

# LEGAL RIGHTS OF H2A WORKERS

## HOUSING RIGHTS

- Housing must be provided free of charge (free housing must also be provided to non-H2A workers employed by H2A growers)
- Housing must comply with OSHA/Migrant Housing standards
- Housing must be inspected by the NC Department of Labor

### KITCHEN

- Clean, no rats or mice
- One burner for every five people (at least two burners total)
- Hot and cold running water
- .75 cubic feet of refrigerator space per person

### LAUNDRY

- One laundry tub for every 30 people (a kitchen sink does not count as a laundry tub)
- Facilities for drying clothes (clothesline or clothes dryer)
- One mop sink in each laundry building

### HEAT

- Heaters if temperature falls below 50°F, or if housing to be used before May 1 or after September 1
- Heaters must heat the room to at least 65°F (70°F in shower area)

### BATHROOMS

- One toilet for every 15 people of the same sex
- Must be marked "Men" and "Women" in English and in language spoken by workers
- One handwash basin for every six people
- Ventilated, clean, sanitary, and must have lighting
- Toilet paper
- Hot showers (one showerhead for every ten people)

### BEDROOMS

- 50 square feet per person (100 square feet per person if workers live, cook, and sleep in the same room)
- Storage facilities for clothes and other items
- Beds elevated at least 12 inches above the floor
- Beds at least 36 inches apart

- Bunk beds at least 48 inches apart, with at least 27 inches between bunks
- No triple bunks

### MISCELLANEOUS

- First aid kit, smoke detectors, fire extinguisher in sleeping and cooking areas
- Sealed garbage containers, emptied at least twice a week or when full
- Windows and doors must have screens
- At least one ceiling light fixture and one outlet per room
- Nothing that threatens life or threatens serious physical harm
- Workers may not be retaliated against for asserting their housing rights (see Retaliation section)

WHAT TO DO IF THERE IS A PROBLEM: Call NC Department of Labor, OSHA Division (1-800-LABORNC) or file written complaint (form NC OSHA 7A), or Contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869). Workers may request that their names not be revealed to the employer.

## FIELD SANITATION

- If workers are in the field more than 3 hours, the following must be available to workers within 1/4 mile:
  - Workers must have access to cool drinking water
  - Hand-washing facilities must be provided
  - Toilets must be provided
- Workers must have the freedom to use all of the above
- Workers may not be retaliated against for asserting their OSHA rights (see Retaliation section)

WHAT TO DO IF THERE IS A PROBLEM: Call NC Department of Labor, OSHA Division (1-800-LABORNC) or file written complaint (form NC OSHA 7A), or contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869). Workers may request that their names not be revealed to the employer.

## WORKER'S COMPENSATION

- All H2A growers must have worker's compensation coverage for work-related injuries and illnesses (including coverage for non-H2A workers employed by H2A growers)
- Coverage includes:
  - medical care, including prescriptions
  - 2/3 of the average weekly wage for any days missed after 7 calendar days
  - transportation to the doctor
  - payment for any permanent injury
- Injured workers should inform the employer of the injury immediately
- Workers may not be retaliated against for asserting their rights under the worker's compensation laws (see Retaliation section)

WHAT TO DO IF THERE IS A PROBLEM: Contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869), or call the Industrial Commission (800-688-8349) to find out who the insurance carrier is for the grower.

## WAGES

- Must be paid the Adverse Effect Wage Rate (AEWR): \$6.98 per hour in 2000
- If the worker completes the contract, he/she must be paid for at least 30 hours of work per week over the period of the contract (3/4 guarantee)
- If the worker completes more than half the contract, he/she should be reimbursed for travel expenses for the trip to North Carolina
- No income tax or Social Security should be withheld
- Christmas tree workers must be paid overtime (1 1/2 times the regular wage) for any hours in excess of 40 hours per week
- Workers must be paid for time spent traveling between fields, and under certain conditions must be paid for time waiting to begin or resume work
- Employers must keep payroll records for each individual worker showing: basis on which wages are paid, number of piece-work units earned, number of hours worked, total earnings, amounts withheld, and net pay
- Non-H2A workers who are employed by H2A growers are also covered by the provisions above (except that taxes and Social Security are withheld from their pay)
- If an H2A grower has unemployment insurance that covers non-H2A workers, this must be disclosed to those workers
- Workers may not be retaliated against for asserting their rights under wage and hour laws (see Retaliation section)

WHAT TO DO IF THERE IS A PROBLEM: Contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869), or Call the Wage and Hour Division of the U.S. Department of Labor (919-790-2741).

## PESTICIDES

- H2A workers are covered by all OSHA and EPA regulations, and by the Worker Protection Standards
- By law, workers should not enter fields that have been sprayed until the re-entry interval has expired (with very few exceptions)
- Within five days of working in fields that have been sprayed
- within the past 30 days, workers must receive training, in a manner they understand, about the acute and chronic effects of pesticides, signs and symptoms of exposure, First Aid, and hazards from drift and pesticide residue
- Growers must post warnings or give oral warnings when fields have been sprayed
- Growers must post a list of chemicals that have been sprayed in the past 30 days, and the location of the spraying
- Workers may not be retaliated against for asserting their rights under OSHA (see Retaliation section)

WHAT TO DO IF THERE IS A PROBLEM: Contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869), or Call NC Department of Labor, OSHA Division (1-800-LABORNC) or file written complaint (form NC OSHA 7A). Workers can request that their names not be revealed to the employer. OSHA should investigate within 24 hours.

## TENANTS' RIGHTS

- H2A workers have the right to have visitors
- The grower must go through the summary ejectment procedure to evict a worker, even when the worker has been fired
- The grower is only required to provide family housing when that is the prevailing practice in the area

WHAT TO DO IF THERE IS A PROBLEM: Contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869).

## RETALIATION

- Workers may not be retaliated against for filing, or threatening to file, a complaint regarding health and safety, job-related injuries or illnesses, or wages and hours

WHAT TO DO IF THERE IS A PROBLEM: Contact Farmworkers Unit of Legal Services of North Carolina (1-800-777-5869), or File an Employment Discrimination Complaint form with the WORD (Workplace Retaliatory Discrimination office) Division of the NC Department of Labor within 180 days (1-800-LABORNC).

### NORTH CAROLINA JUSTICE and COMMUNITY DEVELOPMENT CENTER

P.O. Box 28068 ■ 224 S. Dawson Street ■ Raleigh, North Carolina ■ 27611-8068 ■ 919/856-2570 ph ■ 919/856-2175 fax ■ info@ncjustice.org ■ www.ncjustice.org

Carol Brooke - Migrant Worker Attorney ■ IMMIGRANTS LEGAL ASSISTANCE PROJECT ■ 1-888-251-2776 - clients only