

CATA Policy Manual

Laws Affecting the Farmworker Population and CATA's Position

Christina Harris

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Law Manual

Looking and researching different laws on the internet is a time consuming and slightly annoying task. Much of what the law is actually stating is hidden within complicated language within the text. With the different laws that I looked up on the internet, I included links after the main points to provide future researchers help in finding the website from where the information came. My suggestion for continuing the research on different laws governing the rights of agricultural workers would be to know exactly on which law you are looking up information. Type the law into a search engine in internet explorer and hope the list of possibilities includes the full text of the law. In fact, it would actually be good to include the words "full text" within the search terms.

This task required a great deal of time and knowledge on reading the laws and how they are written to affect agricultural workers. Continuing the work developing position papers for C.A.T.A. would be a handy tool in the future if the laws change or outside individuals desire to know within a synopsis how C.A.T.A., as an organization, stands on a certain issue or piece of legislation. This work was quite interesting because it allowed me to see just how much discrimination is actually embedded within the text of different laws in the United States and have yet to be repealed for certain reasons.

The National Labor Relations Act

The Law

The National Labor Relations Act is also known as the 1935 Wagner Act. It was later amended in 1947 by the Taft-Hartley Act. The first installment of The National Labor Relations Act granted power to employees to bargain and form a collective union. The amendment to the act reduced some rights earned by employees placing labor and the employer on “more equal footing.” However, within the definition of an employee within the legislation, agricultural workers are not protected by the 1935 act or the amendments in 1947. Section 2 of the act plainly states:

- (3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [this subchapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, **but shall not include any individual employed as an agricultural laborer**, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.
<http://www.nlr.gov/publications/nlr4.pdf>

The rights granted to employees are explained in section 7 of the act:

- Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

C.A.T.A.'s Position

C.A.T.A.'s position on the National Labor Relations Act follows that the legislation should be amended to allow for agricultural workers to be considered within the definition of employees in order for their labor rights to be protected through the use of their ability to form unions, have representation, and engage in activities of their own choosing. The 1947 Taft-Hartley act only served to weaken the rights of unions and labor organizations. The National Labor Relations Act needs to be amended providing for equal representation of all workers in various industries.

Effect on Workers

The effect that this old legislation has had on farmworkers is tenfold. The act denies farmworkers the right to organize and bargain for greater rights and opportunities. CATA serves a population of migrant farmworkers, a group of employees who are at high risk for being abused at the workplace. Many cannot speak English and are not aware of their rights on the job. Moreover, farm work is the second most dangerous occupation in America. There are long hours and low pay as well as exposure to hazardous chemicals and pesticides. The rights of agricultural workers are consistently being infringed upon because the workers continue to be denied the same rights as employees in other jobs. The National Labor Relations Act disallows farmworkers to bargain collectively with their employer for fair and equal treatment as well as better working conditions.

What the Law Should Be

The decision to deny farmworkers the same rights granted to other employees was a conscious choice made on behalf of the legislature almost seventy years ago. Since then, the country has grown and changed. Small farms are no longer the norm as agri-business has become more commonplace. Perhaps in the 30's and 40's there was less of a need to allow farmworkers to organize in order to help protect their rights, but this is a new era in agriculture. Some businesses hire many workers and abuses and problems in the system can easily occur with so many employees. Permitting farmworkers the right to unionize and organize allows them to have a greater voice within their occupation as well as ensuring that the farmer does not take advantage of less powerful individuals. Proposed legislation to amend the National Labor Relations Act should be suggested in Congress to alleviate the great injustice that was done to agricultural workers years ago.

What Can Be Done

Calling senators and representatives would begin the process of creating new legislation. The organizing of migrant farmworkers should also continue in order to perhaps apply pressure to the courts allowing for cases to be brought petitioning for agricultural workers to be determined to be employees under the act.

Fair Labor Standards Act of 1938

The Law

The Fair Labor Standard Act of 1938 set minimum wage provisions, maximum hour limitations, and child labor standards for industry and employers. The act was in the era of new deal legislation and allowed workers and employees to gain greater rights within the workplace setting. However, agricultural workers were once again exempt from certain rules within the law. An agricultural worker was defined in Section 3 of the act specifically to be used in the manner of exemption:

- “Agriculture” includes 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 (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, furbearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. <http://www.dol.gov/esa/regs/statutes/whd/0002.fair.pdf>

Agricultural workers are at least partially exempt from the three standards the government desired to enact. The act sets minimum wage standards:

- Every employer shall pay to each of his employees (other than an employee to whom subsection (a) (5) applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

The act sets maximum hours standards:

- Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such

employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

However, agricultural employers are exempt from the minimum wage (Section 6) and the maximum hours standard (Section 7) and are defined as:

- any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock;⁹⁶

Exemptions from the child labor standards enacted under the Fair Labor Standards act are subject to the scrutiny of the court and are mainly dependent upon whether the child has permission of his parents to work on the farm or in the industry, although the labor must occur after school hours if the individual is under 16 years of age.

C.A.T.A.'s Position

C.A.T.A., as an organization designed to help migrant farmworkers learn to empower themselves, is unhappy with this act, which is still in effect more than sixty years later. The law was designed to protect small farmers by allowing them exemptions based upon the amount of farmworkers they hire as well as how many days a year they employ people. However, the act seems to have been simultaneously enacted at the expense of farmworkers and their families. No employee should receive

below minimum wage for work that is completed. Having a law that grants exemptions to only certain employers, makes a statement claiming that all work is not placed on equal footing and allows certain employees to be taken advantage of and their work undervalued. CATA does not like this act because it was designed to take advantage of farmworkers to prevent them from having equal rights with other workers.

Effect on Workers

The Fair Labor Standards Act had a great effect on workers in general. The act permitted employees in industries greater access to security for their families as well as curbing workplace abuses by employers. Yet, many farmworkers are exempt from these provisions and being withheld from equal rights. Therefore, they still cannot reap the benefits of the New Deal legislation as readily as workers in other industries. The act has also gone through various amendments when certain exemptions were repealed, but the exemptions for farmworkers are still contained within the law. The law continues to create a lower class of people within the agricultural industry by not securing the rights of the farmworker as the act does for other employees.

What the Law Should Be

The act was good with respect to the standards enacted within the workplace, but harmful to the extent that exemptions were granted for certain employers, such as agricultural employees. The legislation should be amended to repeal the exemptions granted to certain agricultural employers. Exceptions should not be made for any worker in terms of maximum hours or minimum wage simply because of their

profession. The farmworker is as important to the functioning of the United States as any other worker. Allowing exemptions creates a climate of injustice within the United States disallowing individuals to be on equal footing in terms of labor and the economic system.

What Can be Done

A counter movement to the agri-business industry needs to be generated within the farmworker community. CATA is doing work to organize certain farmworkers and the efforts should be continued so that the workers themselves can demand equal treatment and equal rights with all workers. Lobbying congress to amend the act would also be one possibility to help foster change within the country.

New Jersey Wage and Hour Law

The Law

New Jersey law governing minimum wage and maximum hours is different than the federal law and applies to residents of New Jersey. The state has mandated that the minimum wage applies to agricultural worker, although the exemptions can still be made for farmers with regard to maximum hours. Section 34:11-56a4 of the New Jersey Wage and Hour law states:

- Every employer shall pay to each of his employees wages at a rate of not less than \$5.05 per hour as of April 1, 1992 and, after January 1, 1999 the minimum hourly wage rate set by section 6(a)(1) of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)) for 40 hours of working time in any week and 1 1/2 times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week, except this overtime rate shall not include any individual employed in a bona fide executive, administrative, or professional capacity or, if an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to part-time employees primarily engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c. 153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.
- The provisions of this section for the payment to an employee of not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week shall not apply to employees engaged to labor on a farm or employed in a hotel or to an employee of a common carrier of passengers by motor bus or to a limousine driver who is an employee of an employer engaged in the business of operating limousines or to employees engaged in labor relative to the raising or care of livestock.
- Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid for each day worked not less than the minimum hourly wage rate multiplied by the total number of hours worked.

<http://www.state.nj.us/labor/lasse/wagehour.html#34:11-56a4>

Pennsylvania Fair Labor Standards

The Law

Pennsylvania, unlike New Jersey has exemptions written into the state law concerning both the minimum wage and maximum hours for farmworkers. In section 5 of the minimum wage act, it states the employments and classifications exempt from both the minimum wage and overtime provisions as:

- Labor on a farm

Labor on a farm is then defined in section 231.1 of Regulations for Minimum Wage: Labor on a farm shall include the following:

- The term farm includes stock, dairy, poultry, fur-bearing animal, fruit and truck farms, plantations, orchards, nurseries, greenhouses or other similar structures used primarily in the raising of agricultural or horticultural commodities.
- The term labor on a farm includes the employment of a person on a farm in connection with one of the following:
 1. Cultivating the soil.
 2. Raising or harvesting an agricultural or horticultural commodity, including the raising or hatching of poultry and the raising, shearing, feeding, caring for, training and management of livestock, bees, fur-bearing animals and wildlife.
 3. Harvesting of maple sap.
 4. The operation, management, conservation, improvement or maintenance of a farm and its tools and equipment.
 5. The operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for removing, supplying and storing water for farming purposes.
<http://www.dli.state.pa.us/landi/cwp/view.asp?a=185&q=56262&landiNav>

C.A.T.A.'s Position

As an organization dedicated to helping migrant farmworkers, CATA is pleased that New Jersey instituted a minimum wage standard that does apply to all workers equally. However, New Jersey also allows farmworkers to be exempt from the overtime provisions. Although CATA understands that farm laborers tends to have different

hours because of harvesting, planting, and normal farm work, the organization still feels that agricultural employees should be paid overtime for work they do over forty hours. Pennsylvania's wage labor policy is the same as the federal law. The policy exempts people who labor on a farm from both the minimum wage and maximum hours standard.

What the Law Should Be

CATA would like New Jersey and Pennsylvania, as well as the federal government to adopt policies providing agricultural employees equal rights with the other workers in different industries.

The Occupational Safety and Health Act of 1970

The Law

The Occupational Safety and Health Act was adopted in 1970 and has been since amended many times. Primarily, the legislation was enacted to “To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.”

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=OSHACT&p_id=2743&p_text_version=FALSE

The legislation was enacted, indeed to ensure the safety of employees at the work site by providing a safe workplace free from unnecessary hazards. For the purpose of the law, a worker was defined as an employee of an employer who is engaged in the business of his employer, which affects commerce. An employer was defined as a person occupied with business affecting commerce that has employees, but is not the United States (not including the United States Postal Service) or any State or political subdivision of a State. Within the act certain expectations were expected of the employer with regard to his/her employees:

- (the employer) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
- Shall comply with occupational safety and health standards promulgated under this Act.

- Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct

The Secretary is permitted to create his own standards under the act and employers are supposed to follow the guidelines outlined or be subjected to inspections and penalties. However, there is an Occupational Safety and Health Appropriations Act which provides enforcement exemptions and limitations. Most of the exemptions and limitations are related to the activities of farmworkers. The Appropriations Act exempts small farming operations from enforcement of **all** rules, regulations, standards or orders under the Occupational Safety and Health Act. A farming operation is **exempt** from **all** OSHA activities if it:

- Employs 10 or fewer employees currently and at all times during the last 12 months. Family members of farm employers are not counted when determining the number of employees.
- Has not had an active temporary labor camp during the proceeding 12 months.

A farming operation with 10 or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last twelve months **is not** exempt from inspection. For OSHA, the inspection may include all working conditions covered by OSHA standards except for Field Sanitation, 29 CFR 1928.110, and except as noted, Temporary Labor Camps, 29 CFR 1910.142, which are being enforced by the Wage and Hour Division under Secretary of Labor Order 6-96.

- OSHA, however, retains inspection responsibility for those camps of employees engaged in eggs or poultry production (SIC 025) or red meat production (SIC 021) or engaged in the post-harvest processing of agricultural or horticultural commodities. Generally, post-harvest processing can be thought of as changing the character of the product (canning, making cider or sauces, etc.) or a higher degree of packaging (washing, bundling and bagging carrots) versus field sorting in a shed for size.

http://osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1519&p_text_version=FALSE

The Occupational Safety and Health Act of 1970 is at least partially applicable in agriculture for Temporary Labor Camps, Field Sanitation, Hazard Communication, Cadmium, and Logging Operations.

1. Temporary Labor Camps

- No exemptions for agriculture
- Must meet standard developed for site, shelter, water supply, toilet facilities, lighting, refuse disposal, construction, and operation of kitchens, dining hall, and feeding facilities, insect and rodent control, first aid, and reporting of communicable disease violations

2. Field Sanitation

- Partial exemptions for agriculture
- Agricultural operating qualifying establishments are required to provide employees who do hand labor operations in the field with potable drinking water, toilet facilities, and hand-washing facilities, to maintain these facilities, to inform employees of the importance of specific hygiene practices, and to allow reasonable use in the field without cost to the employees

3. Hazard Communication

- Partial exemptions for agriculture
- Agricultural employers are required to establish a hazard communication program to provide employees with information about the hazardous chemicals, other than pesticides, to which they might be exposed

4. Cadmium

- Partial exemptions for agriculture
- Agricultural employers are required to monitor the air in areas where employees are exposed to cadmium, and if level of exposure is above minimum allowed, employees must be notified, and provided with necessary protective equipment

5. Logging Operations

- Partial exemptions for agriculture
- Agricultural employers, who have logging operations, as defined by the standard, must provide specific training on hazards and work practices, first aid, and CPR.

They must also assure that personal protective equipment, tools, and machinery are provided, maintained, and used in a safe manner.

6. Partial Exemptions:

- Limited to hand fieldwork
- Ten or fewer employees at all times during the past 12 months
- Do not have to provide toilet and hand-washing facilities when employees will be working fewer than 3 hours (including transportation time)
- Farms where only immediate family members are employed

More, less major provisions are also listed with this act. To view the complete list, locate the Summary of Federal Laws and Regulations Affecting Agricultural Employers, 2000 by Jack L. Runyan in the documentation center.

C.A.T.A.'s Position

The position of CATA as an agency dedicated to protecting the health and safety of migrant farmworkers is concerned with the allowed exemptions from the standards based upon the largeness of farm. Once again, the legislation empowers other workers while simultaneously disempowering farmworkers on small farms. It would seem that despite the size of the agency, all workers should be entitled to the same rights and protections under the law. To require other employers to ensure the safety of the workplace for their employees while others are exempt, places both the employers and the employees on unequal ground.

The Effect on Workers

The Occupational Safety and Health Act of 1970, with appropriations, undermines the rights of workers on farms with less than ten people and no labor camp

to have safe and adequate working conditions. Farm work is a dangerous occupation despite the size of the farm and to lack the ability to regulate the workplace allows certain farmworkers to be in danger from exposure to hazardous materials and hazardous conditions. Moreover, the administration of the OSH Act is poorly run with inspections occurring irregularly in many agricultural operations. Without agency power and desire to enforce the act, the legislation becomes useless in nature.

What the Law Should Be

The appropriations within the act should be removed and the guidelines and standards should be enforced for all employers more strictly. Exemptions should be disallowed based on the number of employees and workday injury rates. OSHA should have surprise quarterly inspections of all businesses and sites ensuring that the standards set forth in section 5 of the act are being followed and that the law and employee rights are not being violated.

What Can Be Done

C.A.T.A. should continue its work in organizing farmworkers and providing them with the capacity to notice infringements on their rights through continued education and explanations on the law and their entitlements. Farms and labor camps should also be reported when violations are noticed, perhaps to allow the law to be enforced more strictly.

Migrant and Seasonal Agricultural Worker Protection Act (1983): Excludes H-2A workers

Amended in 1986 and 1995 (29 U.S.C. 1801, *et seq.*)

The Law

The Migrant and Seasonal Agricultural Worker Protection Act was passed to provide migrant and seasonal farmworkers added protection with regard to transportation, pay, housing, and work-related conditions. The law requires people who use the services of a farm labor contractor to take reasonable steps to determine that the contractor has a valid certificate of registration. The law designates criminal and civil penalties and administrative sanctions against anyone in violation of the act. There are many requirements under this law for employers with regard to rights of the migrant and seasonal worker:

- Farm labor contractors and each of their employees who will be performing farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can start farm labor contractor activities
- Farm labor contractors who furnish worker transportation and housing must also:
 1. Furnish proof to the U.S. Department of Labor that their transportation vehicles meet safety requirements
 2. Furnish proof to the U.S. Department of Labor that their transportation vehicles are insured for the amounts specified in the statute and regulations
 3. Identify the housing that will be used and show that it meets State and Federal safety and health standards and is approved for occupancy.
- Farm labor contractors, agricultural employers, and agricultural associations must disclose to migrant and seasonal agricultural workers information about wages, hours, and other working conditions, and housing when they recruit
- Farm labor contractors, agricultural employers, and agricultural associations must make and preserve written payroll records. They must also provide each employee with a written statement of earnings, deductions (plus reasons for deductions), and net pay.

This law requires that each farm labor contractor, agricultural employer, and agricultural association that recruits any migrant or day-haul workers must provide the following information in writing to each worker:

- Place of employment
- Wage rates to be paid
- Crops and kinds of activities in which the worker is to be employed
- Period of employment
- Transportation, housing, and any other employee benefits to be provided and any costs to be charged to workers
- The name of the worker's compensation carrier, name of the policy holder of the insurance, name and telephone number of the person who must be notified of an injury or death, and the time period within which such notice must be given
- Existence of any strike, work stoppage, slowdown or interruption of operations by employees at the place of employment and
- Whether anyone is paid a commission for items that may be sold to workers while they are employed.

This same information must be provided in writing to any seasonal workers, but only if they request it. The information must be provided in the language common to the farmworker if they are not fluent in English.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant or seasonal worker (including each day-haul worker) must make the following records for each employee and preserve them for 3 years:

- Basis on which wages are paid,
- Number of piecework units earned, if paid on a piecework basis
- Number of hours worked
- Total earnings
- Specific sums withheld and the purpose of each sum withheld

- Net pay

Workers must be paid every 2 weeks or twice a month. Each employee must be provided with an itemized written statement of the information listed above for each pay period. The information furnished to employees must be in a language common to workers. Farm labor contractors must also furnish wage records to each agricultural employer and agricultural association for which the contractor provides workers. The agricultural employers and agricultural associations who receive these records are required to keep them for 3 years from the end of the employment period.

However, as with other laws applied to agricultural workers there are certain exemptions to these regulations. The following exceptions are granted within this act:

- Family business exemption. Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, seed conditioning establishment, cannery, gin, packing shed, or nursery, which is owned or operated exclusively by such individual or an immediate family member of such individual, if such activities are performed only for such operation and exclusively by such individual or an immediate family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes.
- Small business exemption. Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor provided under section 13(a)(6)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(A)) is applicable
- Farm labor contractor registration exemption. Farm labor contractors and each of their employees who will perform farm labor contractor activities must obtain a certificate of registration from the U.S. Department of Labor before they can start farm labor contractor activities. Those exempt from the registration requirement include:
 1. Agricultural employers and associations or their employees.
 2. Farm labor contractors who work within a 25-mile intrastate radius of their permanent residence for less than 13 weeks per year.
 3. Custom combine, hay harvesting, or sheep shearing operations.
 4. Seed production operations.
 5. Custom poultry operations.
 6. Common carriers.

7. Labor organizations.
 8. Nonprofit charitable or educational institutions.
 9. Persons hiring or recruiting students or other nonagricultural employees for employment in seed production or in stringing and harvesting shade-grown tobacco.
- Farm labor information exemption. Farm labor contractors, agricultural employers, and agricultural associations must provide migrant and seasonal agricultural workers with information on wages, hours, and other working conditions. In the case of housing, housing providers must provide migrant and seasonal agricultural workers with information on housing. Those exempt from these provisions include:
 1. All those listed above except number 1, --agricultural employers and associations or their employees.
 2. Individuals or immediate family members who engage in farm labor contracting activities on behalf of their exclusively owned or operated operation.
 3. Any person (for example, a farm operator), except a farm labor contractor, who qualifies for the 500-man-days exemption under the Fair Labor Standards Act.

C.A.T.A.'s Position

The position of CATA follows that the Migrant and Seasonal Worker Protection Act was an important step forward in helping to ensure the rights of migrant and seasonal workers. However, the exclusion of H-2A workers from the act allows those farmworkers to remain vulnerable to areas of exploitation by the farmer. CATA is of the position that the act should be amended to include H-2A workers and remove exemptions for certain people and institutions.

Effect on Workers

The current act, although a start, is not so encompassing as to protect the rights of all farmworkers. Foreign H-2A workers are among those at greatest risk for being taken advantage of by employers. Allowing exemptions also sends a message implying

that some workers are more important than others, and therefore should have their rights protected more than others. With this legislation, the United States seems to be drawing a line between the rights of workers who are foreign and those who are not. The rights of migrant and seasonal workers became protected, while foreign worker's rights remained stagnant. The distinction between the two groups seems rather arbitrary based on residency. Rights should be equal and even handed in application based upon the nature of the work, instead of the nature of the person.

What the Law Should Be

A piece of legislation needs to be established specifically for farmworkers specifying certain rights and protections that all farmworkers (H-2A, undocumented, migrant, and seasonal) will have under the act. Farmworkers have been treated as a separate class far too long within America, a place that has grown and flourished off of agriculture. Rights for farmworkers with not exemptions should be established within this country.

What Can be Done

C.A.T.A. should continue doing outreach work to the migrant farm communities. The only way existing laws can be enforced and strengthened is with a greater movement of workers pushing the country in that direction. Empowering the farmworker would provide the opportunity for those most directly affected by legislation and laws to fight for change within the system.

Immigration Reform and Control Act of 1986

The Law

The Immigration Reform and Control Act of 1986 was an amendment to the Immigration and Nationality Act of 1952. The act was set forth to deter illegal immigration to the United States of America. The law provided harsher sanctions for employers who knowingly hiring illegal aliens. Employers must prove their workforce is legal by completing INS Form I-9 for each of their employees. They must also verify their employees' rights to work within the U.S. by checking their credentials from an approved list. The act also established the H-2A program for non-immigrant aliens to perform agricultural work within the United States if there is a shortage of labor in the domestic workforce. Acceptable documents for establishing employment and identity include:

- U.S. passport (expired or unexpired)
- Alien Registration Receipt Card or Permanent Resident Card, Form I-551
- An unexpired foreign passport that contains a temporary I-551 stamp
- An unexpired Employment Authorization Document that contains a photograph, Form I-766, Form I-688, Form I-688A, or Form I-688B
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

The H-2A program established under the act allows for the recruitment of foreign employees assigned to work at a certain farm for a certain period of time if there are not enough American farmworkers to fulfill the need for farm labor. Both the H-2A

employees and the domestic workforce are entitled to certain rights granted through the H-2A program:

- **Recruitment:** The employer must engage in independent positive recruitment of U.S. workers. This means an active effort, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers to secure U.S. workers.
- **Wages:** The wage or rate of pay must be the same for U.S. workers and H-2A workers. The rate must also be at least as high as the applicable [Adverse Effect Wage Rate](#) (AEWR) or the applicable prevailing wage rate, whichever is higher.
- **Housing:** The employer must provide free and approved housing to all workers who are not able to return to their residences the same day.
- **Meals:** The employer must provide either three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. If meals are provided, then the employer may charge each worker a [certain amount](#) per day for the three meals.
- **Transportation:** The employer is responsible for the following different types of transportation of workers: (1) After a worker has completed fifty percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work. (2) The employer must provide free transportation between any required housing site and the worksite for any worker who is eligible for such housing. (3) Upon completion of the work contract, the employer must pay return transportation or transportation to the next job.
- **Workers' Compensation Insurance:** The employer must provide Workers' Compensation or equivalent insurance for all workers. Proof of insurance coverage must be provided to the RA before certification is granted.
- **Tools and Supplies:** The employer must furnish at no cost to the worker all tools and supplies necessary to carry out the work, unless it is common practice for the worker to provide certain items.
- **Three-fourths Guarantee:** The employer must guarantee to offer each worker employment for at least three-fourths of the workdays in the work contract period and any extensions.
- **Fifty Percent Rule:** The employer must employ any qualified U.S. worker who applies for a job until fifty percent (50%) of the contract period has elapsed.
- **Labor Dispute:** The employer must assure that the job opportunity for which the employer is requesting H-2A certification is not vacant due to a strike or lockout.
- **Certification Fee:** A fee will be charged to an employer granted temporary alien agricultural labor certification. The fee is \$100, plus \$10 for each job opportunity certified, up to a maximum fee of \$1,000 for each certification granted.

- **Other Conditions:** The employer must keep accurate records with respect to a worker's earnings. The worker must be provided with a complete statement of hours worked and related earnings on each payday. The employer must pay the worker at least twice monthly or more frequently if it is the prevailing practice. A copy of the work contract must be provided by the employer to each worker.

C.A.T.A.'s Position

C.A.T.A.'s position with regard to the Immigration Reform and Control act of 1986 is one of concern. The current program, through enactment, allows domestic workers to be passed over for jobs in favor of hiring all foreign workers in hopes of greater compliance within the workforce. The H-2A workers are then exploited because of lack of power and entitlement. The rules are inadequately enforced by the governing agency allowing too many farmers to be accepted under the H-2A program. Moreover, the employers tend to hire the foreign workers over American workers because the foreign workers under the program do not have the same rights and ability to leave the farm in the case of abuses at the workplace. The farmers will choose to hire H-2A workers as a way of controlling the workforce and how the H-2A program operates. The act was a good regulation to be legislated in the United States but enforcement has been lax thereby creating a situation where both foreign and domestic workers are being taken advantage of.

Effect on Workers

U.S. workers are denied jobs in agriculture because employers do not want to grant them the same rights and privileges under the program given to foreign workers. Therefore, the rate of joblessness among the domestic farm labor force increases.

Consequently, the H-2A workers are exploited because they do not know their rights, are not allowed to bargain collectively, and are under the influence of their employer while they reside in the country. If there were abuses in the workplace they would go unreported because of this type of a situation.

What Can Be Done

The law as it currently exists is not inherently bad. It provides many foreign workers benefits on the job. However, the enforcement of the law is too lenient. The administration that runs the agency does not take the action needed to enforce the legislation. Too many applications for H-2A workers are accepted without the employer actually recruiting domestic workers, allowing for abuses within the system to occur. The law should simply be amended to be strengthened decreasing the amount of applications, which get accepted for the H-2A program, having a requirement for part of the workforce to be domestic, and H-2A workers should be granted legal permanent status allowing them the opportunity to have rights within America. It has been proven that the U.S has enough agricultural workers to support the country without the need to go outside the borders.

Federal Insecticide, Fungicide, and Rodenticide Act of 1947

The Law

The Federal Insecticide, Fungicide, and Rodenticide Act of 1947 has been amended various times through the years increasing worker protection and exposure to pesticides. The act was first instituted not long after pesticide use became more widespread. The act allowed controls to be placed on pesticides by the government ensuring the safety of workers and citizens. However, the government had to go through a long procedure to ban a pesticide, and it could not prosecute people who did not use the pesticide correctly. The Federal Environmental Pesticide Control Act of 1972 amended the 1947 Act and made it easier for the government to ban hazardous pesticides and impose penalties for their misuse as well as creating two categories of pesticides General Use, which are considered non-hazardous and Restricted Use pesticides, which are considered dangerous, must be clearly labeled and only handled by a licensed individual. Pesticide manufacturers would also have to submit to the EPA detailed information on the chemical formula, directions for use, and safety test results of the substance. A Worker Protection Standard was issued in 1992 and updated in 1997. The Worker Protection Standard specifies regulations for Worker's and what actions they are legally responsible to take to protect themselves. The standards also establishes re-entry intervals for pesticides as well as signs which must be posted to ensure worker safety and trainings that should occur to help farmworkers protect themselves. Provisions under the Worker Protection Standard for workers are as follows:

- Everyone applying pesticides to obey instructions printed on the pesticide container's label
- Only appropriately trained and equipped workers allowed in area during pesticide application
- Worker may enter a treated area before the restricted entry interval (REI) has expired only if the worker will have no contact with pesticide residue, will not be performing hand labor, or is entering for a short-term, emergency, or specifically excepted tasks
- Workers must be provided with protective equipment in proper working order
- Workers must be notified of pesticide applications, treated areas must be posted, and/or oral warnings must be given to workers as directed by labeling
- Workers must have received safety training during the past 5 years before being allowed to enter a treated area during an REI
- Pesticide safety poster must be on display in a central location
- Decontamination site must be provided and maintained if workers are required to enter treated area during REI and ensuing 30 days
- Emergency assistance must be provided to any worker when there is reason to believe the worker was poisoned or injured by pesticides.

The Worker Protection Standard as different provisions for Handlers of pesticides:

- Handler must provide information to handler employer prior to applying pesticides
- Only appropriately trained and equipped handlers allowed in area being treated
- Handler employee must have knowledge of label, safe use of equipment, and posted information before starting handling activity
- Handler fumigating in a greenhouse must be in continuous voice of visual contact with another handler
- Handlers must use protective equipment specified on the label for use with the product
- Handlers must be provided with a decontamination site
- Emergency assistance must be provided to any worker when there is a reason to believe the worker was poisoned or injured by pesticides

Exceptions to the standard are as follows:

- Owner or operator and immediate family

- For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.
- On livestock or other animals, or in or about animal premises.
- On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.
- On plants that are in ornamental gardens, parks, and public or private lawns and grounds that are intended only for aesthetic purposes or climatic modification.
- By injection directly into agricultural plants. Direct injection does not include "hack and squirt," "frill and spray," chemigation, soil-incorporation, or soil-injection.
- In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, pasture and rangeland use.
- For control of vertebrate pests.
- As attractants or repellents in traps.
- On the harvested portions of agricultural plants or on harvested timber.
- For research uses of unregistered pesticides.
<http://www.epa.gov/region5/defs/html/fifra.htm>
<http://www.epa.gov/pesticides/safety/workers/PART170.htm#170.112>

C.A.T.A.'s Position

C.A.T.A finds the act, as currently enforced, inadequate in protecting workers from the harmful effects of pesticides. Although, the requirements under the legislation look good on paper, the enforcement of such standards is loose and compliance with the law is lax on the part of the farmer. Farmworkers are not sufficiently trained by a competent safety trainer. Rather often a video is put in and workers are told to watch in order to receive their training. Trainings on how to protect workers also do not have to be done every year, but every five years will suffice. Many farmers also do not bother with complying with the law and do not provide decontamination stations nor proper

training techniques or explanation and posting of re-entry intervals. Overall the laws must be strengthened and enforced by the governing agencies in order to ensure that worker's rights and health are being protected.

Effect on Workers

At stake in the Federal Insecticide, Fungicide, and Rodenticide act and the subsequent amendments is the health and safety of the farmworker. Pesticides are dangerous chemicals that workers are exposed to on a daily basis because of lack of satisfactory laws enforcing the regulations that provide for the safety of the farmworker. The medical condition of the farmworker is being undermined by the lack of enforcement and compliance. They are not presented with an adequate workplace in which safe and careful work can occur. Instead, farmworkers, through lazy regulation, are treated as though their health and safety are not important to their employers or the American public.

What the Law Should Be

The act needs to be strengthened in order to ensure that farmworkers health and safety are not being exploited and that everybody within the United States has the rights that would be granted upon every human being. Farmworkers are not being treated as if they are important and have equal rights with other people within the United States. A country which prides itself on equal protection cannot flourish when people are not protected equally. This piece of legislation should be strengthened providing harsher penalties for employers who go outside the bounds of the law, as well as stricter

reinforcement of the current statute. What good is a law if the regulatory agency does not govern and enforce the act? Enforcement of all labor legislation is needed to a greater extent.

What Can be Done

C.A.T.A. is currently providing worker protection trainings, which allows the worker to be more empowered through the ability of the worker to protect him/herself. However, coupled with this technique C.A.T.A should begin to make a more concerted effort to report findings of abuse on the workplace site to the responsible agencies. Perhaps, if greater abuses within the system begin to be reported, the governments hand will be forced to take care of the problem.

Family and Medical Leave Act of 1993

The Law

The Family and Medical Leave Act of 1993 was passed to ensure that employees were given the opportunity to take time off work for family reasons without fear of losing their jobs. FMLA applies to all:

- public agencies, including state, local and federal employers, local education agencies (schools) and
- private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year and who are engaged in commerce or in any industry or activity affecting commerce including joint employers and successors of covered employers.

Most employers in the private and public sector are covered under the act. However, agricultural employers are often not covered because of the seasonal nature of the work; therefore most employees do not fit the requirements to take the 12 weeks of leave. To be eligible for FMLA benefits, an employee must:

- work for a covered employer
- have worked for the employer for a total of at least 12 months
- have worked at least 1,250 hours over the previous 12 months
- work at a location where at least 50 employees are employed by the employer within 75 miles

Most employers do not work for the farmer for a straight 12 months. Moreover, many farmers do not employ fifty or more workers for twenty or more workweeks exempting many farmers from the fulfilling the requirements. However, for those employees who qualify, a covered employer must grant an eligible employee a total of 12 workweeks of unpaid leave in a 12 month period for one of the following reasons:

- for the birth of a son or daughter and to care for a newborn child
- for the placement with employee of a child for adoption or foster care, and to care for the newly placed child
- to care for an immediate family member (spouse, child, parent, but not a parent-in-law) with a serious health condition
- when the employee is unable to work because of a serious health condition
http://www.unlv.edu/Human_Resources/Benefits/fmla.html#coverage

C.A.T.A.'s Position

The Family and Medical Leave Act of 1993 is a piece of legislation that needs to be improved in order to ensure that all employees, including agricultural workers, will be covered under the law. The requirements for employers and employees that are placed within the law currently allows for loopholes in the application of the law fairly and justly. Because of these loopholes, seasonal and migrant farmworkers are not receiving the leave to which they are entitled. Once again the law is circumventing the rights of the farmworker.

Effect on Workers

The Family and Medical Leave Act of 1993 does not consider the nature of the work of the farmworker. Therefore, the farmworker remains at a disadvantage with regard to the law. The agricultural worker is disallowed from caring for a new child within the family and knowing he/she has job security. Moreover, farmwork is a very dangerous occupation. Injury rates within the industry are higher than within other occupational settings. Therefore, farmworkers would be greatly helped by the provision

allowing the worker to take up to twelve weeks off when issues of their own health are affected. Consequently, farmworkers are quite negatively impacted by this legislation.

What the Law Should Be

The Family and Medical Leave Act of 1993 should be amended to encompass agricultural workers. This could perhaps be done by shortening the amount of time needed with an employer before being able to receive the leave time from that of 12 months to 4 months. Another idea would be to amend the act to include smaller farmers as well who employ less than fifty workers. These two amendments would allow a greater number of migrant and seasonal agricultural workers to be included within the act.

What Can Be Done

Migrant and Seasonal Farmworkers need to continue to be organized and demand their rights as workers. Likewise, legislators have to be pressured by many different fair labor groups to order equal rights for all workers despite occupation.

English Only Laws

The Law

A strong English Only movement began in the 1980s with the conception of U.S English, founded in 1983 by Senator S.I. Hayakawa and John Tanton. With the increase in immigration from Spanish speaking and Asian countries the movement has grown. In 1996 The Emerson Bill (H.R. 123) passed by the House but not the Senate. The bill specified English as the official language of government, and would have required that the government "preserve and enhance" the official status of English. Exceptions would have been made for the teaching of foreign languages; for actions necessary for public health, international relations, foreign trade, and the protection of the rights of criminal defendants; and for the use of "terms of art" from languages other than English. Currently, twenty-five states possess English Only laws: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wyoming. Recently, a Supreme Court Case entitled *Alexander v Sandoval* concerning English only laws was decided by the Supreme Court. However, instead of ruling on the constitutionality of an English Only law, the case was concerned with whether a citizen possesses a private right of action to sue when a law is considered discriminatory. The court ruled that under Title VI of the Civil Rights act of 1964 this was not granted by Congress as the act was intended. Therefore, English only laws are allowed to remain for legislative purposes because

individual citizens lack standing to sue.

<http://www.theatlantic.com/issues/97apr/english.htm>

Effect on Workers

The instatement of English only laws can affect the migrant and seasonal agricultural worker in a variety of different ways. Many farmworkers are new to the country mainly of Hispanic descent from regions of Mexico or of African descent from the Caribbean who do not speak English well. English only laws can affect access to adequate Healthcare as well as driver's licenses. The legislation would put all immigrants from country's that do not speak English at an immediate disadvantage. Moreover, federal funds supporting bilingual education as well as multicultural programs would be discontinued disallowing for the promotion of learning and speaking other languages besides English within the United States. The removal of language and cultural functions would place many Americans at a disadvantage in terms of expanding their knowledge and acceptance of other cultures of people.

What the Law Should Be

English only laws are discriminatory in intent and should not be allowed to pass within legislation in any state. They began as a knee jerk reaction by conservatives to the growing Latino population within the country. Instead of discriminating against people who speak a different language, the United States should have an accepting policy allowing others to learn English while continuing to speak another language as well. Since its inception, the United States has been a melting pot of individuals

conversing in different languages. To remove the ability of Americans to speak and learn in different languages would go against what America as a country as always stood for, and that would be un-American.

What Can be Done

A strong counter-movement to the English only movement is already in effect. They should just continue the work they are currently doing in hopes that no new legislation will be passed within states that do not currently have policies. Hopefully, as the minority population within the United States increases, the possibility of expanding English-only laws will become a moot point