

WE ARE YOUR DOL



NEW YORK
STATE OF
OPPORTUNITY.

Department
of Labor

January 2022

The Farm Laborers Fair Labor Practices Act

- Farm Laborers now earn 1 ½ times of their regular rate for hours worked (**overtime**) over 60 in a calendar week (established by the employer). The following may be excluded:
 - ✓ Executive, Professional and Administrative staff
 - ✓ Members of the Employer's Immediate Family (within 3 degrees of consanguinity)
- Farm Laborers are permitted to voluntarily work during their designated day of rest, **provided the employer pays that day of work at the overtime rate.**
- Employers must provide farm laborers at least one day (**24 consecutive hours**) of rest in every calendar week. The following may be excluded:
 - ✓ Executive, Professional and Administrative staff
 - ✓ Members of the Employer's Immediate Family (within 3 degrees of consanguinity)
 - ✓ Foreman in Charge (may be more than one)
- Employers, including certified agricultural crew leaders (FLCs), are now required to provide farm laborers with **Unemployment Insurance coverage** once the employer has paid remuneration of \$300 or more to employees in a quarter.
- H-2A Foreign Guest Workers are excluded from unemployment insurance coverage and employers are no longer required to report them.

Increases in the Minimum Wage and the H-2A Adverse Effect Wage Rate (AEWR)

Effective December 31, 2021, the New York State Minimum wage is now \$15 per hour in NYC, Nassau, Suffolk and Westchester Counties.

Workers in the rest of the State are now paid a minimum wage rate of \$13.20 per hour.

As of December 29, 2021, the AEWR for H-2A job orders in New York State is \$15.66 per hour statewide.

WORKER PROTECTION DIVISIONS WITHIN THE NYS DOL

Division of Immigrant Policies and Affairs: DIPA conducts educational visits to employers and farm workers in New York State. Staff educate employers and workers on labor law, employment services available through the Career Center system and they resolve apparent violations. Additionally, DIPA staff assist in H-2A and H-2B job order processing for employers in NYS. The State Monitor Advocate is also part of DIPA.

Division of Labor Standards: LS enforces state Labor Laws, including Farm Labor and Anti-Retaliation regulations.

Other divisions include the Bureau of Public Work, Division of Safety & Health, the Office of Special Investigations.

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New York State Department of Labor's Division of Immigrant Policies & Affairs

- We work under the Deputy Commissioner of Labor for Worker Protection.
- DIPA engages in education and compliance-based work – we are not law enforcement.
- There are 6 programs implemented by DIPA:
 - **Agriculture Labor Program:** Federally required outreach to farm workers around the state which includes information on their labor law rights, employment services available and assistance with complaints.
 - **Foreign Labor Certification Unit:** Federally required processing of H-2A and H-2B job orders for employers in NYS seeking foreign guest workers. This includes federally required housing inspections, field checks and the referral of violations observed or discovered while in the field.
 - **State Monitor Advocate:** Monitors services provided by the NYS Department of Labor staff and advocates for farm worker protections.
 - **Language Access:** We ensure the NYSDOL complies with requirements to provide services in the customer's native language.
 - **Outreach to Immigrant Communities:** We provide Know Your Rights presentations to workers and employers around the state, educating them on their labor law rights and responsibilities.
 - **Anti-Trafficking Efforts:** We certify possible victims for services and assist with U and T visa certifications in NYSDOL connected cases.

During the course of education and compliance-based work, DIPA staff do not engage in immigration status conversations, as labor law applies to all workers.

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AGRICULTURE LABOR PROGRAM (AgLP)

Outreach staff are located throughout the state and work primarily in the field during the harvest season:

- Outreach staff have laptops and smartphones so they can serve workers.
- They work flexible schedules to accommodate farmworkers who may only be available outside of normal business hours.
- Staff carry forms and other paperwork necessary to assist customers in different locations, such as labor camps, worksites, or nearby coffee shops.

Staff regularly partner with community organizations to provide educational outreach, for example:

- Empire Farm Days
- Becker Forum
- Various Mobile Consulate events around the State

Outreach staff also assist the H-2A Federal Foreign Guest Worker Program by conducting:

- Field Checks (as required by Federal Regulations when there is a domestic placement),
- Field Visits (as permitted by Federal Regulations to provide outreach to foreign and domestic workers).

When staff discover a possible violation in the field, they may attempt resolution or refer to the appropriate enforcement agency:

- Factors include: the complexity of the violation, number of workers and jurisdictional issues.

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AgLP and Violations: How are they handled?

- DIPA staff receive information regarding possible violations of labor law or other regulations/laws.
 - DIPA staff will gather contact information & other details from affected workers.
 - DIPA then decides to either attempt education and compliance with the employer or refers to appropriate enforcement agencies.
 - If DIPA's attempt at compliance is unsuccessful, the case is then referred to enforcement.
- During education & compliance, DIPA will not discuss sources of information with employers. The only exception is when the violation relates to wages or other benefits due to a specific employee.

What happens if cases are referred to enforcement agencies?

- When cases are referred to enforcement agencies, DIPA will provide case information and may assist (such as with language needs), if necessary.
- The employer is subject to additional scrutiny by enforcement, including potential fines and penalties associated with the violations.

A referral to enforcement agencies is the necessary outcome for systematic, complex and pervasive violations of labor law. But it should not have to happen for “little” violations. If employers are able to correct violations, it makes sense to take the opportunity to do so!

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What are the typical “little” violations DIPA routinely encounters in the field?

- Failure to post required posters,
- Failure to provide required work agreement,
- Failure to provide compliant paystubs,
- Failure to provide field sanitation and potable drinking water,
- Unpaid wages for short periods of time & pay frequency violations,
- Failure to pay NYS minimum wage after a recent increase and
- Failure to provide a meal period.

Why is cooperating with DIPA a good idea?

- When an employer chooses to work with DIPA to rectify a violation, it shows good faith on the part of the employer. **Being open to fixing “little” violations makes good business sense!**
- Employers can be proactive in addressing “little” violations before the violations, such as underpayments, become too big to address.
- Employers may avoid liquidated penalties and fines that may be imposed by enforcement agencies.

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How has DIPA served Agricultural Employers and MSFWs in 2021?

- Field Staff returned to in person outreach in June 2021.
- Staff conducted 443 field visits to employers and workers.
- Staff conducted 127 housing inspections for H-2A employers.
- Staff communicated with 1398 employers/managers, 1676 domestic migrant and seasonal farm workers, 5097 H-2A farm workers, 499 year-round workers, 2492 non-ag workers, and 108 NGOs/service providers for a total of 11,263 contacts.
- Staff identified 213 apparent violations and assisted in the resolution of 185.
- DIPA received 8 complaints during 2021. And staff assisted in the payment of \$6133.88 for 3 workers.
- In 2021, staff assisted workers in the following languages:
 - Arabic
 - Burmese
 - Chinese
 - Haitian Creole
 - Spanish

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How will housing inspections for the H-2A guest worker program be conducted in 2022?

All Housing Inspections will be completed by the Department of Health.

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THANK YOU!

LEARN MORE HERE:

<https://labor.ny.gov/immigrants/index.shtm>