

# GLOBALG.A.P. Risk-Assessment on Social Practice (GRASP)

## GRASP Module – Interpretation for United States of America

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## THE NATIONAL INTERPRETATION GUIDELINE

### A. INTRODUCTION

GRASP criteria and principles **provide the minimum compliance criteria** to be follow for those producers seeking the assessment. Therefore, **where there is no legislation (or legislation is not so strict or less beneficial for workers) on one GRASP criteria, GRASP criteria must be applied, assess and monitor as stated in the checklist.** There is no federal or state law of any jurisdiction that prevents an employer from granting or giving *more* than what is legally mandated. All federal and state legal requirements are *minimum* standards.

Federal, state or any other kind of relevant legislation from United States of America overwrites GRASP criteria **ONLY when this legislation is more demanding (provides better rights or protection to the worker) or when relevant legislation declares the application of one criteria illegal.**

This UNITED STATES GRASP National Interpretation Guidelines provides only some guidance to producers and assessors on the respective legal framework of the country and in certain cases the regions of that country. (General Rules 2.1.d)

However, please be aware that: (DISCLAIMER): Using this Module alone will NOT give its user an accurate view of the law of any locality in the United States. It does NOT contain the applicable law of the Control Points in the United States. It DOES contain or refer to relevant FEDERAL (U.S.) laws, but those are usually amplified, amended or made inapplicable by all or some employment situations in every U.S. state. As there are 50 states, it is impractical for this document to contain the laws of each. However, the Annex contains useful website addresses which include the state legal provisions of all 50 states on some of the elements stated in the Control Points. For some others, no compilation of the state laws of each of the 50 states could be found. Those assessing farm operations in any particular state, county or municipality must check the particular state and local legal provisions applicable to that geographical unit. No other action will provide an accurate view of the law.

ALL use of state laws in this document are for illustration purposes only. Their use represents that state's law on the topic for which it is cited only. Applying it to any other state on that topic would be wholly inaccurate. Auditors and producer must seek for the correct regulations that applied to its operations all the time.

The federal Privacy Act of 1974 prohibits others who are not other governmental agents to see, copy or retain any federal records on individuals. Therefore, assessors will not be able to see employer's retained I-9 forms (and submitted documentation) H-2A visa and any other governmental records of any employee. See Control Points for suggested methods for gaining information needed for assessment.

## **B. WEBSITES and their USE**

i. The main FEDERAL laws referred to in this Module, the Fair Labor Standards Act (“FLSA”) and the Migrant and Seasonal Labor Protection Act (“AWPA”) can be accessed by the website address for the U.S. Department of Labor (“USDOL”), Employment Standards Administration (ESA), Wage & Hour Division (“WHD”): <http://www.dol.gov/whd>

It has a convenient link system that accesses all topic areas. Links direct users to other subheadings under that topic. The “search box” can also be used by placing a common-sense title of the desired information in the box, e.g., “Minimum Wage in Agriculture”, “Poster Requirements” or “Work Hours for Children on Farms”. Whether using the Topic Access System or the Search Box, a brief summary of the federal laws that are administered by the Department of Labor on that subject will be displayed, usually with further helpful links.

This site also has links to other USDOL Divisions and Federal Departments, e.g., Occupational Health and Safety Administration (“OSHA”), Equal Employment Opportunity Commission (“EEOC”) and U.S. Department of Agriculture (“USDA”), with more minor legal roles in aspects stated in the Control Points. It also has some relevant State laws and State Agencies.

ii. At several Control Points and in the Annex, there are website addresses given which offer a useful state-by-state compilation of the most significant features of every states’ laws on any single topic, such as Minimum Wage or Child Labor in Agricultural Employment. When clicking on those websites, each state and the highlights of its’ laws on that topic are listed in alphabetical order, ready for easy use.

For further questions or research, there are also websites addresses given at the Control Points and in the Annex that list each states’ governmental agencies for any particular governmental function, such as states’ Departments of Labor or Equal Employment Opportunity Commissions.

iii.. To find the full details of the labor and related laws of EACH STATE, there is a simple-to-use web format that is almost always the fastest way to get the state law information sought.

To illustrate, to find the Department of Labor for the labor laws and policies of Pennsylvania: [www.state.dol.pa.gov](http://www.state.dol.pa.gov)

The above address, with “pa”—used here for the state of Pennsylvania, as an example—(and just change to any state that is desired), will yield the Department of Labor and Industry (always referred to as “dol” in the address, no matter what the actual name of the state’s department may be) for the state inserted—either through the state’s postal abbreviation or its full name. The address is not upper or lower case-sensitive.

The “dol” portion of the address can be changed to access another desired Department in each state. For example: [www.state.doe.ca.gov](http://www.state.doe.ca.gov) will display the Department of Education (or any other similar name with the same functions it may have in any particular state) of California.

If encountering any difficulty with this address formula, there is another simple format to access all the government departments and functions of any state, for example: [www.texas.gov](http://www.texas.gov) or [www.tx.gov](http://www.tx.gov). Of course, insert the full name or postal abbreviation of the desired state where “texas” or “tx” is used in the example above.

### **C. ORIENTATION to LEGAL JURISDICTIONS**

The United States’ agricultural labor legislative and regulatory system is unlike many other nations’ for which Country Modules have previously been prepared. The U.S. legal framework involves at least 51 jurisdictions (not including the District of Columbia and U.S. Territories, which are generally governed by Federal labor laws and in some cases local municipalities, counties, districts and other state governmental subdivisions). Federal law and the 50 states’ laws all address most of the topics covered by the Control Points and their Compliance Criteria.

In addition to that complexity, the usual case in both federal labor laws *and* those of *each* of the 50 states, is that *agricultural* labor is treated *differently* and *separate* from labor laws for non-agricultural industries—which are frequently referred to exactly in that manner as “non-agricultural” laws about labor and conditions of work. Thus, locating a labor provision on any particular subject requires special care to ensure that the rule found applies to agricultural operations and labor. This is especially important, as both federal and state jurisdictions provide far fewer protections and benefits for agricultural workers, including children, than for workers in all other industries.

Each of the 51 jurisdictions (Federal and 50 States) has their own administrative and enforcement agency, with, in the case of the U.S. DOL and many of the state’s equivalent Departments, multiple offices throughout the country or within their state. Each of these 51 agencies interprets and enforces their single jurisdiction’s laws *only*. They cannot advise or comment upon the laws of any other jurisdiction than their own. The same is of course true when using websites to gather that information. Both the USDOL (WHD) website and, for example, the site of the Illinois Department of Labor would have to be used in order to get an accurate view of agricultural labor laws applicable in Illinois.

### **D. RULES for INTERPRETING CONTROLLING LAW between FEDERAL and STATE LAWS and references to each States’ major labor law provisions**

When both a particular federal legal provision and that of a state address the same issue but with different requirements there are, depending upon a coverage analysis and the provision involved, some methods used to establish which law controls in that state. Although federal law applies uniformly in every state it is not always controlling. First, not every business is covered under its legislation. The most relevant coverage qualifications of the two federal statutes where most of the matters interpreted in this Module are addressed, the Fair Labor Standards Act (“FLSA”) and the Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”) can be found in the Annex under Control Point 4. Even when a farm itself is covered, its’ workers may not be. All or some of them may be exempted from all or some of its provisions. Below are the most relevant and significant total and partial exemptions from FLSA provisions.

- Overtime

Under the FLSA, no farm worker has any right to be paid at an Overtime wage level (“Overtime”). They can work for an unlimited number of hours per week and not be entitled to receive any additional wage rate greater than the legal hourly Minimum Wage or whatever their regular wage is, if higher, whether that is calculated by straight time or through piece-work (e.g., wages based on the number of baskets of tomatoes picked per day and per week) units. Further clarification of these principles can be found in the Annex at Control Point 10.

- Minimum Wage and Overtime

Farm employees hired by an employer who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding year are totally exempt from the two most important FLSA guarantees, the right to receive the Minimum Wage and Overtime. This exemption would apply to few U.S. farms as most are of a size that would require more manpower than the coverage minimum standard here.

- Minimum Wage— See Annex under Control Point 3 for website address with Listing of all States’ Minimum Wage;

- i. Certain classes of individuals can be paid less than the Minimum Wage under the FLSA. These lower wages are referred to as a “subminimum wage”. For details, see Control Point 7 and Annex under Control Point 7.
- ii. The rules concerning which businesses and workers are covered under **FLSA** and **AWPA** and therefore subject to its provisions can be found in the Annex under Control Points 4 and 7. When laws other than the FLSA and AWPA are cited in the Interpretations that follow, check their coverage and exemption provisions at their website before applying to your circumstance.
- iii. If a business is covered by and its workers are not exempted from all or portions of the FLSA, AWPA or any other federal laws cited in the Interpretations and a particular state also has a provision on a specific topic that differs from the federal law, there is a common rule of construction that applies. The provision that will apply in each individual state is, in almost every case, the one that is more stringent or protective or beneficial to the adult or child laborer. For example, the current Federal Minimum Wage (as of August, 2010) is \$7.25 per hour. The State Minimum Wage in Alaska is \$7.75 per hour and in Washington it’s \$8.55. Applying the rule results

in the conclusion that in Alaska the applicable minimum wage is \$7.75 and in Washington it's \$8.55, as long as the business and its employees are covered and not exempt from and under Alaska or Washington state minimum wage laws. If the business involved is not covered or all or some of its' agricultural employees are exempt from State minimum wage rates, then the Federal Minimum Wage (\$7.25) would apply. Another example: the federal agricultural child labor laws generally do not permit non-residential children to work on farms until they are 14 years of age. Wisconsin permits farm work, without exceptions, at age 12. The rule that applies in Wisconsin, if a business is covered under the FLSA, is that children may not work on farms until they are 14 years of age because that is the more stringent standard. An illustration about exemptions: The FLSA exempts farm workers from Overtime pay rates. California includes farm workers in its overtime pay provisions. The rule in California is that farm workers are entitled to Overtime pay rates, because that is more beneficial to the worker.

#### **E. STATE LAW EXEMPTIONS**

In addition to the federal legal exemptions common to agricultural operations, State law exemptions are often applied to adult and child farm workers. In Michigan, hours and hazardous work restrictions do not apply to agricultural child laborers, nor do they have to obtain the otherwise required Work Permit. Louisiana requires that employers pay their workers no less than bi-monthly, but exempts agricultural employers from that requirement. All states have a worker's compensation system to adjudicate workers' injury claims and direct employers' compensation payments, except that some states exempt at least some agricultural employees from inclusion in their system. In Virginia for example, only those who work on farms that have more than two full-time employees can claim compensation for their workplace injuries through its worker's compensation system.

#### **F. Use of "EMPLOYEE" or "WORKER" and Legal Background on Farm Labor Contractors – See Annex under "Introduction"**

Control Point	Compliance Criteria	Interpretation for United States of America
<b>EMPLOYEES' REPRESENTATIVE(S)</b>		
1	<p>Is there at least one employee or an employees' council to represent the interests of the staff to the management through regular meetings where labor issues are addressed?</p>	<p>Documentation is available which demonstrates that a clearly identified, named employees' representative(s) or an employees' council representing the interests of the employees to the management is elected or in exceptional cases nominated by all employees and recognised by the management. The election or nomination takes place in the ongoing year or production period and is communicated to all employees. The employees' representative(s) shall be aware of his/her/their role and rights and be able to discuss complaints and suggestions with the management. Meetings between employees' representative(s) and the management occur at accurate frequency. The dialogue taking place in such meetings is duly documented.</p> <p>For GRASP compliance, in addition to the local law, the farm shall have a representative or a form of representation when the farm has <b>more than 1 employee</b> (employee concept is defined in the Annex, Introduction of this document, and includes seasonal and hired labor e.g., farm labor contractor and H-2A). <b>All employees shall have</b> a form of employees' representation that can be applied to meet the GRASP requirements as indicated in the different control points with respect to the employees' representative (ER). The ER or in alternative scenarios, the person (people) responsible for the system of representation shall be present during the assessment.</p> <p>This form or representation could take any form (could be a person, group of people, several temporally appointed people, etc.) as long as:</p> <ul style="list-style-type: none"> <li>• It is independent from management</li> <li>• It is decided by the employees</li> <li>• It is communicated to the employees</li> <li>• It is recognized by the employees</li> </ul> <p>Workers' representatives are not banned in the farms in United States and at least one employees' representative is required by GRASP.</p> <p>Where there is a union or worker association on the farm, its representative can be considered the workers' representative. If not possible, or this representative does not accept the responsibility, or workers prefer to elect a different person, then:</p> <ol style="list-style-type: none"> <li>1. The employees' election or nomination of a representative can only consider someone who is actually working on the farm where they would serve as employees' representative.</li> </ol>

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			<p>2. The election or nomination must be free and open to all workers, who must be allowed to discuss the candidates and hold the election on farm property during hours when they are employed.</p> <p>3. Their election or nomination and the chosen employees' representative must be free of management interference, threats, intimidation, or reprisals and the like. Recognition by management of the employees' representative must be automatic.</p> <p>The employees' representative or council (or multiple representatives or council with many members in cases of large agricultural operations) must represent the interests of the workers only, who must agree on the structure and procedures of that role. The representative or council must be able to make and receive communications in the workers' native language.</p> <p>In the case of the term employees or workers, the intent is that any worker including family members are included here. – Interpretation from CIPRO</p> <p>NATIONAL LABOR RELATIONS ACT Also cited NLRA or the Act; 29 U.S.C. §§ 151-169 [Title 29, Chapter 7, Subchapter II, United States Code]</p>
<b>COMPLAINT PROCEDURE</b>			
2	Is there a complaint and suggestion procedure available and implemented in the company through which employees can make a complaint or suggestion?	A complaint and suggestion procedure appropriate to the size of the company exists. The employees are regularly informed about its existence, complaints and suggestions can be made without being penalized and are discussed in meetings between the employees' representative(s) and the management. The procedure specifies a time frame to answer complaints and suggestions and take corrective actions. Complaints, suggestions and follow-up solutions from the last 24 months are documented.	<p>There are no federal or state laws about complaint procedures at workplaces without recognized unions. However, GRASP requires the existence of a complaint and suggestion procedure.</p> <p>On farms with recognized unions, a formal grievance procedure is usually part of their collective bargaining agreement.</p> <p>If a farm has an unrecognized union or other worker association and it has a complaint process, it should be used.</p> <p>When the farm does not have a worker association, the procedure should be directed to the employees' representative (CP 1).</p>

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			<p>Whether provided or developed, farm management ensures clear, documented procedures for complaints are available, according to their needs and local legislation.</p> <p>Any procedure must require written or oral complaints and permit those that are anonymous and those that are written or spoken in the workers' native language.</p> <p>The procedure will determine the time for answering the complaint and who will answer the complaint.</p> <p>It is part of the employers' communications duty to inform workers, in a language its workers understand, that there will be no discipline, punishment, reprisals, or discrimination of any type against those who complain.</p> <p>The employees' representative shall inform the inspector/auditor about the efficacy of the complaints procedure.</p> <p>Refer to IFA CPCC 8.1 for minimum requirements of a complaint procedure. As related to the scope of GLOBALG.A.P. related worker complaints.</p>
<b>SELF-DECLARATION ON GOOD SOCIAL PRACTICES</b>			
3	Has a self-declaration on good social practice regarding human rights been signed by the management and the employees' representative and has this been communicated to the employees?	The management and the employees' representative(s) have signed, displayed and put in practice a self-declaration assuring good social practice and human rights of all employees. This declaration contains at least commitment to the ILO core labor conventions (ILO Conventions 111 on discrimination, 138 and 182 on minimum age and child labor, 29 and 105 on forced labor, 87 on freedom of association, 98 on the right to organize and collective bargaining, 100 on equal remuneration and 99 on minimum wage) and transparent and non-discriminative hiring procedures and the complaint procedure. The self-declaration	<p>Even though there is no specific federal, state or farm workers' union declaration of "good social practices", this is a requirement of GRASP.</p> <p>The declaration will reference that acceptance of the farm management to comply with the totality of relevant federal and state laws including those principles from the ILO core conventions that United States has not adopted.</p> <p><a href="https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871">https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871</a></p> <p>The U.S. has ratified only two of the ILO core labor conventions, Number 182 on the worst forms of child labor and 105 on forced labor. Therefore, the self-declaration should clearly indicate that the farm commit to respect, as long as it is not illegal, with the</p>

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	<p>states that the employees’ representative(s) can file complaints without personal sanctions. The employees have been informed about the self-declaration and it is revised at least every 3 years or whenever necessary.</p>	<p>following basic rights:</p> <ul style="list-style-type: none"> <li>• non-discrimination in any form,</li> <li>• humane treatment and non-harassment,</li> <li>• ethical recruitment – prohibiting forced and compulsory labor,</li> <li>• compliance with all applicable minimum age laws for working,</li> <li>• complying with all applicable child labor law,</li> <li>• recognizing the existence of freedom of association,</li> <li>• allowing rights to organize and collective bargaining,</li> <li>• recognizing rights on equal remuneration,</li> <li>• considering industry minimum wage,</li> <li>• implementing transparent and non-discriminative hiring procedures, and</li> <li>• creating a complaint procedure.</li> </ul> <p>The self-declaration must be signed by the workers’ representative and the management representative and should be communicate to all workers.</p> <p>On those few farms with unionized workers, their collective bargaining agreement, signed by management and the union, contains many elements of good social practices. To be considered, it must be completed with statements on the rights listed above and duly communicated to all the workers already hired and to new hires (including subcontracted and H-2A labor).</p> <p>Farm employers can demonstrate that they meet the equivalent of the requirement that management self-declare, sign and communicate its “good social practices policies” through their use of required U.S. and state Departments of Labor and related Departments’ posters as long as they include all the rights listed above. Otherwise, there must be proof of an annex document that has been duly signed and communicated to workers and new hires.</p>

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		<p>This Control Point will be satisfied if farms which adequately post required federal and state agricultural labor, including forced labor, safety, and discrimination posters (which includes the requirement that the posters be in the workers' native language), create a separate statement signed by the employer and each worker that the worker has seen the posters and understood their content. This duly signed statement, should include all the rights listed above.</p> <p>If the farm is in a state that does not offer or require such posters of their own state laws, employers are required to prepare and use a Self-Declaration, to be signed by both the worker and workers' representative stating and including all the rights stated above.</p>
<b>ACCESS TO NATIONAL LABOR REGULATIONS</b>		
4	Do the person responsible for the implementation of GRASP (RGSP) and the employees' representative(s) have knowledge of or access to recent national labor regulations?	<p>The responsible person for the implementation of GRASP (RGSP) and the employees' representative(s) have knowledge of or access to national regulations such as gross and minimum wages, working hours, trade union membership, anti-discrimination, child labor, labor contracts, holiday and maternity leave. Both the RGSP and the employees' representative(s) know the essential points of working conditions in agriculture as formulated in the applicable GRASP National Interpretation Guidelines.</p> <p>Management shall facilitate the access to information on gross and minimum wages, working hours, trade union membership, anti-discrimination, child labor, labor contracts, holiday and maternity leave to the employee to the (employees') representative and the RGSP all the time that they are present at the farm. Employee sensitive data shall remain confidential.</p> <p>Proof of such access should be shown during assessment. If access is provided electronically, the auditor shall check what resources guarantee access to the information when workers are present. In case the workers do not elect an employees' representative, an alternative system shall be in place to provide for the role of the employees' representation in this CP.</p> <p>See Annex for coverage provisions of FLSA (Fair Labor Standards Act) and AWPA (Agricultural Worker Protection Act), to identify if their provisions apply to any particular farm. See Annex here and under Control Point 3 for citations to many of the federal and state laws and enforcement agencies that comprise an</p>

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			<p>approximate equivalency to the national and state regulations listed in the Compliance Criteria.</p> <p>Also, see Annex under Control Point 3 for federal and state websites on some of the listed national and state regulations.</p>
<b>WORKING CONTRACTS</b>			
5	<p>Can valid copies of working contracts be shown for the employees? Are the working contracts compliant with applicable legislation and/or collective bargaining agreements and do they indicate at least full names, a job description, date of birth, date of entry, wage and the period of employment? Have they been signed by both the employee and the employer?</p>	<p>For every employee, a contract can be shown to the assessor on request (on a sample basis). Both the employees as well as the employer have signed them. Records contain at least full names, nationality, job description, date of birth, the regular working time, wage and the period of employment (e.g., permanent, period or day laborer, etc.) and for non-national employees their legal status and working permit. The contract does not show any contradiction to the self-declaration on good social practices. Records of the employees must be accessible for the last 24 months.</p>	<p>All employees shall be informed in writing and with comprehensible data about their employment conditions and its compliance with national legal requirements.</p> <p>This control point seeks to allow the workers and the management to keep the same information on the job terms, type, remuneration, legal status, legal age and working schedule and conditions.</p> <p>Evidence should permit to establish systems to fulfill the compliance criteria of this CP.</p> <p>On farms without a CBA, this Control Point requires the preparation of a basic employment contract, which must be signed by the employer and each employee.</p> <p>There is no National or State Identity Card, which could serve as proof of nationality. However, there are federal rules requiring employers to establish prospective worker's US or other nationality, legally authorized immigrant or immigrant employment status, through use of the I-9 form. It must be used by all employers for all workers. Employers must collect and retain the I-9 document (see Annex for website with the form, its rules, and procedures), from all prospective employees upon or shortly (within 3 days) after their hiring.</p> <p>An undocumented or other prospective worker who is not legally authorized to work would not be able to submit the I-9 with the genuine documents required to establish their necessary and compliant legal worker status. They could not lawfully be hired.</p> <p>Also, there is a temporary work visa available for non-national seasonal farm workers who qualify, the H-2A visa, issued by the</p>

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			<p>Department of Labor: <a href="https://www.dol.gov/whd/ag/ag_h-2a.htm">https://www.dol.gov/whd/ag/ag_h-2a.htm</a>. See Annex for further details and website with full information.</p> <p>Farm employers have certain added responsibilities to their H-2A visa holder workers. They must:</p> <ul style="list-style-type: none"> <li>• pay them no less than the prevailing wage level,</li> <li>• pay for their transportation to and from their temporary residence and to their regular or new worksites,</li> <li>• pay for meal(s) at workplace and provide other meals at cost or free cooking facilities,</li> <li>• provide housing that meets federal standards, and</li> <li>• carry workers compensation insurance.</li> </ul> <p>The I-9 form and the H-2A visa are proof of nationality. These documents are however covered under the U.S. Privacy Act, which means employers cannot show them to third, non-governmental parties. Most employers make an entry or keep a register of some kind about those workers who submitted an I-9 or H-2A visa at the time of employment. An employer is permitted to show those notations or the register without violating the Privacy Act.</p> <p>The H-2A Form ETA 790 includes relevant information without signatures and is acceptable form of contract as long that there is evidence that the worker has knowledge of the information contained on the form. This form guarantees the working program petition I129 ETA 1942 and including applicable criteria has been signed and agreed upon.</p>
<b>PAYSLIPS</b>			
6	Is there documented evidence indicating regular payment of salaries corresponding to the contract clause?	The employer shows adequate documentation of the salary transfer (e.g., employee's signature on pay slip, bank transfer). Employees sign or receive copies of pay slips / pay register that make the payment transparent and comprehensible for them. Regular payment of all employees during the last 24 months is documented.	<p>There is no legal requirement for employees to sign for the receipt of their wage payment. Although some farm employers do require a signature upon workers' receipt of wage payments, this is not the norm. This Control Point requires that the employee either receive a copy of their pay stub information or sign upon the receipt of their wages.</p> <p>The requirements of the FLSA and AWPA to pay wages at certain levels or with only certain allowable deductions are imposed as</p>

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		<p>legal duties on employers. Compliance with these provisions would meet the requirements of this Control Point for proof of actual wage payments to workers.</p> <p>Including pay information on a worker's wage pay stub is a common payment method. For employers who do not currently include wage information along with their wage payments to employees, the Control Point requires this procedure. Pay slips shall consider language and education barrier that potentially limit understanding of evidence of payment.</p> <p>Farm management ensures legally required information is transparent and comprehensible for workers on the pay slips.</p> <p>See Annex for federal wage recordkeeping requirements. There are also some state laws that require the same or equivalent wage statements as the federal laws above. For examples of state laws, see Annex.</p>
<b>WAGES</b>		
7	Do pay slips / pay registers indicate the conformity of payment with at least legal regulations and/or collective bargaining agreements?	<p>Wages and overtime payment documented on the pay slips / pay registers indicate compliance with legal regulations (minimum wages) and/or collective bargaining agreements as specified in the GRASP National Interpretation Guideline. If payment is calculated per unit, employees shall be able to gain at least the legal minimum wage (on average) within regular working hours.</p> <p>For federal minimum wage law, including subminimum wage rules, see <a href="https://www.dol.gov/general/topic/wages/minimumwage">https://www.dol.gov/general/topic/wages/minimumwage</a></p> <p>For listing of every states' Minimum Wage laws, see <a href="http://www.dol.gov/whd/minwage/america.htm">http://www.dol.gov/whd/minwage/america.htm</a></p> <p>The federal and state minimum wage laws also include piece rate calculation requirements.</p> <p>In every case, the minimum wage that applies in any given state is the one that is the highest between the federal and any state's minimum wage levels.</p> <p>The FLSA permits the payment of a "subminimum wage" for certain classes of workers.</p> <ul style="list-style-type: none"> <li>• For vocational education or full-time students and those whose earning or productivity is impaired by physical or mental disability: sub-minimum wage set by certificate from the USDOL (WHD).</li> <li>• For Child Laborers (those under 16 years of age and not working for family): they can be paid 85% of the federal Minimum Wage (since it is currently \$7.25, when 15% is deducted, the special child labor wage of \$6.17 per hour</li> </ul>

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		<p>would apply) for their first consecutive 90 days of employment only, under what is informally referred to as a “Training Wage”.</p>
<b>NON-EMPLOYMENT OF MINORS</b>		
8	<p>Do records indicate that no minors are employed at the company?</p>	<p>Records indicate compliance with national legislation regarding minimum age of employment. If not covered by national legislation, children below the age of 15 are not employed. If children -as core family members- are working at the company, they are not engaged in work that is dangerous to their health and safety, jeopardizes their development, or prevents them from finishing their compulsory school education.</p> <p>Children and young workers, including core family members, shall be included in the GRASP assessment.</p> <p>The general minimum age for agricultural employment is 14 years. of age. For federal child labor minimum age, wage and agricultural occupational laws, see <a href="http://www.dol.gov/dol/topic/youthlabor/Agriculturalemployment.htm">http://www.dol.gov/dol/topic/youthlabor/Agriculturalemployment.htm</a></p> <p>Also, see Summary of these laws in Annex Control Point 9.</p> <p>Family Exemption from Federal Child Labor Laws: Children of any age may be employed by their parent(s) (or guardian(s)) at any time of day, for any number of daily or weekly hours in any occupation on a farm they own or operate, except that they must not be employed during any hours when they are legally required to be in school (for state compulsory school age laws and home schooling requirements, see Annex at Control Point 9). These family child laborers are also totally exempt from the FLSA’s child labor protections concerning the minimum age for farm employment, which otherwise prohibit those under 16 years of age from performing any of 11 Hazardous Occupations in agriculture.</p> <p>Although those of any age can work with parental consent on a legally-defined “small farm” according to federal law, this Control Point does not permit such work until the general minimum working age in agriculture of 14 years. Hazardous occupational restrictions for those under 16 years of age apply to those working with parental consent on “small farms”. See federal child labor law website above.</p> <p>Many states’ laws exempt child laborers from minimum age requirements and occupational restrictions when working on farms where their parents are employed. This Control Point however, does not exempt these children from the minimum work</p>

Control Point		Compliance Criteria	Interpretation for United States of America
			<p>age (generally 14 years of age) and the Hazardous Occupational restrictions (for those under 16 years of age) apply. Some states exempt all children working as farm laborers from all or some of their state child labors laws, whether their parent works on the same farm or not. This Control Point does not permit these exemptions either.</p> <p>For GRASP compliance, no worker between ages 14 to 18 shall work in any activity that is dangerous to their health and safety, jeopardizes their development or prevents them from finishing their compulsory school education.</p> <p>Examples of dangerous activities for young workers:  <a href="https://www.osha.gov/SLTC/youth/agriculture/machinery.html">https://www.osha.gov/SLTC/youth/agriculture/machinery.html</a></p> <p>The laws of the states vary widely. For a listing of every states' basic child labor laws in agriculture, see  <a href="http://www.dol.gov/whd/state/agriemp2.htm">http://www.dol.gov/whd/state/agriemp2.htm</a></p> <p>When the federal and any state's child labor law conflicts on any particular element, the standard that applies in that state is the one which is more stringent or more protective of the child laborer.</p> <p>Evidence of compliance with this Control Point includes requiring and retaining child laborers' Employment Certificates ("working papers"), if they are mandated by their states' laws. If Employment Certificates are not required, the employer should demand proof of age from new employees, including a government issued ID, such as a passport, visa, drivers license or birth certificate. Employers should retain a copy of the acceptable proof on file.</p>
<b>ACCESS TO COMPULSORY SCHOOL EDUCATION</b>			
9	Do the children of employees living on the company's production/handling sites have access to compulsory school education?	There is documented evidence that children of employees at compulsory schooling age (according to national legislation) living on the company's production/handling sites have access to compulsory school education, either through provided transport to a public school or through on-site schooling.	<p>It is a GRASP requirement that when there are minors living in the farm premises, the administration shall:</p> <ol style="list-style-type: none"> <li>1) Keep a list with the location, name, age, parents' information of the minors</li> <li>2) Provide evidence that the families have been notified of the necessity that their children go to school.</li> </ol>

Control Point		Compliance Criteria	Interpretation for United States of America
			<p>This control point only can be marked as non-applicable when there are no minors living on the premises.</p> <p>Compulsory school age and home-schooling requirements are a matter of states' law only. A free, accessible public education from Kindergarten – 12<sup>th</sup> Grade (High School) is guaranteed by law to every child in every state. The children of farm workers are within this guarantee, including those of parents who are undocumented aliens or undocumented seasonal migrant or residential farm employees.</p> <p>The requirements of this Control Point apply to the children of all farm employees when the employer provides onsite housing or is involved in nearby off-premises housing, such as, e.g., contracting with, providing or paying for labor camp or dormitory-type or any other type of housing.</p> <p>For list of compulsory school age laws for every state: <a href="http://www.infoplease.com/ipa/A0112617.html">http://www.infoplease.com/ipa/A0112617.html</a>  For list of home schooling requirements for every state: <a href="http://www.hslda.org/laws/default.asp">http://www.hslda.org/laws/default.asp</a></p>
<b>TIME RECORDING SYSTEM</b>			
10	Is there a time recording system that shows working time and overtime on a daily basis for the employees?	There is a time recording system implemented appropriate to the size of the company that makes working hours and overtime transparent for both employees and employer on a daily basis. Working times of the employees during the last 24 months are documented. Records are regularly approved by the employees and accessible for the employees' representative(s).	<p>Generally, there are time recording systems on most farms. See Annex for the federal work time recordkeeping requirements. They include the requirement that the employer retain these records for three years.</p> <p>Any work hours recording system, from a hand-written time record sheet, signed periodically by each employee to a mechanical time clock system will adequately satisfy this requirement (see Implementation Guideline).</p> <p>If a daily time recording system is not implemented (e.g. fixed contracts, fixed working hours, fixed monthly salary), alternative way(s) of recording working hours shall be available. Evidence and explanation shall be provided.</p>
<b>WORKING HOURS AND BREAKS</b>			
11	Do working hours and breaks documented in the time records comply	Documented working hours, breaks and rest days are in line with applicable legislation and/or collective bargaining agreements. If	Unless more beneficial legislation for the worker, this Control Point considers a regular work week of 48 hours for any worker. In addition to that, considers ONLY a maximum of additional

Control Point		Compliance Criteria	Interpretation for United States of America
	with applicable legislation and/or collective bargaining agreements?	not regulated more strictly by legislation, records indicate that regular weekly working hours do not exceed a maximum of 48 hours, during peak season (harvest), weekly working time does not exceed a maximum of 60 hours. Rest breaks/days are also guaranteed during peak season.	<p>twelve hours of overtime ONLY during harvest peak time. For GRASP compliance, even when permitted by the law, the total number of hours, including overtime and ordinary, SHALL NOT exceed 60 hours per week in any week of the year. This shall be checked by auditor.</p> <p>To meet these criteria, work hours records must show that the regular and overtime hours limits were not exceeded.</p> <p>For federal minimum wage law (FLSA):  <a href="https://www.dol.gov/general/topic/wages/minimumwage">https://www.dol.gov/general/topic/wages/minimumwage</a></p> <p>For listing of every states' minimum wage laws:  <a href="http://www.dol.gov/whd/minwage/america.htm">http://www.dol.gov/whd/minwage/america.htm</a></p> <p>Re meal and rest period: State legislation controls required meal and rest period times. Generally, the states that regulate meal periods require a meal break after an employee has worked anywhere between 5 - 7 consecutive hours, depending on the state. Generally, that time does not have to be paid time.</p> <p>Very few states require a rest period, which also does not need to be paid time.</p> <p>Listing of every state that has meal time provisions and their requirement: <a href="http://www.dol.gov/whd/state/meal.htm">http://www.dol.gov/whd/state/meal.htm</a>  Listing of every state that has rest period provisions and their requirements: <a href="http://www.dol.gov/whd/state/rest.htm">http://www.dol.gov/whd/state/rest.htm</a></p> <p>If a particular state has a meal and/or rest period requirement, the employer should set up working hours and breaks to comply with those laws and be able to show work schedules to reflect these non-working periods.</p>
<b>ONLY APPLICABLE FOR PRODUCER GROUPS INTEGRATION INTO QMS</b>			
QMS	Does the assessment of the Quality Management System (QMS) of the producer group show evidence of the correct	The assessment of the Quality Management System of the producer group demonstrates that GRASP is correctly implemented and internally assessed. Non-compliances are identified and corrective actions are taken to	This control point normally has no Interpretation, as it connects the GRASP requirements to the GLOBALG.A.P. Option 2 groups.

Control Point		Compliance Criteria	Interpretation for United States of America
	implementation of GRASP for all participating producer group members?	enable compliance of all participating producer group members.	
<b>ADDITIONAL SOCIAL BENEFITS</b>			
R 1	What other forms of social benefit does the company offer to employees, their families and/or the community? Please specify incentives for good and safe working performance, bonus payment, support of professional development, social benefits, child care, improvement of social surroundings, etc.).	Incentives for good and safe working performance: Bonus payment: Support of professional development: Family friendliness: Medical care/health provisions: Improvement of social surroundings: Other benefits:	No interpretation needed, this is a voluntary extra point. Maybe give examples of typical social benefits.

## Annex to GRASP Interpretation for United States of America

### Introduction:

#### Use of “EMPLOYEE” or “WORKER”

For purposes of GRASP and this document, the term “employee(s)” refers to all farm workers. Please refer to the General Rules of GRASP latest version, the definition was: Employees are remunerated for the agricultural production services and/or production-related services (e.g. staff preparing meals for employees) they provide to a producer. This includes permanent, casual, and seasonal workers (H-2A) as well as apprentices and subcontractors (hired labor) that are handling the product. It may exclude the core family members of the producer. In case producers have no employees during any time of the year, they have to provide an according self-declaration and GRASP becomes not applicable.

GRASP issues its’ Proof of Assessment issued by GLOBALG.A.P. to whichever party is being audited, has signed employee contracts with its employees and is responsible for compliance with GRASP’s Control Points. That party can be the Farm Labor Contractor, a Farm Owner or a Farm Operator (see GRASP General Rules latest version). A person (individual) or business (individual or producer group) with a registered legal entity owning the production, relevant to the scope of GRASP (certified to a GLOBALG.A.P. Standard), who has the legal responsibility for the products sold by that farming business. A GLOBALG.A.P. Number (GGN), as specified in the valid GLOBALG.A.P. General Regulations identifies each producer. A producer can apply for GRASP together with the GLOBALG.A.P. primary production audit following the application procedure set in the valid GLOBALG.A.P. General Regulations and these GRASP General Rules.

#### GRASP CONTRACTOR AND Farm Labor Contractors

The complying entity who is, for GRASP purposes, the Employer, must require its contractors and subcontractors to comply with all Control Points. This must be documented and will be reviewed during the assessment.

Some background information Farm Labor Contractors in the U.S. may be useful. A very common form of recruiting, training, supervising, administering and paying farm laborers is through their contracted services. These Contractors operate in almost every state providing labor for almost every crop, though their dominance or scarcity in any one state or any one crop varies widely. According to federal law, even in cases where a farm worker is recruited, trained, supervised, administered and paid from the bank account of a farm labor contractor, even one who has, in this example, issued a contract to the worker in its own name as “Employer” (none of which is uncommon), federal law will consider the Farm Labor Contractor and the Farm Owner/Operator as “Co-Employers” of that worker. Therefore, both parties will be responsible for full legal compliance with all federal employment-related laws.

Some states follow that rule and some don’t. In states that follow the federal rule, workers recruited through Farm Labor Contractors, no matter how many other worker-related services the Contractor may also provide to the Farm Owner/Operator, are considered to be “employees” of both the Contractor and the Farm Owner/Operator as “co-employers”. Other states permit the Farm Labor Contractor who has provided all or some of the services they traditionally perform for the Farm Owner/Operator to be treated as the worker’s *sole* “Employer”. In those cases, Farm Owners’/Operators’ can lawfully claim that their workers are only “Independent Contractors” and not their “Employees” for all legally mandated employment-related purposes. In those states, they are legally employees of the Farm Labor Contractor.

### Control Point 1:

(U.S.) Federal Website - [http://www.nlr.gov/About\\_Us/overview/national\\_labor\\_relations\\_act.aspx](http://www.nlr.gov/About_Us/overview/national_labor_relations_act.aspx), including exemption of farm workers from the National Labor Relations Act, 29U.S.C. Section 151 et seq. There is no federal protection of freedom of association and the rights of collective bargaining for farm workers. State laws do not apply to freedom of association or collective bargaining for any workers, except its own public workers.

### Control Point 2:

Federal Website - [http://www.nlr.gov/About\\_Us/overview/national\\_labor\\_relations\\_act.aspx](http://www.nlr.gov/About_Us/overview/national_labor_relations_act.aspx)

### Control Point 3:

The U.S. has ratified only two of the ILO core labor conventions, Number 182 on the worst forms of child labor and 105 on forced labor. Although the U.S. illegal system is not based upon ILO ratifications, when taken as a whole, federal and most states' labor law protections are roughly equivalent to the core ILO labor conventions that remain unratified in the U.S. See below for the websites of many of the federal and state laws and enforcement agencies whose provisions are similar to the ILO requirements.

The US Department of Labor and such related agencies as the Equal Employment Opportunity Commission and the Occupational Health and Safety Administration require that certain of its posters, each with the federal laws of a particular portion of its labor law protections (e.g., Minimum Wage, Child Labor, Migrant and Seasonal Agricultural Worker Protection) be posted in a conspicuous place, readily observable by the workers. Most states have similar requirements for display of posters of portions of their state Labor and related laws. Full rules of these requirements, their applicability and exemptions as well as links to the posters for both federal and all state jurisdictions are found at website listed below.

There are also federal, state and some municipal or county-wide laws and agencies (and in some cases, required posters) concerning many of the ILO conventions that are listed as the minimal basis for "good social practices". These include general and Workplace Discrimination, Child Labor (including minimum ages), Forced Labor, Freedom of Association, Right to Organize and Collective Bargaining (although farm employees are not included in the federal Act that grants workers these rights and states have no authority to legislate on these issues other than for their own public employees), Equal Remuneration, Minimum Wage and a Complaint Procedure to government enforcement agencies. No federal or state laws guarantee workers' right to freedom of association and collectively bargain. There is also no legal right to complain about work conditions to employers that are not violations of federal and/or state laws; for workers' complaints that claim violations of law, most federal and state agencies (depending on the laws and the rights involved) take individual complaints and pursue them against employers.

The websites to the legal structures and agencies that, when read as a whole, comprise "good social practices" as defined by ILO core labor conventions are listed below.

#### **Federal Websites**

Poster requirements and posters for all federal labor laws: <http://www.dol.gov/elaws/posters.htm> ; also see <http://hrweb.berkeley.edu/labor/laobrpostings.htm>

Discrimination: Equal Employment Opportunity Commission: <http://eeoc.gov>

Child Labor: <http://www.dol.gov/dol/topic/youthlabor>; <http://www.dol.gov/elaws/esa/flsa/cl/e4.asp> also see Annex at Control Point 9

Forced Labor: There are no federal laws against domestic forced labor. Generally, see [http://hrc.berkeley.edu/pdfs/hidden\\_slaves\\_report.pdf](http://hrc.berkeley.edu/pdfs/hidden_slaves_report.pdf); <http://ojp.usdoj.gov/BJA/grant/httf.htmlor> ; and [http://www.law.cornell.edu/uscode/18usc\\_sec\\_18\\_00001589---000-.html](http://www.law.cornell.edu/uscode/18usc_sec_18_00001589---000-.html)

Freedom of Association/Right to Organize/Right to Collective Bargaining, which is not protected for farm workers under federal or state laws: In general,

[http://www.nlr.gov/About\\_Us/overview/national\\_labor\\_relations\\_act.aspx](http://www.nlr.gov/About_Us/overview/national_labor_relations_act.aspx)  
Equal Remuneration: Equal Pay Act: <http://www.eeoc.gov/laws/statutes/epa.cfm>;  
[http://www.dol.gov/oasam/regs/statutes/equal\\_pay\\_act.htm](http://www.dol.gov/oasam/regs/statutes/equal_pay_act.htm)  
Minimum Wage: <http://www.dol.gov/dol/topic/wages/minimumwage.htm>  
Complaints: for FLSA - <http://www.dol.gov/elaws/esa/flsa/14c/20.htm> ; For AWP: <http://www.dol.gov/whd/index.htm>;  
See also <http://www.epa.gov/oecaerth/civil/osha/oshaenfstareq.htm#enforcement>

### **State Websites**

Poster requirements and posters for each state's labor laws: <http://www.hrdocs.com/Posters/>  
Discrimination: Listing of every state's equal employment or equivalent human rights agency: <http://www.eeocoffice.com/>  
Child Labor: Listing of every state's child labor provisions in agriculture: <http://www.dol.gov/whd/state/agriemp2.htm#Texas>; also see Annex at Control Point 9  
Forced Labor: Only a few states have laws against forced labor. In general, see [http://www.hrea.org/index.php?doc\\_id=430](http://www.hrea.org/index.php?doc_id=430)  
Selected states' forced labor laws, as examples:  
California: <http://www.californiaagainstsavery.org/modern-day-slavery/current-law/>  
Washington: <http://www.atg.wa.gov/HumanTrafficking.aspx>  
Equal Remuneration: For Listing of every state's equal pay laws: <http://www.ncsl.org/?tabid=13341>  
Minimum Wage: Listing of every state's minimum wage laws: <http://www.dol.gov/whd/minwage/america.htm>  
Complaints: Listing of every state's Department of Labor, Wage and Hour Division including some additional agricultural labor provisions: <http://www.dol.gov/whd/contacts.state.of.htm>

### **Control Point 4:**

It is necessary to find out if the farm involved, its farm labor contractor, if any and its farm employees are covered under the AWP and the FLSA, and therefore subject to its provisions, from minimum wage to recordkeeping.

Re **AWP**: The AWP protects migrant and seasonal agricultural workers, which is very broadly defined. All migrant and seasonal agricultural workers are covered except H-2A visa holders (temporary nonimmigrant aliens, authorized to work in agriculture for a limited time period as discussed in Interpretation of Control Point 5) and those working at any custom combine, hay harvesting or sheep shearing operation.

The Act also regulates Farm Labor Contractors. It is largely the Act's requirements of Contractor duties and responsibilities to the employees that are relevant to this Module. Every Farm Labor Contractor is covered by the AWP, except employers who own or operate a farm and recruit farm workers solely for their own operations or whose employee engages in labor contractor activities exclusively for the employer. Also, not covered by the Act are any custom combine, hay harvesting or sheep shearing operation.

Re **FLSA**: As relates to farm operations, in order to be within its coverage, a business must have:

- workers engaged in interstate commerce producing goods for interstate commerce; and
- an annual gross volume of sales made or business done that is not less than \$500,000

Even if a farm does not meet these tests for what is referred to as "enterprise coverage", the FLSA's minimum wage and child labor provisions may still apply if it is engaged in interstate commerce or in the production of goods for interstate commerce.

It is estimated that 90% of all U.S. farms are covered by the FLSA.

### **Federal Websites**

Minimum wage, benefits, working hours and child labor laws in agricultural employment see Fair Labor Standards Act: <http://www.dol.gov/elaws/esa/flsa/14c/20.htm> ; also Farm employer-employee information requirements, see Migrant and Seasonal Agricultural Worker Protection Act: <http://www.dol.gov/whd/index.htm>

Employment Discrimination: see Annex 3

Family Medical Leave Act: <http://www.dol.gov/whd/fmla/index.htm>

Occupational Safety and Health:

<http://www.epa.gov/oecaerth/civil/osha/oshaenfstatreg.htm#enforcement>

### **State Websites**

Minimum Wage: See Annex 3

Freedom of Association and Rights to Collective Bargaining: California:

<http://are.berkeley.edu/APMP/alra/alrahandbook.pdf>

Farm employer-employee information and farm labor contractor requirements, see selected states as examples only:

Washington: <http://www.ini.wa.gov/forms/pdf/700088a0.pdf>;

Florida: <http://www.myfloridalicense.com/dbpr/reg/farmLabor.html>;

California: [http://www.ehow.com/about\\_5762862\\_ag-labor-contractor-license-requirements.html](http://www.ehow.com/about_5762862_ag-labor-contractor-license-requirements.html)

Illinois:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1372&ChapAct=225%A0ILCS%A0505/&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Illinois+Farm+Labor+Contractor+Certification+Act%2E>

Oregon: <http://www.leg.state.or.us/ors/658.html>;

Idaho: [http://labor.idaho.gov/farmworker/3833\\_2fw-flcfacts.pdf](http://labor.idaho.gov/farmworker/3833_2fw-flcfacts.pdf);

Wisconsin: [http://www.uwex.edu/ces/forage/wfc/proceedings2002/labor\\_laws.htm](http://www.uwex.edu/ces/forage/wfc/proceedings2002/labor_laws.htm); [discrimination-see](#)

Employment Discrimination: see Annex 3

Family Medical Leave provisions in the states, as examples only:

Washington: <http://www.ini.wa.gov/WorkplaceRights/files/FamilyLeaveFAQs.pdf>

Florida: [http://www.nccp.org/profiles/FL\\_profile\\_28.html](http://www.nccp.org/profiles/FL_profile_28.html)

California: <http://www.documents.dgs.ca.gov/ohr/Supervisor/DGSFMLAPolicyProcedures.pdf>

Connecticut:

[http://www.jud.ct.gov/LawLib/Notebooks/Pathfinders/LaborLawandtheFamily/labor.htm#sec\\_3](http://www.jud.ct.gov/LawLib/Notebooks/Pathfinders/LaborLawandtheFamily/labor.htm#sec_3)

New Jersey: <http://www.state.nj.us/lps/dcr/law.html#3>

Note: There are no federal laws on union membership, freedom of association, right to collectively bargain and non-union labor contracts for farm workers.

States, (except for California as to unionization rights) also deny farm employees the right to organize and collectively bargain, as well as a right to be employed pursuant to a non-union labor contracts. Employment contracts are also rare in agriculture. Federal laws do require that farm labor contractors and farm employers give farm employees they recruit or employ information about the conditions of their employment.

### **Control Point 5:**

Re required signed employment contract: Even though employment contracts are not required by U.S. law (for any occupation or industry), if there is a collective bargaining agreement (“CBA”) signed by the employer and the employee representative, that is the signed employment contract

For Federal I-9 Employee Form and Information: <http://www.uscis.gov/files/nativedocuments/m-274.pdf>

Re terms of H-2A Visa for temporary work by qualified non-national seasonal farm workers: it can be issued by a US Consulate abroad for a stay of up to one year and over a maximum of three consecutive years. Employers of H-2A visa holders have particular duties to these employees, which are frequently in excess to those federal and state laws require for employees who are either nationals or otherwise legally authorized to work here. See Control Point. For full H-2A visa rules and procedures: <http://www.dol.gov/compliance/guide/taw.htm>

### **Federal**

Recordkeeping provisions in the Fair Labor Standards Act (“FLSA”):  
<http://www.dol.gov/whd/flsa/index.htm>;

In the Migrant and Seasonal Agricultural Worker Protection Act (“AWPA”):  
<http://www.dol.gov/whd/index.htm>

Notes:

- a. Federal Minimum Wage- \$7.25 per hour will remain the same until possibly 2020
- b. Youths ages 16 and above may work in any farm job at any time.
- c. Youths aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor.
- d. Youths 12 and 13 years of age may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent.
- e. Youths under 12 years of age may work outside of school hours in non-hazardous jobs with parental consent, but only on farms where none of the employees are subject to the minimum wage requirements of the FLSA.
- f. Local youths 10 and 11 may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 if their employers have obtained special waivers from the Secretary of Labor.
- g. Youths of any age may work at any time in any job on a farm owned or operated by their parents.
- h. Subminimum Wage- the subminimum wage rate for full time students may not be less than 85% of the applicable statutory minimum- which for Federal is \$7.25 so therefore subminimum wage would be \$6.17. E.g., student internships

### **States**

See Annex Control Point 4 above for selected states’ Farm Labor Contractor and Workers Rights provisions, including Recordkeeping

### **Control Point 6:**

The wage information required in the Compliance Criteria to this Control Point is made available to employees, usually by payslip or pay stub. AWPA does require that employees get a statement at the time of payment of the hours worked, total earnings, itemized deductions, net wage amount given, with the basis for the wage, which is usually the minimum hourly wage. If that basis is by piece-rate calculation, the number of piece-work units earned that comprise the wage must also be listed. These requirements are intended to make the actual wage sum paid transparent and comprehensible to the employee, as is required by the Criteria.

Records of these payments along with the required pay information, must be retained by the employer for three years. There is no legal requirement that employees sign their wage receipt in any manner.

For **federal** wage recordkeeping provisions: FLSA - <http://www.dol.gov/whd/flsa/index.htm>; and

AWPA - <http://www.dol.gov/whd/index.htm>

For some selected **states’** laws on wage recordkeeping provisions, see, as examples only:

California -

[http://www.vineyardteam.org/files/resources/SAE\\_EMPLOYMENTREQUIREMENTS\\_GeorgeDaniels.pdf](http://www.vineyardteam.org/files/resources/SAE_EMPLOYMENTREQUIREMENTS_GeorgeDaniels.pdf);

Washington - <http://www.lni.wa.gov/workplacerrights/files/policies/esd2.pdf>;

New Jersey:

[http://wd.dol.state.nj.us/labor/wagehour/lawregs/nj\\_state\\_wage\\_and\\_hour\\_laws\\_and\\_regulations.html#1156a20](http://wd.dol.state.nj.us/labor/wagehour/lawregs/nj_state_wage_and_hour_laws_and_regulations.html#1156a20) ;

Rhode Island: <http://www.dlt.ri.gov/ls/pdfs/WageHourBook.pdf>

### **Federal Websites**

Employment Eligibility Verification (I-9):

[http://www2.pittstate.edu/hrs/documents/I9studentconsent\\_000.pdf](http://www2.pittstate.edu/hrs/documents/I9studentconsent_000.pdf)

H-2A Temporary Employment Visa: [http://www.dhs.gov/xnews/releases/pr\\_1202308216365.shtm](http://www.dhs.gov/xnews/releases/pr_1202308216365.shtm)

### **Control Point 7:**

It is necessary to find out if the farm involved and its farm workers are covered under the FLSA, and therefore subject to its' federal minimum wage provisions.

As relates to farm operations, to be within its coverage, a business must have:

- workers engaged in interstate commerce producing goods for interstate commerce; and
- an annual gross volume of sales made or business done that is not less than \$500,000

Even if a farm does not meet these tests for what is referred to as "enterprise coverage", the FLSA's minimum wage (and child labor) provisions may still apply if it is engaged in interstate commerce or in the production of goods for interstate commerce.

It is estimated that 90% of all U.S. farms are covered by the FLSA.

For **federal** minimum wage law: <http://www.dol.gov/dol/topic/wes/minimumwage.htm>

For this listing of every **states'** minimum wage laws: <http://www.dol.gov/whd/minwage/america.htm>

### **Control Point 8:**

#### **Federal:**

Child Labor: Fair Labor Standards Act

<http://www.dol.gov/dol/topic/youthlabor/Agriculturalemployment.htm>

As a summary, pursuant to the FLSA, if a child is not exempt because the work is done on a farm owned or operated by its' family, most commercial agricultural work cannot be done until the age of 14. There are no hours restrictions on agricultural child laborers at any age, other than a requirement that they must not work during school hours (see Annex to Control Point 9 below for websites concerning the compulsory school age requirements for every state and each state's laws on home schooling). Child Laborers may work any times of the day for an unlimited number of daily and weekly hours.

Children who are 10 or 11 years old can work hand-harvesting short-season (for no more than 8 weeks) crops. At ages 12 and 13 a child may work on a farm where a parent works and with parental consent. At 14 years old there continue to be no hours restrictions on farm labor of minors except for the continuation of the prohibition against working during school hours or against home schooling regulations. These hours restrictions generally continue according to each state's education laws until the minor is 16 years old (see Annex under Control Point 9 below) and either no longer subject to compulsory or home school requirements or, in some states, at a later age, if the minor is still enrolled in secondary education.

Agricultural occupational restrictions continue until the minor is 16 years old. The most significant prohibit those under 16 years old from operating tractors (or being a passenger or helper on a tractor) or operating hay mowers and balers, feed grinders and power post-hole diggers. They also cannot drive a bus, truck or car while transporting passengers. They are also barred from operating or assisting to operate earth-moving equipment, forklifts and most power-driven saws. They cannot work from heights over 20 feet or in most enclosed fruit, forage or grain storage facilities. They may not handle or apply acutely toxic agricultural chemicals. For the complete list of all 11 hazardous occupations in agriculture, consult the FLSA website included above.

**States:** The state child labor laws vary widely, from Alabama and Texas, amongst others, who have no state restrictions to California and New York, which are relatively restrictive. More than half the states have exactly or substantially the same state law provisions as the federal FLSA.

List of every states' child labor provisions in agriculture: <http://www.dol.gov/whd/state/agriemp2.htm>

### Control Point 9:

Re ensuring access to school for farm workers' children: There are public schools available in every locality in every state, with transportation usually publicly provided. Each state has a federally-mandated department or a division within their education department that is dedicated to migrant education programs. These programs are most often administered by local school districts, which can be citywide, countywide or by other geographic or political subdivision. See discussion and website below. Almost all public education funding and most education programs are set by state law. The federal role in education is very limited.

Federal role in Education: <http://www2.ed.gov/programs/mep/legislation.html>

#### **States:**

The age that compulsory education attendance ceases varies amongst the states, from 16 to 18 years old, with many states adding conditions to either earlier or continued compulsory or home schooling leaving age.

Listing of compulsory school ages for every state: <http://www.infoplease.com/ipa/A0112617.html>

Listing of home schooling requirements for every state: <http://www.hslda.org/laws/default.asp>

State migrant labor farm children programs can include such services as bilingual education initiatives, specialized educational attainment assessments for migrant children who may never have resided in any one state for an entire school year and interstate education record transfer systems to document children's past educational history.

Listing of every states' Migrant Education Programs: <http://www.nasdme.org/map.cfm>

### Control Point 10:

Re US and state legal obligations for minimum wage and overtime payments:

Although overtime wage payment to farm workers are not required by federal law and the law of 49 of the states (California being the exception by requiring overtime wage payment for its farm workers), the Control Point does set the regular weekly hours limit of 48 hours with no more than 12 hours of weekly overtime permitted.

For clarification and comparison, in *non-agricultural* employments federal and state laws mandate that employees who work more than the full regular work week, which is legally defined in the U.S. as 40 hours, receive "time and a half"—that is 1.5 times their regular pay rate—be it the Minimum Wage or higher—for those hours they work in excess of the regular work week. To illustrate, those who work 48 hours a week at a regular wage of \$10 per hour in a *non-agricultural* employment (in excess of the federal Minimum Wage of \$7.25 for this illustration only) would be paid \$10 per hour for the first 40 hours of their labor (\$400), but for the 8 extra hours would have to legally be paid an additional \$5 per hour for a total of an additional \$20 (1.5 times the regular hourly wage rate) per hour or \$120. That worker's 48 hour work week would yield \$520 in wages. Overtime not being mandated for farm employees (and very few agricultural employers voluntarily pay their farm employees overtime pay for the hours they work beyond the regular work week), the farm worker would only earn a straight \$10 per hour for all 48 hours that were worked, for a total of \$480 per week.

Minimum wage requirements for adult farm employees **are** required federally. The wage due is calculated either by straight hourly time or through its equivalent earned by agricultural piece- work.

Since federal law must be applied by the states, even those states whose own legislation does not require that farm employees earn an hourly minimum wage are bound to the payment of the federal minimum wage to farm employees.

**Federal Websites:** Wage and Recordkeeping requirements:

FLSA: <http://www.dol.gov/elaws/esa/flsa/14c/20.htm>

AWPA: <http://www.dol.gov/whd/index.htm>

For the listing of every **states'** minimum wage laws: <http://www.dol.gov/whd/minwage/america.htm>

### Control Point 11:

There is no maximum number of regular and overtime work week hours mandated by federal or state laws. However, the GRASP limitations of Control Point 10 (48 hours as a regular work week with a maximum of 12 hours of weekly overtime permitted), must be applied.

**Federal:** Fair Labor Standards Act Wage Statements provisions:

<http://www.dol.gov/whd/flsa/index.htm>

Migrant and Seasonal Agricultural Worker Protection Act Wage Statements provisions:

<http://www.dol.gov/whd/index.htm>

There are no federal meal and rest period requirements. There are so few collective bargaining agreements operating in the agricultural industry that the farm sites where their provisions, including possible meal and rest period requirements would apply, are not numerous

Re State meal and rest period laws:

Many states - 19 - have some required meal time requirement for adults. Most states – 33 - have provisions specifically granting a meal period to working minors. Most states include agricultural workers in their meal time requirements, although some of them exempt adult and/or child agricultural employees from their coverage.

Only 8 states require any rest period and only 4 clearly include agricultural employees. Most of the states having a rest period law require a 10-minute break for every four hours of work.

**States**, as examples only:

California -

[http://www.vineyardteam.org/files/resources/SAE\\_EMPLOYMENTREQUIREMENTS\\_GeorgeDaniels.pdf](http://www.vineyardteam.org/files/resources/SAE_EMPLOYMENTREQUIREMENTS_GeorgeDaniels.pdf)

Washington - <http://www.lni.wa.gov/workplacerrights/files/policies/esd2.pdf>

New Jersey:

[http://lwd.dol.state.nj.us/labor/wagehour/lawregs/nj\\_state\\_wage\\_and\\_hour\\_laws\\_and\\_regulations.html#1156a20](http://lwd.dol.state.nj.us/labor/wagehour/lawregs/nj_state_wage_and_hour_laws_and_regulations.html#1156a20)

Rhode Island: <http://www.dlt.ri.gov/ls/pdfs/WageHourBook.pdf>

**State Websites:**

Listing of all states that have meal time provisions and their requirements:

<http://www.dol.gov/whd/state/meal.htm>

Listing of all states that have rest period provisions and their requirements:

<http://www.dol.gov/whd/state/rest.htm>

## OTHER SUGGESTED USEFUL WEBSITES

All (Federal) U.S. Department of Labor, Wage and Hour Division topics:

<http://www.dol.gov/whd/index.htm>

Reference Guide to the Fair Labor Standards Act: <http://www.lectlaw.com/files/emp39.htm>

National Conference of State Legislatures: <http://www.ncsl.org>

State Directors of Labor Standards: Interstate Labor Standards Association (ILSA):

<http://www.ilsa.net>

State Commissioners of Departments of Labor: National Association of Governmental Labor Officials (NAGLO): <http://www.naglo.org/>

National Association of State Directors of Migrant Education: <http://www.nasdme.org/map.cfm>

Child Labor Coalition: <http://www.stopchildlabor.org/>