

Chapter Ind 201

MIGRANT LABOR

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Note: Chapter Ind 49, Migrant Labor Camps as it existed on April 30, 1978 was repealed and a new chapter Ind 201, Migrant Labor was created effective May 1, 1978.

Ind 201.01 Scope. This chapter is promulgated pursuant to and for the enforcement and implementation of ss. 103.90 to 103.97, Stats.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Ind 201.02 Data. The department shall submit data and information relative to ss. 103.90 to 103.97, Stats., and this chapter to the council on migrant labor pursuant to specific requests from the council and through an annual report submitted to the council in January.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Ind 201.03 Forms. All forms issued by the job service division may be obtained from DILHR, P. O. Box 7902, Madison, Wisconsin 53707.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Ind 201.04 Investigations. (1) "Reasonable daylight hours" means:

(a) Normal daytime business hours for investigation of employers' records.

(b) Between sunrise and sunset for investigation of all other matters.

(2) The department may not disclose the name of a person filing a complaint with the department, if the person requests that his/her name not be disclosed by the department.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Ind 201.05 Migrant labor contractors. (1) A migrant labor contractor shall apply to the department for a certificate on form DILHR-JSD-5234 or on the form required under USC 2045.

(2) The fee for the certification or renewal shall be \$25.

(3) The term "real party in interest" means a person who is engaged, directly or indirectly, in activities as a migrant labor contractor and who conceals his/her activities through another person.

(4) The term "fee or other consideration" means money or anything of value or benefit paid or promised to be paid for services as a migrant labor contractor.

(5) The term "regular employe" means a person employed year round by an employer and who engages in activities as a migrant labor contractor solely for his/her employer.

(6) The term "employer's own operation" means any farm or other business enterprise owned or managed by the employer.

(7) The term "migrant labor contractor's immediate family" includes only:

- (a) A spouse.
- (b) Children and step-children.
- (c) Parents.
- (d) Brothers, sisters and half brothers and sisters.
- (e) Grandparents.
- (8) Every contractor shall:

(a) Submit a separate Form WH-412 (Application for Farm Labor Contractor Employee Identification Card) for each officer, director, partner or agent of the contractor at the time of application or within 10 days after hiring such person.

(b) Keep records which show for each worker recruited: name in full, home address, all sums paid to the contractor on account of the labor or recruitment of the worker, the cost to the contractor of goods and services provided the worker and all sums and the purpose for all sums received from or on behalf of the worker. The contractor shall preserve such records for a period of 3 years and shall make them available to the worker or the department for inspection upon request.

(c) Provide a policy under s. 103.91 (8) (f), Stats., the limits of which, with respect to each vehicle shall be \$100,000 because of bodily injury to or death of one person in any accident and, subject to such limit for one person, \$300,000 because of bodily injury to or death of 2 or more persons in any one accident if 12 persons or less are transported in one vehicle, \$500,000 if more than 12 persons are transported in one vehicle at one time, and \$50,000 because of injury to or destruction of property of others in one accident. This requirement shall not apply if the contractor furnishes transportation only as the agent of an employer who has obtained a policy of insurance against liability for damages arising out of the operation of motor vehicles with coverage equivalent to the coverage required under this paragraph.

(d) Provide a Form ES-414 (Vehicle Mechanical Inspection Report) for each vehicle used to transport individuals or property in connection with activities as a migrant labor contractor.

(e) Provide every worker recruited a written work agreement as specified in ss. 103.90 to 103.97, Stats., and this chapter.

(9) The department shall review and make a determination on an application under this section within 20 working days after the application is received.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; cr. (9), Register, March, 1986, No. 363, eff. 4-1-86.

Ind 201.06 Work agreements. (1) A single work agreement for a family may be used only when all of the terms and conditions of employment are substantially similar for all working family members.

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(2) The term "employs" means having direction and control of any worker, being responsible for the wages of a worker, or allowing a worker to perform work for the employer.

(3) If an employer does not use Form DILHR-JSD-5233 (Migrant Labor Work Agreement), he/she shall use a form approved by the department. An employer may not use a form unless it has been approved by the department prior to its use.

(4) When considering an employer's form for approval, the department shall, in addition to the requirements of s. 103.915 (4), Stats., take into account the clarity and design of such form.

(5) "Kind of work available" means in a cannery or freezing plant processing specified fruits or vegetables; or farm work planting, cultivating, harvesting, handling, drying, packing, packaging, grading or storing specified fruits or vegetables; or nursery work; or sod farming or Christmas tree cultivation or harvesting.

(6) The description in the work agreement of the housing to be supplied shall include a description of cooking, bathing, laundry and toilet facilities and a statement of the maximum number of persons to be accommodated in the sleeping area to which the worker will be assigned, in the case of single persons, or, in the case of families, in the housing unit to which the worker will be assigned.

(7) "Transportation arrangements" means:

(a) Costs, if any, to the worker.

(b) The specific mode of transportation, including the type of vehicle used if the employer is to provide transportation.

(c) The rate of payroll deduction for a travel or subsistence advance, if such advance is to be deducted.

(8) The minimum work guarantee shall cover the period from the date the worker is notified by the employer to report for work, which date shall be no later than 10 days from the approximate beginning date specified in the work agreement, or the date the worker reports for work, whichever is later, and continuing until the date of the final termination of employment, which date shall be no sooner than 7 days before the approximate ending date specified in the work agreement, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control. If a worker is notified by the employer to report for work or is employed prior to the approximate beginning date specified in the work agreement, the period of employment and the guarantee of minimum work shall begin on the date the worker is notified to report for work or the date the worker reports for work, whichever is later, and shall continue until the final termination of employment, as specified in the work agreement, signed at the time of recruitment, or earlier if the worker is terminated for cause or due to seriously adverse circumstances beyond the employer's control.

(9) The term "seriously adverse circumstances beyond the employer's control" means the substantial shutdown of the employer's operations for reasons including, without limitation because of enumeration, loss of crops, loss of, or inability to operate facilities or inability to store or process unmarketable, perishable agricultural produce; such term shall not

apply to the shutdown of the employer's operation for change over of equipment or between packs or crops.

(10) "Terms and conditions of employment" includes, without limitation because of enumeration, job assignment, layoffs, discharge, filling vacancies, transfers, job bidding, seniority, hours, work schedule, overtime pay, leave of absence, benefits, insurance, pension, vacation, holiday leave, sick leave, or general working conditions.

(11) Elapsed time shall be computed, subject to the limits in s. 103.915 (5), Stats., on the basis of 500 miles of travel per day.

(12) (a) "Applicable wage rates" means the actual anticipated straight-time hourly rates the worker will be paid. If the worker will be paid on a piece rate basis, the work agreement shall show the employer's guarantee hourly rate. If at the time of recruitment the employer cannot anticipate the exact rate the worker will be paid, the work agreement shall specify a base rate which shall be not less than the base rate paid by the employer at the end of the preceding season for the kind of work specified, together with the words "or more" or similar phrase.

(b) In determining whether the employer has met the weekly or bi-weekly guarantee under s. 103.915 (4) (b), Stats., the straight-time hourly rate which the worker was paid for the greatest number of hours during the preceding work guarantee period, the used. If there was no preceding work guarantee period, the rate paid the worker during the current guarantee period, the rate paid the worker during the current guarantee period shall be used. If the worker is paid on a piece rate basis, the employer's specified guaranteed hourly rate shall be used.

(13) If the applicable wage rate to be paid include a bonus provision, the work agreement shall clearly state the conditions under which the bonus shall be paid or forfeited.

(14) When an employer uses multiple sheet forms and signs the agreement first, the work agreement may provide that it may be cancelled by the employer if, by a specific date, the employer or the designated agent has not received a fully signed copy of the work agreement.

(15) The work agreement may provide for cancellation by the employer if the worker fails to notify the employer or designated agent within a reconfirmation period of not less than 15 days of his or her continuing intention to accept the employment. Notification of reconfirmation may be made by collect telephone call, by an employer provided prepaid postcard, or any other means paid for by the employer.

(16) Any work agreement utilizing one or both of the options embodied in subs. (14) and (15) shall set forth the optional language in a highly visible manner compared to the printing of the rest of the work agreement.

History: Emerg. cr. (13), eff. 3-30-78; Register, April, 1978, No. 268, eff. 5-1-78; emerg. cr. (12) and (13), eff. 2-21-79; cr. (12) and (13), Register, May, 1979, No. 281, eff. 6-1-79; cr. (14) to (16), Register, March, 1986, No. 363, eff. 4-1-86.

Ind 201.07 Migrant labor camps. (1) APPLICATION. The application fee for operating a migrant labor camp shall be \$10. Issuance of a certificate to operate will be contingent on the camp satisfying the minimum standards of this chapter. The application fee for a registration after March 31 shall be \$25. The department shall review and make a determination Register, March, 1986, No. 363

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on an application under this subsection within 130 working days after the application is received and within 20 working days after the camp has been inspected. The department shall schedule each inspection promptly, taking into consideration seasonal conditions and the employer's schedule for the use of the camp.

(2) CLOSING ORDER. Within 3 working days from the date of an order closing a camp, the department shall transmit the file and a copy of the order to the attorney general or the district attorney for the county in which the violation occurred for prosecution.

(3) NOTICE OF REVOCATION. Every notice of revocation of a certificate to operate a camp shall be accompanied by a closing order.

(4) GATES AND GATEWAYS. "Gates and gateways" means a gate or gateway width of which is no less than the aggregate width required for exits under ILHR 51.15 (6) on May 1, 1978 for a building the occupant load of which is the same as the occupant load of the migrant labor camp.

(5) DEFINITIONS. (a) "Camp operator" means a person who maintains a migrant labor camp.

(b) "Common use facilities" means structures or areas other than sleeping or living quarters designed to be used by camp occupants not members of the same family.

(j) First aid facilities shall be equivalent to the 16 unit First Aid Kit recommended by the American red cross, and shall be provided in a ratio of 1 per 50 persons, except as provided under par. (k).

(k) A kit supplied to each family shall be deemed to satisfy the requirements of par. (i) if it contains at least the following items:

1. 3½ yards gauze bandage 1 inch width.
2. 1½ yards ½ inch adhesive tape.
3. 12 adhesive bandages.
4. 7/8 oz. first aid cream.
5. Two 2 x 2 2-12 ply gauze pads.

(l) No flammable or volatile liquids or materials may be stored in or adjacent to rooms used for living purposes, unless needed for current household use.

(m) Agricultural pesticides and toxic chemicals may not be stored in the housing area during the period of occupancy.

(22) CAMP OPERATORS' AND OCCUPANTS' RESPONSIBILITIES. (a) A camp operator or his/her agent may establish reasonable rules relating to the responsibility of camp occupants as to camp occupancy and care. A copy of all such rules shall be posted in the camp where they can be easily seen by the camp occupants and shall be given to the occupants together with the work agreement. All such rules shall be written in English and, if the customary language of any occupant is not English, in the language of the occupant.

(b) A camp operator or his/her agent shall:

1. Clearly explain to camp occupants their responsibilities under any rules established under par. (a).
2. At least once a week inspect the camp area, structures, toilets, showers, and other facilities and see that each is maintained in a clean and orderly condition and that broken or damaged property is promptly repaired.
3. Designate an individual to maintain the grounds and common use facilities in a clean and orderly condition at least daily, except that in camps occupied by 100 or more persons, the camp operator shall provide a full-time person to perform all duties required under this paragraph.

4. Designate an individual or employe to be responsible for the compliance with this section. Such person's name shall appear on the material posted under sub. (24).

(c) Each occupant of a camp shall:

1. Use the sanitary and other facilities furnished by the camp.
2. Keep in a clean and orderly manner that part of the camp and premise which the occupant occupies or uses.
3. Be responsible for the cleanliness of the dwelling units to which the occupant has been assigned and adjacent grounds.

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4. Dispose of his/her rubbish and garbage by placing it in containers provided for rubbish and garbage.

(23) INSPECTION. (a) All migrant labor camps including individual dwelling units shall be opened to inspection at all reasonable daylight hours by representatives of the department.

(b) The department inspector shall make his/her presence known to the camp operator or an adult member of the operator's immediate family or the person designated as responsible for compliance with this section and to any affected occupant before making an inspection.

(24) POSTING OF RULES. A copy of this section prepared by the department in English and in the language of the camp occupants if other than English, shall be posted in the camp or where the occupants report for work in a place easily seen by the camp occupants. The copy shall state where copies of the rules may be obtained.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78; emerg. am. (11) (c), eff. 1-5-79; am. Register, May, 1979, No. 281, eff. 6-1-79; am. (9) (a) and cr. (1) (cm) and (cn), Register, May, 1981, No. 305, eff. 6-1-81; cr. (8) (f), Register, October, 1982, No. 322, eff. 11-1-82; corrections in (4), (6) (e), (11) (a) 1., (13) (c), (14) (h), (15) (a) and (m), (16) (o), (17) (a) 6. and (d) 19. and (21) (f) made under s. 13.93 (2m) (b) 7 and 14, Stats., Register, October, 1985, No. 358; am. (1), Register, March, 1986, No. 363, eff. 4-1-86.

Ind 201.08 Wages. (1) Drafts or checks shall be made payable to the order of individual workers.

(2) The term "termination of the period of employment for which the worker was employed" means termination by either party for whatever reason.

(3) Partial payment under s. 103.93 (1) (b), Stats., shall not be allowed unless the employer is unable to determine the amount of piece rate wages owed a worker because of a lack of confirmation from a processor buyer.

(4) Any additional wages due a worker under s. 103.92 (1) (b), Stats., shall be paid within 2 days after such wages are determined.

(5) Wage statements shall show the amount of gross and net wages paid by the employer to the worker, the number of hours worked and the amount of and reason for each deduction from the wages of the worker. A reasonable coding system may be used by an employer.

(6) Authorizations for deductions or withholding from wages must be specific as to the amount and reason for the deduction. A general statement authorizing the employer to make deductions for future loans, services, loss or damage to property shall be invalid.

History: Cr. Register, April, 1978, No. 268, eff. 5-1-78.

Ind 201.09 Field sanitation standards. In operations where 6 or more migrant workers are engaged in hand labor, the employer shall meet the requirements of subs. (1) to (5) without cost to the worker.

(1) TOILET FACILITIES. (a) Toilet facilities shall be provided in the ratio of one facility per every 20 workers, regardless of gender, located within ¼ mile of each employe's work place in the field or, if not feasible, at the closest vehicular access. Toilet facilities shall have doors than can be closed and latched from the inside.