

# Rural Migration News

## Blog 191

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### Federal Labor Law Enforcement in Agriculture

The purpose of labor law enforcement is to ensure that the rights of workers are protected and to level the playing field for employers, so that those who underpay workers or engage in other cost-reducing behavior in violation of labor laws do not gain a competitive advantage over law-abiding employers. The US Department of Labor's Wage and Hour Division (WHD) is the major federal agency that protects the rights of US farm workers and H-2A guest workers.

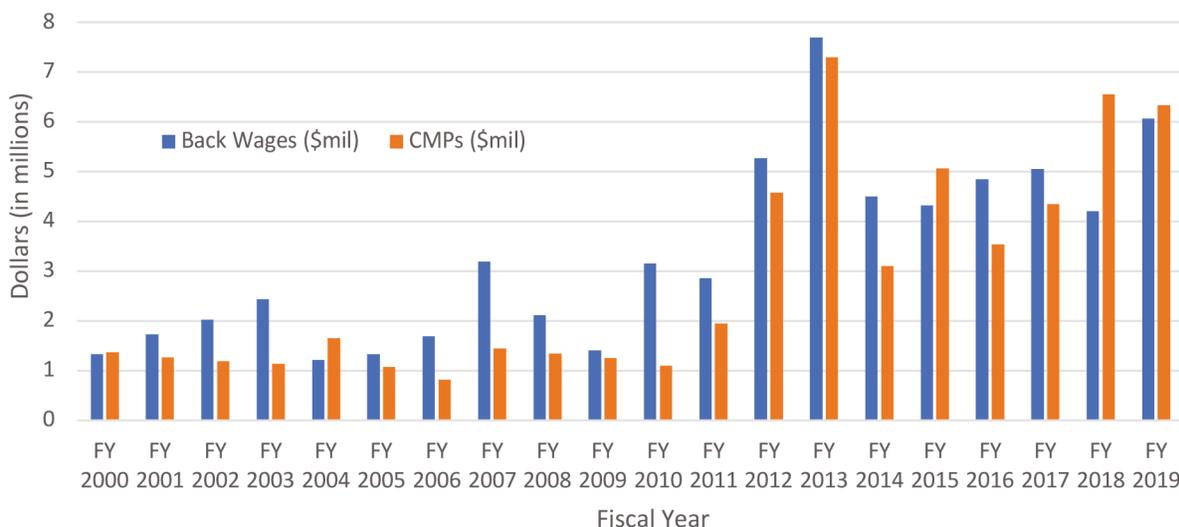
WHD enforcement data reveal three major trends. First, violations of H-2A regulations have become the major source of back wages owed to farm workers and dominate the civil money penalty (CMP) assessments that are levied for labor law violations in agriculture. In FY2000, violations of the Migrant and Seasonal Worker Protection Act generated about \$1 million in back wages and CMPs, compared with \$100,000 for H-2A violations. In FY19, violations of MSPA led to \$4 million in back wages and

CMPs, compared with \$5 million for H-2A violations.

Second, farm labor contractors (FLCs) account for a disproportionately high share of labor law violations. FLCs employ a seventh of US farm workers, but account for a quarter of all agricultural labor law violations. FLCs are expanding their share of all farm worker employment, and their share of H-2A guest worker employment, suggesting more farm labor law violations.

Third, within a particular commodity or NAICS code, the five percent of investigations that find the most violations account for 50 to 75 percent of all violations in that commodity. For example, the five percent of US crop farms with the most violations accounted for two-thirds of all violations found on all US crop farms, and a similar five-percent of violators accounted for two thirds of violations among FLCs and in fruits, vegetables, and other commodities. Inducing compliance among bad apples, or putting them out of business, could decrease the total number of violations by two thirds or more.

Back Wages Owed to Farm Workers and CMPs Peaked in FY13



Source: <https://www.dol.gov/agencies/whd/data/charts/agriculture>

## Enforcement FY00-FY19

WHD conducted over 31,000 investigations in US agriculture between FY00 and FY19, ordered \$66 million to be paid in back wages to 154,000 farmworkers, and assessed \$56 million in civil money penalties for labor law violations. The number of WHD agricultural investigations fell from over 2,000 a year in the early 2000s to 1,100 a year or about 100 a month recently.

H-2A investigators normally work in teams of two and conduct five to 10 investigations during two-weeks stints visiting farms.

The number of farm workers who were owed back wages peaked at 12,000 in FY14, when some 9,000 workers were found to be owed back wages in FY19. The amount of

back wages owed peaked at \$7.7 million in FY13, the same year that CMPs peaked at \$7.3 million. Back wages and CMPs were between \$4 million and \$7 million a year over the past five years.

WHD enforces two major farm labor laws: the Migrant and Seasonal Worker Protection Act and regulations governing the H-2A program. About 45 percent of the agricultural investigations over the past two decades found violations of MSPA. The number of MSPA violations peaked in FY14, and has since declined by more than half.

However, back wages owed to farm workers, and CMPs assessed for MSPA violations, peaked in FY19 and were two and three times FY14 levels. Indeed, a seventh of all back wages and CMPs assessed over

the past two decades for MSPA violations were found in FY19, when the average back wage owed per employee was \$572, three times the average \$166 owed over the past two decades.

Some 11 percent of the agricultural investigations found violations of H-2A regulations. The H-2A program doubled in size over the past six years, and the number of violations rose to 12,000 in FY19, when almost 5,000 H-2A and US workers were owed back wages for H-2A violations. Back wages owed to workers for H-2A violations peaked at \$4.4 million in FY13, when CMPs for H-2A violations were almost \$6 million. Over 200,000 H-2A workers fill 10 percent of the jobs on US crop farms, and H-2A violations are likely to rise as the number of H-2A workers increases.

**MSPA Violations Peaked in FY14, but Back Wages and CMPs for MSPA Violations peaked in FY19**

Fiscal Year	Cases with Violations	Share of Violations	Total Violations	Average Violations per Case	Employees owed Back Wages	Back Wage Amount	Average Back Wages per Employee	Civil Monetary Penalties Assessed
2000	853	6%	4,422	5	1,114	\$104,903	\$94	\$870,421
2001	941	7%	10,745	11	6,356	\$368,132	\$58	\$733,537
2002	948	7%	5,994	6	1,835	\$387,659	\$211	\$783,400
2003	740	5%	6,008	8	1,994	\$266,325	\$134	\$600,071
2004	794	6%	4,295	5	1,129	\$272,540	\$241	\$946,102
2005	616	4%	3,430	6	1,330	\$98,460	\$74	\$588,631
2006	615	4%	3,105	5	1,007	\$152,332	\$151	\$610,890
2007	812	6%	5,350	7	1,497	\$179,565	\$120	\$1,181,543
2008	747	5%	5,275	7	2,557	\$308,924	\$121	\$764,301
2009	636	5%	4,979	8	2,061	\$326,548	\$158	\$804,288
2010	626	4%	4,876	8	1,883	\$323,135	\$172	\$648,311
2011	654	5%	5,578	9	2,558	\$404,962	\$158	\$885,448
2012	767	5%	7,129	9	3,688	\$754,592	\$205	\$1,036,650
2013	822	6%	8,255	10	4,336	\$636,514	\$147	\$902,628
2014	756	5%	10,745	14	6,213	\$742,537	\$120	\$951,669
2015	707	5%	7,802	11	3,569	\$644,188	\$180	\$838,747
2016	608	4%	7,696	13	3,792	\$680,185	\$179	\$968,444
2017	548	4%	3,876	7	1,274	\$249,645	\$196	\$1,613,028
2018	492	3%	4,905	10	2,314	\$562,797	\$243	\$2,751,533
2019	412	3%	4,580	11	2,253	\$1,288,790	\$572	\$2,875,374
Total	14,094	100%	119,045	8	52,760	\$8,752,732	\$166	\$21,355,015

Source: <https://www.dol.gov/agencies/whd/data/charts/agriculture>

## H-2A Violations Peaked in FY19, but Back Wages and CMPs for H-2A Violations peaked in FY13

Fiscal Year	Case with Violations	Share of Violations	Total Violations under H-2A	Average Violations per Case	Employees Receiving Back Wages	Back Wages	Average Back Wages per Employee	Civil Monetary Penalties Assessed
2000	68	1%	1,100	16	307	\$91,915	\$299	\$136,620
2001	102	9%	9,739	95	1,185	\$466,293	\$393	\$258,540
2002	121	3%	3,606	30	1,043	\$203,347	\$195	\$173,385
2003	76	3%	3,440	45	937	\$360,788	\$385	\$311,025
2004	79	2%	1,910	24	560	\$139,367	\$249	\$178,350
2005	73	2%	2,415	33	947	\$363,032	\$383	\$285,900
2006	86	1%	1,084	13	265	\$218,421	\$824	\$57,900
2007	95	3%	3,270	34	1,826	\$440,085	\$241	\$77,413
2008	114	3%	3,314	29	1,064	\$640,472	\$602	\$440,508
2009	117	4%	4,152	35	1,487	\$400,765	\$270	\$309,338
2010	100	3%	3,730	37	954	\$371,221	\$389	\$357,080
2011	170	5%	5,987	35	1,548	\$813,374	\$525	\$780,755
2012	216	9%	10,214	47	3,228	\$1,805,327	\$559	\$3,267,239
2013	232	10%	11,171	48	4,440	\$4,448,005	\$1,002	\$5,972,230
2014	173	6%	6,954	40	2,971	\$1,379,230	\$464	\$1,768,000
2015	207	7%	7,935	38	2,496	\$1,605,360	\$643	\$3,921,187
2016	235	5%	6,079	26	3,572	\$1,451,579	\$406	\$2,223,114
2017	330	6%	7,314	22	3,717	\$2,378,157	\$640	\$2,246,527
2018	318	7%	8,438	27	4,328	\$1,971,674	\$456	\$3,064,224
2019	431	11%	11,984	28	4,994	\$2,419,766	\$485	\$2,836,552
Total	3,343	100%	113,836	34	41,869	\$21,968,177	\$525	\$28,665,885

Source: <https://www.dol.gov/agencies/whd/data/charts/agriculture>

### Detailed Data: FY05-19

Detailed data from 17,000 agricultural establishments that were the subject of 20,260 investigations between FY05 and FY19 found 292,400 violations of the three major federal farm labor laws, the Fair Labor Standards Act (24 percent of all violations), MSPA (30 percent), and H-2A program rules (32 percent). About 30 percent of the employers investigated had no violations, and 31 percent had five or more violations. The employers with five or more violations accounted for two-thirds of all labor law violations found.

Farm labor contractors (FLCs) play a special role in farm labor markets, earning revenue by finding workers for employers and jobs for workers. The Quarterly Census of Employment and Wages (QCEW) reports the average employment of FLCs who enroll their workers in the

unemployment insurance systems that are operated by states, which means that QCEW coverage of FLC employment varies by state. Almost all workers employed in agriculture are included in the QCEW for California and Washington, but H-2A guest workers and US workers employed by smaller FLCs and on smaller farms are excluded from the QCEW in Florida, Georgia, and other southern states.

FLCs are becoming more important as farmers outsource labor-intensive tasks to crop support services (NAICS 1151), defined as nonfarm employers who bring workers to farms to plant and harvest crops. FLCs account for over half of the employment in crop support services. Across the US, FLCs account for 14 percent of average employment in agriculture and 25 percent of all labor law violations.

Among FLCs, a relative handful of “bad apples” account for a high share of violations. The 10 US FLCs with the most violations were a minuscule share of the 4,800 FLCs investigated, some several times, but they accounted for a sixth of all labor law violations found at FLCs and 10 percent of all back wages owed by FLCs.

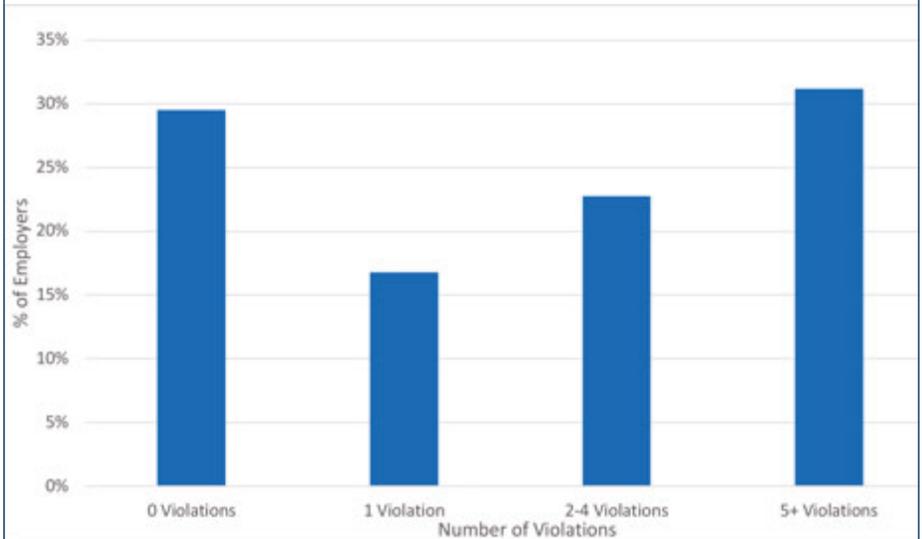
The bad apple problem is even more pronounced in California, where 22 investigations of the 10 FLCs with the most violations detected 28 percent of all violations committed by the state’s FLCs. These top 10 California FLC violators accounted for 22 percent of the back wages owed to farm workers. The bad apple issue is also apparent when employers are ranked by their share of the violations found in a particular commodity or NAICS code. The five percent of US crop farms with the most violations of federal labor laws between

FY05 and FY19 accounted for two-thirds of all the violations found on US crop farms. A similar bad apple story applies to US FLCs, where the five percent with the most violations accounted for two thirds of all violations found among US FLCs.

WHD investigators record the commodity of the employers investigated. A comparison of the share of violations found in a commodity or NAICS code with the share of QCEW employment in that NAICS code shows that commodities with H-2A workers have much higher shares of violations than their shares of employment. There are two explanations. First, H-2A employers often violate H-2A regulations and other labor laws. Second, in states where H-2A workers are excluded from unemployment insurance, QCEW employment is lower than actual employment in that commodity.

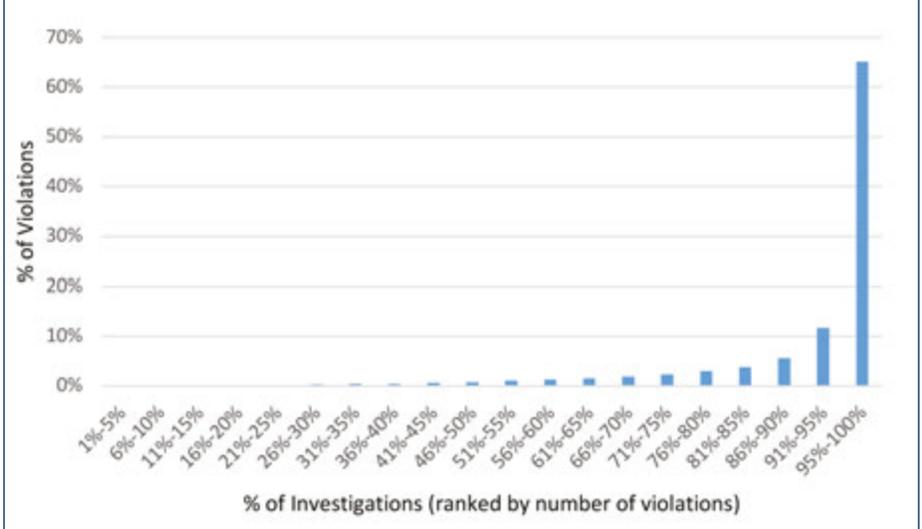
Both factors are at work in the two NAICS codes with the highest ratios of violations to employment. The share of violations found in NAICS 1124, sheep and goats, is eight times the share of QCEW employment in sheep and goats. Many sheep and goat farms rely on H-2A workers from Peru and other countries to tend their sheep, often on public lands in the western states. Two associations, Mountain Plains Agricultural Services and the Western Range Association,

**Almost 30 percent of investigations found no violations, and 31 percent had 5 or more**



Data include violations of H-2A, MSPA, FLSA, and other labor laws enforced by WHD  
Source: [https://enforcedata.dol.gov/views/data\\_catalogs.php](https://enforcedata.dol.gov/views/data_catalogs.php)

**The 5% of US crop farms with the most labor law violations accounted for two thirds of all violations found on US crop farms (FY05-FY19)**



**The 10 California FLCs with the most labor law violations accounted for 28 percent of all FLC violations in the state**

Employer	Number of Investigations	Number of Violations	Share of FLC Violations	Total Back Wages Owed	Share of FLC Back Wages Owed	Total CMPs Assessed	Share of FLC CMPs Assessed
Cal West Farm Management, Inc.	2	776	4.2%	\$50,197	2.9%	\$2,650	0.1%
Global Horizons Inc.	3	679	3.7%	\$132,885	7.8%	\$0	0.0%
Sunshine Agricultural Services	2	674	3.7%	\$58,689	3.4%	\$1,600	0.0%
Benito Veliz Carrillo dba: E C Labor	2	550	3.0%	\$9,045	0.5%	\$3,000	0.1%
Cruzberto Barajas-Angel	1	540	2.9%	\$17,214	1.0%	\$2,550	0.1%
Esparza Enterprises, Inc	8	494	2.7%	\$38,222	2.2%	\$9,111	0.3%
Juan Luis Ayala Lopez-FLC	1	409	2.2%	\$20,905	1.2%	\$4,200	0.1%
LLamas Ag, Inc.	1	391	2.1%	\$23,484	1.4%	\$2,975	0.1%
Nextcrop	1	384	2.1%	\$13,313	0.8%	\$19,525	0.6%
Cruz Lopez, Domingo Eustacio FLC	1	327	1.8%	\$7,408	0.4%	\$1,600	0.0%
<b>Top 10 FLCs</b>	<b>22</b>	<b>5,224</b>	<b>28.4%</b>	<b>\$371,363</b>	<b>21.7%</b>	<b>\$47,211</b>	<b>1.4%</b>
Total CA FLCs	836	18,382	100%	\$1,712,569	100%	\$3,397,538	100%

Source: [https://enforcedata.dol.gov/views/data\\_catalogs.php](https://enforcedata.dol.gov/views/data_catalogs.php)

handle recruitment and paperwork for their member farmers, most of whom employ fewer than five H-2A sheepherders, each of whom is usually provided with a mobile trailer to tend a flock of 1,000 sheep.

Other NAICS categories with a far higher share of violations than their share of employment include 1132, Forest Nurseries and Gathering of Forest Products, and 1153, Support Activities for Forestry. Many of the H-2A workers in forestry are employed in reforestation activities, such as planting seedlings for piece-rate wages.

Peruvian H-2A sheepherder in Wyoming



The share of violations and the share of employment varies by commodity or NAICS code

NAICS Code	Violations (FY05-FY19)	Share of Violations	Average QCEW Employ 2019	Share of Employ	Ratio: violations/employment
1111 Grain Crops	3,572	1.3%	54,657	4.3%	31%
1112 Veg and Melon Crops	40,046	14.9%	89,582	7.1%	210%
1113 Fruit and Nut Crops	54,465	20.2%	176,405	14.0%	145%
1114 Nursery Crops	15,094	5.6%	161,272	12.8%	44%
1119 Other Crops	23,713	8.8%	64,634	5.1%	172%
1121 Cattle & Dairy	1,954	0.7%	159,234	12.6%	6%
1122 Hogs and Pigs	948	0.4%	31,004	2.5%	14%
1123 Poultry and Eggs	27,361	10.2%	45,994	3.6%	279%
1124 Sheep and Goats	2,540	0.9%	1,522	0.1%	784%
1125 Aquaculture	1,165	0.4%	7,071	0.6%	77%
1129 Other Animal	2,464	0.9%	20,259	1.6%	57%
1131 Timber Tract	1,077	0.4%	2,967	0.2%	170%
1132 Forest Nursery	1,870	0.7%	2,052	0.2%	428%
1133 Logging	2,522	0.9%	48,257	3.8%	25%
1141 Fishing	311	0.1%	6,665	0.5%	22%
1142 Hunting and Trapping	146	0.1%	1,908	0.2%	36%
1151 Crop Support	80,169	29.8%	342,323	27.1%	110%
1152 Animal Support	924	0.3%	30,622	2.4%	14%
1153 Forestry Support	8,796	3.3%	17,277	1.4%	239%
Total Violations/Employment	269,137	100.0%	1,263,705	100.0%	100%
115115 Farm Labor Contactors	65,135	24.2%	181,322	14.3%	169%

Sources: WHD enforcement database and QCEW

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