



2017

THE ALMOND CONFERENCE

CRACKING THE HUMAN RESOURCES NUT: TACKLING THE MOST PRESSING EMPLOYMENT LAW CHALLENGES

Room 306-307 | December 5 2017



CEUs – New Process

Certified Crop Advisor (CCA)

- Sign in and out of each session you attend.
- Pickup verification sheet at conclusion of each session.
- *Repeat this process for each session, and each day you wish to receive credits.*

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Sign in sheets and verification sheets are located at the back of each session room.

Cracking the Human Resources Nut: Tackling the Most Pressing Employment Law Challenges

Presented by:
Amy Wolfe, President and CEO



Topics to be discussed:

- Labor Contracting and Client Liability
- CA Minimum Wage Phase in Requirements
- Overtime Rules
- 7th Consecutive Day
- Temporary Agricultural Workers: H2A Program
- H2C - On Its Way?
- Legalization of Marijuana

Joint Employer Liability

The landscape has changed and firewalls between growers and FLCs no longer exists.

- Effective January 1, 2015, Labor Code § 2810.3 now holds the business responsible for wage, hour and workers' comp issues of the contracting company
- FLCs, construction, security, cleaning, gardeners, etc.
- 2 exemptions:
 - 5 or fewer workers from contractor
 - Total number of employees, between grower (company) and contractors' < 20

Joint Employer Liability

- Employers who are entering into contracts with subcontractors should analyze whether the contract for services allows the subcontractor to pay its employees at least minimum wages for the work anticipated to avoid a possible violation of section 2810.

Growers must know the requirements for FLCs – they are now the grower's requirement

Joint Employer Liability

Could your company be held liable?

- Wages, Overtime, etc.
- Cal-OSHA Violations
- Workers Compensation Premiums & Claims
- Sexual Harassment Claims
- Transportation/Housing Claims
- Liability and Damage Claims
- Product Liability / Contamination

Minimum Wage Increases

- Minimum wage will increase to \$11.00 per hour effective January 1, 2018 for all employers with 26 or more employees.
- Minimum wage will increase to \$10.50 per hour effective January 1, 2018 for all employers with 25 or fewer employees.

Minimum Wage Increases

- Salaried exempt employees such as Foremen, Field Supervisors, Departmental Managers, etc., has been increased to \$880 per week or \$45,760 per year.
- Unless salaried exempt employees are paid the foregoing salary, including meeting other requirements for salaried exempt employees, these employees will be subject to overtime compensation.

Minimum Wage Increases

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2017	\$10.00/hour	\$10.50/hour
January 1, 2018	\$10.50/hour	\$11.00/hour
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.00/hour	

Automatic Increases

- After 2023, California minimum wage increases automatically each January 1.
- The increases will be less of 3.5% or the rate of inflation.
- Minimum wage increases may be suspended twice by the Governor if economic and budget conditions do not support the increase.

Phase-In Overtime

Phase-In Overtime for Agricultural Worker Act of 2016

AB 1066 was enacted with the intent that agricultural employees of California have the same opportunity to earn overtime compensation under the same standards as other Californians.

Phase-In Overtime

Key Elements

- Reduces the agricultural work week from 60 to 40 hours
 - Four year phase in period – commencing July 2019
- Daily overtime reductions from 10 hours to 8 hours
 - Effective January 1, 2019
- Employers who have 25 or less employees
 - Regulations will take effect on January 1, 2022

Phase-In Overtime Breakdown

For employers with 26 or more employees:

AB 1066 – Overtime Laws for Agricultural Workers

	2019	2020	2021	2022
Daily Work	9.5 hrs.	9 hrs.	8.5 hrs.	8 hrs.
Work Week	55 hrs.	50 hrs.	45 hrs.	40 hrs.

Phase-In Overtime Breakdown

For employers with 25 or fewer employees:

AB 1066 – Overtime Laws for Agricultural Workers

	2022	2023	2024	2025
Daily Work	9.5 hrs.	9 hrs.	8.5 hrs.	8 hrs.
Work Week	55 hrs.	50 hrs.	45 hrs.	40 hrs.

7th Consecutive Work Day Issue

AB 1066 Repealed Exceptions in the Labor Code

- Agricultural employees may not be compelled to work on the 7th day in a work week.
- The Labor Code states that no employer “shall cause his employees to work more than six days in seven.” The question here relates to what the word “cause” means:
- “An employer causes its employee to go without a day of rest when it induces the employee to forgo rest to which he or she is entitled. An employer is not, however, forbidden from permitting or allowing an employee, fully apprised of the entitlement to rest, independently to choose not to take a day of rest.”
- According to the court, the employer can’t conceal the right to rest and can’t take any action to encourage employees to forego rest.

7th Consecutive Work Day Issue

Option: Volunteer-Work on the 7th Consecutive Day of Workweek

Volunteer-Work on the 7th Consecutive Day of Workweek

Crew: _____

Date of Work Day: _____

Crew Leader: _____

By signing this form, I acknowledge that I am volunteering to work on the seventh consecutive day of the work week. I understand that working on my scheduled day off is completely voluntary on my part and it is not a requirement of the company. I also understand that I will not face disciplinary action if I decide not to work on the day stated on this form. I do agree to contact my supervisor if I am unable to come to work as required by our attendance policy.

I am also aware that this workday will be compensated at 1 and 1/2 times my regular rate of pay for the first 8 hours of work and double time, if I work beyond eight hours on this workday.

#	Name	Employee #	Signature
1.			
2.			
3.			
4.			
5.			

Keep these records
filed with your
HR Department

May be audited by
DLSE

Temporary Agricultural Workers: H2A Program

The H2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs.



H2A Employer Requirements

- Offer a job that is temporary or seasonal in nature
- Demonstrate that there are not enough U.S. workers
- Show that employing H2A workers will not adversely affect the wages & working conditions of similarly employed U.S. worker

H2A Employer Requirements

Paperwork requirements:

- Employer must submit temporary labor certification application to the DOL
- Employer submits Form I-129 to USCIS

Grower and FLC Responsibilities

Rates of Pay

- Hourly (needs to be at least minimum or contracted rate)
- Piece Rate (which cannot be less than minimum or contracted rate)



Grower and FLC Responsibilities

A written disclosure must be provided with:

- Beginning and ending dates
- Conditions of employment
- Hours per day/days per week
- Crops and job(s) to be performed
- Tools required (no charge)
- Worker's Compensation
- Deductions

Grower and FLC Responsibilities

- ✓ H2A workers must be guaranteed an offer of employment for a total number of hours equal to at least 75% of the work period specified in the contract.

Grower and FLC Responsibilities

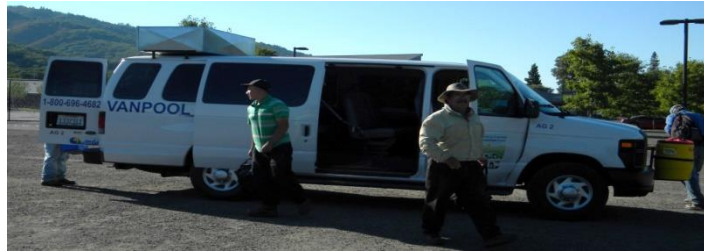
Inbound/outbound and other expenses:

- Employer must either pay in advance or reimburse a worker for the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer (provided that the worker completes 50 percent of the work contract period).
- When the worker completes the contract, the employer must pay for that workers' return costs.
- If the worker must travel to obtain a visa so that they may enter the U.S. , then the employer must pay for the transportation and daily subsistence costs of that part of the travel.

Grower and FLC Responsibilities

Transportation

- Must provide daily transportation to and from work
- Be insured and operated by licensed drivers



Grower and FLC Responsibilities

Housing

- Housing must be provided at no cost to H2A workers.
- If the employer elects to secure rental (public) accommodations for workers, the employer is required to pay all housing-related charges directly to the housing's management.
- Must pass both federal, state and local inspections.

Grower and FLC Responsibilities

Meals

- You may provide each covered worker with three meals per day, you can charge for those meals but you must state the charge in the job offer and it cannot be more than the DOL-specified cost (\$12.07 per day)

OR

- Furnish free and convenient cooking and kitchen facilities where workers can prepare their own meals

Grower and FLC Responsibilities

Records Required

- Hours of work offered
- Actual hours worked
- Wage Statement



Worker Responsibilities

- Prospective workers outside the United States apply for visa and/or admission.
- Once application for employer is approved, prospective H-2A workers who are outside the US must:
 - Apply for an H-2A visa with the U.S. Department of State (DOS) at a U.S. Embassy or Consulate abroad.
 - Seek admission to the US with U.S. Customs and Border Protection (CBP) at a U.S. port of entry.

OR

- Directly seek admission to the US in H2A classification with CBP at a U.S. port of entry, if a worker does not require a visa.

Association Responsibilities

- Jointly responsible for compliance along with grower
- Assistance provided?
 - Recordkeeping
 - Timekeeping templates?
 - Wage statement templates?
 - Payroll assistance?

Association Responsibilities

Do they provide any assistance with?

– Worker Injuries

- Assistance with investigations?
- Assistance with worker's compensation claims?

Things to Remember

- If hiring H2A workers ensure you have provided terms and conditions of employment beforehand.
- Ensure that H2A workers are receiving appropriate paperwork including terms and conditions, wage statements and pay.

H-2C

- Congressman Bob Goodlatte (R-Va.), Chairman of the House Judiciary Committee, has unveiled a bill to create a new agricultural guest worker program, dubbed H-2C.
- His goal - to provide America's farmers and ranchers with access to a legal, stable supply of workers.

H-2C

According to Goodlatte, the Agricultural Guestworker Act, or the Ag Act, replaces the current H- 2A program with a reliable, efficient, and fair program which was marked up by the House Judiciary Committee on October 4, 2017.

H-2C Highlights

- Would be administered by the U.S. Department of Agriculture.
- Provides more flexibility to American's farmers with respect to housing, transportation, and touchback periods.
- The author says it is more flexible than H-2A, meeting fluctuating labor needs.

How Legalized Marijuana Effects Employers

- California voted in favor of SB 94, the recreational marijuana initiative that allows adults 21 and over to possess up to an ounce of marijuana and cultivate up to six plants indoors.
- Employers may still enforce drug-free workplace rules for cannabis even with marijuana legalization in California. Companies can still drug test you for pot and fire you or refuse to offer you employment if you test positive.
- California's Supreme Court has held that an employer may refuse to hire an applicant who tests positive for marijuana, even if the drug is legally prescribed for a disability.

What does your policy say?

- Proposition 64 explicitly allows “public and private employers to enact and enforce workplace policies pertaining to marijuana.”
- Employees can be dismissed for consuming, even if it’s on your own time and away from work, if that’s the company’s policy.

What does your policy say?

- Does your policy address marijuana use?
- Consider types of work. For example, a no tolerance policy for those that operate equipment or drive vehicles for the company.
- However, employers who do not have a well-documented cannabis policy could expose themselves to allegations of discrimination.

Logical Questions

Q: But what about people with a doctor's recommendation to use marijuana for a medical condition? Employers can't prohibit them from taking their medicine, right? Or fire them?

A: In California, there are no workplace provisions protecting the rights of medical marijuana patients. There is no law requiring accommodation for medicating on the job or protection from termination.

Logical Questions

Q: What if there is an incident on my farm that involves an employee under the influence, can I drug test?

A: Yes, for now. The current administration has temporarily reversed a decision by the prior administration limiting post-accident testing.

On the Horizon

By January 1, 2021 a task force of law enforcement personnel is to report to the state legislature its policy recommendations and the steps that state agencies are taking regarding impairment, including driving and operating equipment.

- The recommendation will be similar to alcohol and the legal limit to operate a car or equipment.

Contact Information

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Thank you!



What's Next

Tuesday, December 5 at 12:00 p.m.

- Investing Across the Globe – Room 306-307
- What You Should Consider Before You Grow – Room 308-309
- The Update from Our Friends Down Under: What's Truly Applicable to California – Room 312-313
- The Almond Food Safety Plan: Teaching Example for FSMA Preventive Controls – Room 314

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State of the Industry

Tuesday at 4:30 p.m. in Hall C