in the workplace. <p>Read each card with these common situations, stating one by one and asking that those people who have heard about or experienced them can raise their hands. At the end, the trainer facilitates reflection on the importance of confronting retaliation.</p>	<p>Flipchart with basic information prepared</p> <p>Flash cards with key concepts</p>
			<p>The trainer asks:</p> <p>What fears might agricultural workers have when speaking out against rights violations?</p> <p>Write down answers on stationery/flip chart to keep the group in view.</p>	

5 minutes	Most common types of retaliation and how to take action	Know the most common types of retaliation and some strategies to combat them individually and collectively.	To ensure that the group has understood what retaliation means, the trainer does a brief exercise to identify retaliation. Read <i>History with examples of retaliation (Appendix 2, Module IX)</i> Tell me if there is retaliation in this example? explain why or why not. It is possible to take action when we face retaliation, it is our right not to experience this type of situation at work. Share the existing resources to report retaliation, if possible, share a real example in which a worker suffered retaliation and then achieved justice when they decided to report. (Omit names of people to ensure confidentiality of the case)	Flipchart with basic information prepared Flash cards with example scenarios and questions
5 minutes	Module 10: Local Resources			
5 minutes	Review the information of available resources.	Distribute the resource materials	The trainer distributes worker handouts and explains their purpose and how to use them. The trainer asks that each person share with one of their colleagues a resource on the handout(s) that they believe could be useful, now or in the future. Do you think any of the information you received today can be useful for other workers? Sharing information with other people is an excellent opportunity to reiterate this information for one's own knowledge and to help others to take action. Information is power! Use it to educate yourself, ask questions, talk about your rights and the situations you face at work with your colleagues.	Worker handout(s) Additional information sheets to have available in case people want to have more than one copy.
5 minutes	Closing dynamics - Evaluating what has been learned			

Reviewing	Identify interest, learning and follow-up opportunities	The trainer conducts a brief evaluation of participants' knowledge - Read a couple of examples of situations at work and ask the group to identify if it is unfair or illegal (or both) and what could be done in each situation.	Flash cards with example scenarios and questions
Closing and Thanks	Finish the space with gratitude	The trainer appreciates the attention and participation of all people. The trainer makes sure participants have their contact information for follow up if needed.	Contact information

Glossary and Definitions

Term or phrase	Explanation
Agriculture	Agriculture means farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, and as otherwise defined in 20 CFR 655.103(c).
Farmworker	An employee who performs agricultural labor or services as defined under H-2A regulations at 20 CFR 655.103 (c). For the purposes of the FLSP program, this does not include supervisory agricultural employees.
H-2A Worker	Any temporary foreign worker who is lawfully present in the U.S. to perform agricultural labor or services of a temporary or seasonal nature pursuant to sec. 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, as amended.
Employer	A generic term that means any individual or company that employs workers; an employer can be a singular person, group of people, or corporate entity.
Agricultural Employer	For purposes of this program, “agricultural employers” are defined in 29 CFR 501.3 and 20 CFR 655.103 (b) as “a person (including any natural person, partnership, association, corporation, cooperative, firm, corporation, trust, or other organization with legal rights and obligations) who: (i) Has an employment relationship (such as the ability to hire, pay, fire, supervise, or otherwise control the employee’s work) with respect to an H-2A worker or a worker in equivalent employment; or (ii) Files an Application for Temporary Employment Certification other than as an agent; or (iii) Is a person on whose behalf an Application for Temporary Employment Certification is filed.”
Agricultural Association	Any non-profit association or cooperative of farmers, farmers or ranchers (including, but not limited to, processing establishments, canneries, ginners, packing houses, nurseries, or other similar fixed agricultural employers), constituted or qualified under applicable state law, that recruits, solicits, hires, employs, provides, accommodates, or transports any worker subject to 8 U.S.C. 1188. An Agricultural Association may file H-2A applications and act as an agent of an employer or may act as a sole or joint employer of any worker subject to 8 U.S.C. 1188.

Recruiter	A term that describes a natural or legal person, that is, a person who acts individually or as part of an institution or agency, who performs any of the following activities: disseminating information about job offers, summoning interested people, interviewing, collecting information from workers, writing down information in lists or files to be shared, selecting groups of workers, providing information on contracts, facilitating visa procedures, transfers and delivery of documents that allow a person to be employed in the United States with a work permit.
Supervisor	A person employed by an employer who has review, reporting, and in-termediation responsibilities between the workers and the employer. They often represent or transmit the rules or interests of the employer before the workers. It is possible that in some places the supervision tasks are distributed among several people with different hierarchies, known as “foreman”, “field walker”, “mayordomos”, “manager”, Etc.
Work Site	Term that describes the space or environment in which workers perform their assigned tasks at work; sometimes, depending on the law, it also ex-tends to housing provided by employers, transport to reach the fields, etc.
Right	Term designating a protection by law. A violation of rights is something that goes against what the law says.
Collective Bargaining Agreement (CBA)	A written, legally binding contract or agreement that regulates the con-ditions of employment in one or more workplaces and that has been negotiated and agreed upon between an employer and a union compo-sed of workers. It must have the key enforcement and execution mecha-nisms to investigate and enforce effectively the laws applicable to agri-cultural employees in the relevant jurisdiction, including but not limited to the Fair Labor Standards Act, the Agricultural Workers Protection Act Migrant and Seasonal, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, and federal laws governing the hiring of temporary nonimmigrant (H-2A) agricultural workers. These mechan-isms must include, at a minimum 1) Independent audits carried out by third parties, 2) Complaint mechanism enforceable by third parties, 3) Education of agricultural workers.
Worker-Driven Social Responsibility Program (WSR)	In agriculture, a WSR program must have legally binding agreements between food retailer(s) and worker organization(s) requiring purcha-sing preference for participating agricultural employers in good stan-ding with the WSR Program. A WSR Program must have the following implementation and enforcement mechanisms to effectively investigate and enforce compliance with laws applicable to farm employees in the relevant jurisdiction, including but not limited to the Fair Labor Stan-dards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, and federal laws governing the recruitment of temporary nonim-migrant agricultural (H-2A) workers. Such mechanisms must include, at a minimum: 1) Independent third-party audits, 2) Enforceable third-par-ty complaint mechanism, 3) Farmworker Education.

USDA: United States Department of Agriculture	A U.S. federal government agency that provides leadership on food, agriculture, natural resources, rural development, nutrition, and other related issues. Manages the FLSP project.
FLSP: Farm Labor Stabilization and Protection Pilot Program	Program administered by USDA that supports agricultural employers in implementing strong labor standards to promote a safe and healthy work environment for farmworkers employed in the United States, regardless of their immigration status.
KYRR training: “Know Your Rights and Resources” training	Training methodology that is part of the FLSP program and whose purpose is to guide farmworkers employed by employers approved to participate in the FLSP program about the fundamental labor rights and benefits they have in their workplace, in addition to the additional resources that exist to know and defend those rights.
KYRR FLSP Trainer	Person trained in the KYRR methodology to train agricultural workers on their labor rights under the FLSP program.
FLSA: Fair Labor Standards Act	U.S. labor law that establishes a minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
DOL: Department of Labor	U.S. federal government agency that administers federal labor laws to guarantee workers’ rights to fair, safe, and healthy working conditions, including minimum hourly wage and overtime pay, protection against employment discrimination, and unemployment insurance.
WHD: Wage and Hour Division	The division of DOL that is responsible for enforcing the country’s labor laws, including those related to the minimum wage and employment of minors.
OSHA: Occupational Safety and Health Administration	U.S. federal agency that is part of DOL and which assures safe and healthful working conditions by setting and enforcing standards, and by providing training, outreach, education and assistance.
EEOC: Equal Employment Opportunity Commission	An independent U.S. federal agency that enforces laws that make discrimination illegal in the workplace. The commission oversees all types of work situations including hiring, firing, promotions, harassment, training, wages, and benefits.
NLRB: National Labor Relations Board	An independent U.S. federal government agency that enforces the National Labor Relations Act by investigating allegations of wrongdoing brought by workers, unions or employers, conducting elections and deciding and resolving cases.
EPA: Environmental Protection Agency	An independent U.S. federal agency that protects people and the environment from significant health risks, sponsors and conducts research, and develops and enforces environmental regulations.
Retaliation	When an employer carries out a punishment, revenge, or any adverse action against an employee for having exercised a protected legal right.

<p>Infringe upon (e.g. any employment rights)</p>	<p>Make vulnerable, put at risk, breach, violate. E.g.: during a low-productivity at the end of the seasons, an employer continued to pay piece-rate that resulted in workers earning less than the minimum wage per hour, which infringes upon their right to the minimum wage.</p>
<p>Coercion</p>	<p>Pressure to force a person to perform activities that harm them or to stop performing activities that are their right. This pressure can be through physical pressure or through threats of damage to your personal integrity, your assets or properties, or your rights.</p>

Training Manual for Trainers

Know Your Rights

FLSP RESOURCES

First edition, July 2024
Printed in USA

This manual provides essential information about the **labor rights of agricultural workers** employed in the United States under the **Farm Labor Stabilization and Protection Pilot Program (FLSP)**. It is a key resource for labor rights trainers who have been hired by the National Alliance of Farmworker Women under the FLSP "Know Your Rights and Resources" program of the U.S. Department of Agriculture (USDA).

