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29 C.F.R. § 500.20

Definitions.

For purposes of this part:

(a) *Administrator* means the Administrator of the Wage and Hour Division, United States Department of Labor, and such authorized representatives as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(b) *Administrative Law Judge* means a person appointed as provided in title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 557. Chief Administrative Law Judge means the Chief Administrative Law Judge, United States Department of Labor.

(c) *Agricultural association* means any nonprofit or cooperative association of farmers, growers, or ranchers, incorporated or qualified under applicable State law, which recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker.

(d) *Agricultural employer* means any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker. *Produces seed* means the planting, cultivation, growing and harvesting of seeds of agricultural or horticultural commodities. *Conditions seed* means the in-plant work done after seed production including the drying and aerating of seed.

(e) *Agricultural employment* means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(f) *Convicted* means that a final judgment of guilty has been rendered by a court of competent jurisdiction from which no opportunity for appeal remains.

(g) *Day-haul operation* means the assembly of workers at a pick-up point waiting to be hired and employed, transportation of such workers to agricultural employment, and the return of such workers to a drop-off point on the same day. This term does not include transportation provided by an employer for individuals who are already employees at the time they are picked up nor does it include carpooling arrangements by such employees which are not specifically directed or requested by the employer, farm labor contractor or agent thereof.

(h)

(1) The term *employ* has the meaning given such term under section 3(g) of the Fair Labor Standards Act of 1938

(29 U.S.C. 203(g)) for the purposes of implementing the requirements of that Act. As so defined, *employ* includes to suffer or permit to work.

(2) The term *employer* is given its meaning as found in the Fair Labor Standards Act. *Employer* under section 3(d) of that Act includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(3) The term *employee* is also given its meaning as found in the Fair Labor Standards Act. *Employee* under section 3(e) of that Act means any individual employed by an employer.

(4) The definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act. Under MSPA, questions will arise whether or not a farm labor contractor engaged by an agricultural employer/association is a bona fide independent contractor or an employee. Questions also arise whether or not the worker is a bona fide independent contractor or an employee of the farm labor contractor and/or the agricultural employer/association. These questions should be resolved in accordance with the factors set out below and the principles articulated by the federal courts in *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722 (1947), *Real* v. *Driscoll Strawberry Associates, Inc.,* 603 F.2d 748 (9th Cir. 1979), *Sec'y of Labor, U.S. Dept. of Labor* v. *Lauritzen,* 835 F.2d 1529 (7th Cir. 1987), *cert.* denied, 488 U.S. 898 (1988); *Beliz* v. *McLeod,* 765 F.2d 1317 (5th Cir. 1985), and *Castillo* v. *Givens,* 704 F.2d 181 (5th Cir.), *cert. denied,* 464 U.S. 850 (1983). If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate. In determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate. *Lauritzen* at 1538; *Beliz* at 1329; *Castillo* at 192; *Real* at 756. This determination is based upon an evaluation of all of the circumstances, including the following: