



# COLORADO'S AGRICULTURAL WORKERS

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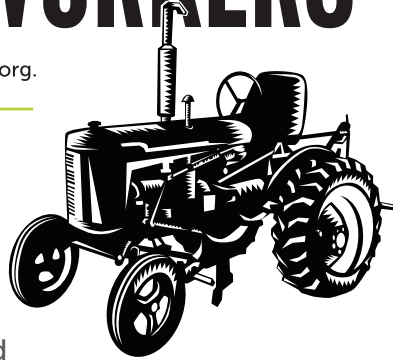
## PURPOSE

The purpose of this issue brief is to highlight where agricultural workers are exempted and/or excluded from Colorado state statutes and regulations. While some of these exemptions and exclusions may be necessary given the unique requirements of agricultural work and others may merit closer review to assess whether they are leading to undue harm to workers, the economy, and/or communities. This issue brief also summarizes data (and data gaps) on differential impacts on agricultural workers in Colorado. This issue brief is not about “good” and “bad” actors. Rather, it describes the legal structures that currently exist impacting agricultural workers.

## OPPORTUNITIES FOR FILLING DATA & KNOWLEDGE GAPS THROUGH ADDITIONAL RESEARCH

To remedy historical, structural injustices and create a more secure and Colorado food system, the state of Colorado must address the legal exclusions of agricultural workers from its labor and employment laws through legislation, increase enforcement of existing laws and regulations in the agricultural sector, and create structures that enhance agricultural workers’ participation and voice in public fora and policy advisory processes. That said, recommending specific policies to address the exclusions and negative outcomes detailed herein is beyond the scope of this particular brief.

The Colorado Food System Advisory Council (COFSAC) encourages Colorado’s elected officials and agency personnel to broaden and deepen solutions-oriented engagement with the wide range of groups that provide

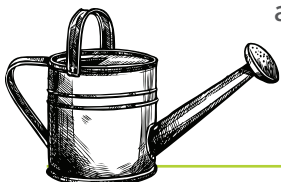


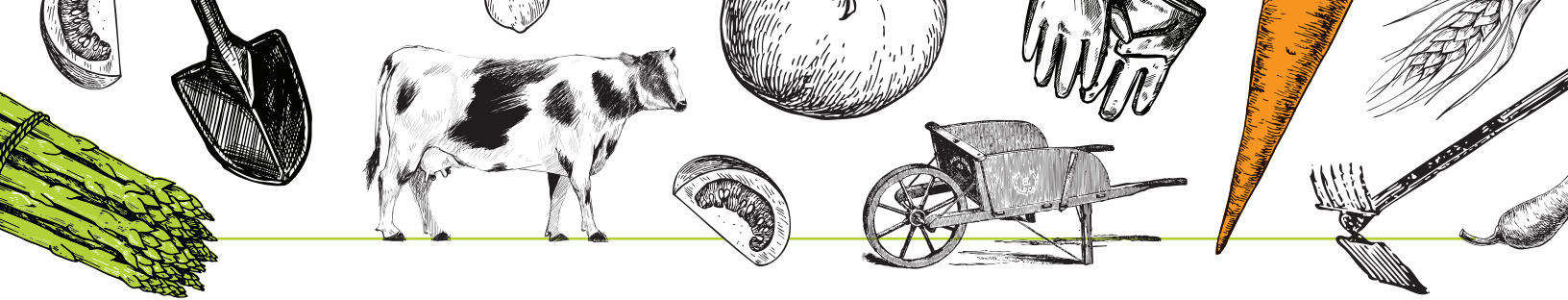
services to and advocate for agricultural workers in this state. Some of these groups have galvanized during the COVID-19 pandemic and have formed productive working relationships with the Colorado Department of Health and Human Services, Agriculture, Education, and county departments of health to deliver trustworthy information and much needed aid to essential workers, as well as to promote public health. To reduce the need for such interventions in the future and as part of our state’s collective reckoning with the legacy of racism embedded in some of our laws, policy change is warranted. As that work proceeds, COFSAC recommends:

### 1) IMPROVING COLORADO-SPECIFIC DATA COLLECTION

Colorado lacks detailed information on the direct health, economic, and social status of its agricultural workers – particularly the temporary, migrant and seasonal workers. Colorado is also lacking information about the extent of regulation-specific exemptions across different employer types and employment levels (e.g. hours worked) which may also be limiting flexible labor market responses between employers and workers and contributing to labor shortages. Correlations between the existing policy framework and purported outcomes therefore must be viewed skeptically. Additional culturally competent research and data must be conducted with representative samples of agricultural workers.

*Partners:* Colorado Department of Labor and Employment, Colorado School of Public Health, State University Extension





## 2) ENGAGING AGRICULTURAL WORKERS DIRECTLY IN POLICY DEVELOPMENT AND EVALUATION

Agricultural workers should be directly engaged in both policy development and policy evaluation efforts. Without question, it is difficult to provide genuine opportunities that elevate worker voices, but in-person engagement with agricultural workers, in the places they work, with adequate support like interpretation and compensation, can yield invaluable evidence to improve the positive impacts of public policy. Employers also need to be engaged in collaborative problem solving to ensure workable solutions that help address the needs of all stakeholders.

**Partners:** Colorado Department of Labor and Employment, Colorado Department of Agriculture

The crises of 2020 have brightly illuminated the contributions of the essential workers -- particularly in its agricultural and food sectors -- upon which the vitality of our state's economy and the viability of its food system rests. Better understanding the needs of Colorado's agricultural workers, elevating their voices in public discourse, and supporting their collective visibility and participation will strengthen the resilience of Colorado's agricultural industry and its food systems.

### I. IMPETUS

One of the many truths revealed by the COVID pandemic was that agricultural workers are often publicly overlooked when it comes to their role as truly "essential workers" in the state of Colorado and beyond<sup>1</sup>. Yet between March 31, 2020, and December 2, 2020, the Colorado Department of Public Health and Environment (CDPHE) reported at least 29 outbreaks impacting 245 agricultural workers who tested positive, had suspected cases, or had died from COVID-19<sup>2</sup>. Due to barriers accessing tests in the early months of the pandemic, which contributed to under-reporting<sup>3</sup>, these numbers are assumed to be significant underestimates of both the prevalence and impacts of COVID-19<sup>4</sup> (other

previous outbreaks among agricultural workers have similarly gone under-reported<sup>5</sup>).

Agricultural workers across the US tend to experience multiple health disparities due to a wide range of social determinants including their race and ethnicity. Nationally, 69% of hired agricultural workers were born in Mexico, 83% identify as Hispanic, and less than a quarter self-identify as White (24%).<sup>6</sup> A recent CDC report highlights the starkly disproportionate incidence of COVID-19 infection, hospitalizations, and deaths among persons identifying as Hispanic or Latino. In Denver alone, the majority of adult COVID-19 cases (55%), hospitalizations (62%), and deaths (51%) were among Hispanic adults, double the proportion of Hispanic adults in Denver (24.9%). The CDC also found that, among adults with COVID-19, Hispanic persons reported larger household sizes, more known COVID-19 household exposures, more work in essential industries, more work while ill, and more delayed testing after symptom onset.<sup>7</sup> Colorado Department of Public Health and Environment's (CDPHE) statewide data also indicate Hispanic community infection rates that far exceed the Hispanic population of Colorado: 28.4% of cases in Colorado, 30.8% of the hospitalizations, and 26% of deaths, as compared to 21.7% of Colorado's population.<sup>8</sup>

### II. AGRICULTURAL WORKERS

For the purpose of this brief, agricultural workers are defined by the US Bureau of Labor Statistics and include many types of agricultural workers commonly referred to as field and farm laborers, ranch hands, crop workers, hand harvesters, or hand laborers.<sup>9</sup> In Colorado, agricultural workers make up over 23,598 jobs across several primary occupation types summarized in Table 1 below.<sup>10, 11</sup> While this brief focuses on agricultural workers, it is worth noting that the experiences of other food system workers including workers in food processing, restaurants, food retail, etc. is worthy of deeper exploration in future briefs.<sup>12</sup>



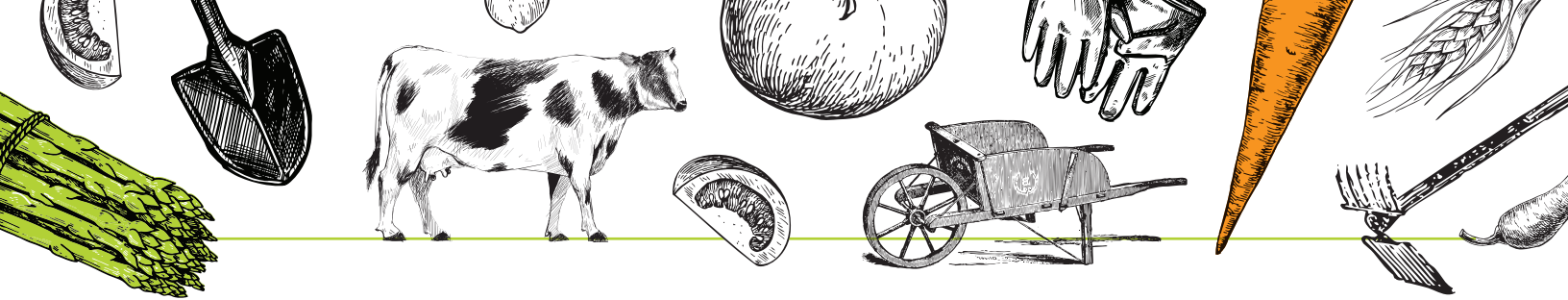


Table 1. Agricultural Workers

Agricultural Workers Include:	
Farmworkers and Laborers, Crop, Nursery, and Greenhouse (SOC: 45-2092)	Agricultural Equipment Operators (SOC: 45-2091)
Farmworkers, Farm, Ranch, and Aquacultural Animals (SOC: 45-2093)	First-Line Supervisors of Farming, Fishing, and Forestry Workers (SOC: 45-1011)
Agricultural Workers, All Other (SOC: 45-2099)	Graders and Sorters, Agricultural Products (SOC: 45-2041)

Agricultural workers are currently, and historically have been, low wage workers in the US. According to recent data, Colorado’s agricultural workers’ median wage was \$14.41/hr in 2019.

To note, Colorado’s wages are higher than the national agricultural worker median wage of \$12.59/hr (about 14% higher), but the cost of living in Colorado is also about 12% above the national average, which may help explain the wage difference.<sup>13</sup>

Demographic data from state and federal records<sup>14</sup> (excluding programs like H2A<sup>15</sup>) summarized in Tables 2-4 below show that agricultural workers are more often male (68.4%), younger (55.4% are aged 19-44), and White or Hispanic/Latino (54.2% and 39.1% respectively)<sup>16</sup>.

Table 2.

Gender	Agricultural Workers
Male	68.4%
Female	31.6%

Table 3.

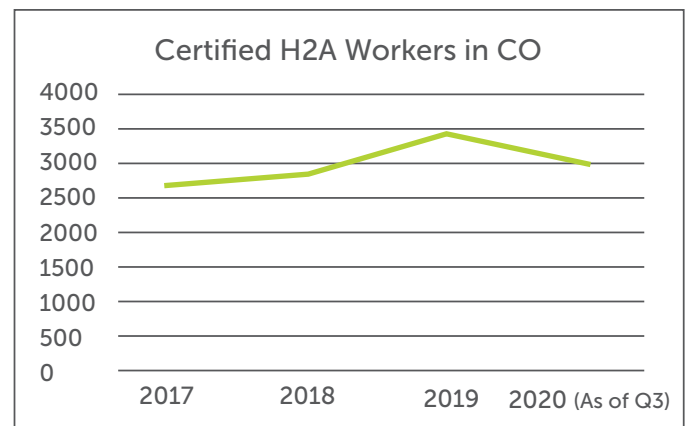
Age	Agricultural Workers
14-18	7.1%
19-24	13.6%
25-34	23.1%
35-44	18.7%
45-54	15.9%
55-64	13.4%
65+	8.2%

Table 4.

Race/Ethnicity	Agricultural Workers
White <sup>17</sup>	54.2%
Hispanic or Latino <sup>18</sup>	39.1%
Black or African American	3.0%
Asian	1.7%
Two or More Races	1.1%
American Indian or Alaska Native	0.7%
Native Hawaiian or Other Pacific Islander	0.1%

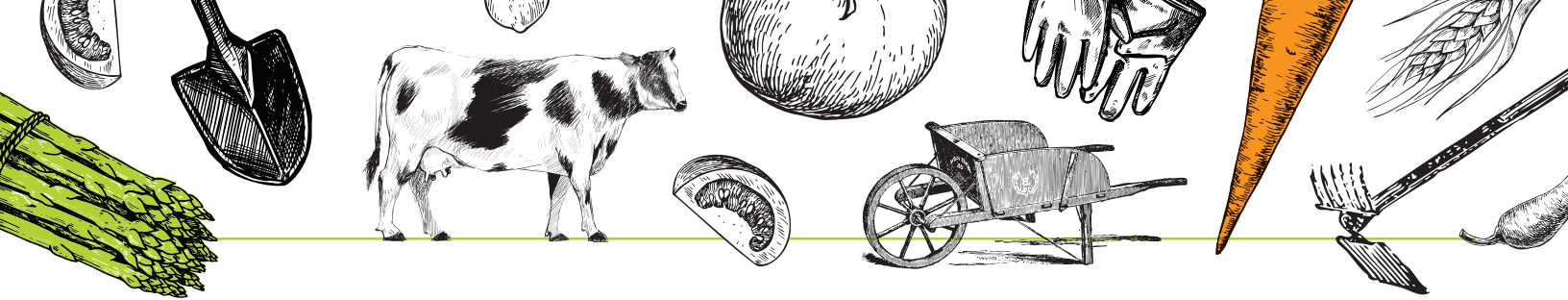
In addition to the workers included in the data above, Colorado has also benefited from an average of 3,000 temporary agricultural workers from foreign countries, most commonly Mexico, on certified H2A Visas per year over the last four years.<sup>19</sup> Employers of H2A workers must pay the higher of the prevailing wage/piece rate or the Adverse Effect Wage Rate (which increased to \$14.26/hour in 2020<sup>20</sup> and exceeds the state’s current minimum wage of \$12/hr in 2020<sup>21</sup>). H2A employers must also provide housing that meets applicable safety standards at no cost to the workers and must pay for both the inbound and outbound transportation, from their home country to the place of employment and back, as well as provide daily transportation to and from the worksite.<sup>22</sup>

Table 5.



There are some important limitations to the aggregate estimates of agricultural workers in Colorado. For example, these numbers do not





include the owner/operators of Colorado farms and ranches, nor their unpaid family members (including children & spouses). In Colorado, only 23% of the 38,893 farms and ranch operations hire outside labor. Additionally, these data also do not likely fully capture temporary, seasonal, and contract labor brought into Colorado by farm labor contractors<sup>23</sup> nor do they reflect accurate numbers of undocumented workers, nor prisoners who work in agriculture during their incarceration. In summary, when these other groups of workers are included, it is likely that there are over 100,000 individuals directly involved in farm, ranch, and food processing labor each year in Colorado.

### III. CONTRIBUTIONS TO THE STATE'S ECONOMY

Estimates of the overall impact of Colorado's food and agricultural industries on state employment, wages and revenue vary as calculations of the economic impact of the suppliers that support the food and agriculture industries, as well as those industries supported by the induced spending of direct and supplier industries, vary by economist. Estimates that only include the direct impacts of Colorado farms and ranches likely fall short when reporting that farms and ranches in the state paid \$542 million in salaries, wages, and benefits to full and part time on-farm employees.<sup>24</sup> When including the economic impact of suppliers that support the food and agriculture industries, as well as those industries supported by the induced spending of direct and supplier industries (considering jobs created in transportation, retail sales, food sales and restaurants, and tourism, for instance), the estimates are much greater. Studies that include these multiplier effects show that Colorado agricultural and related industries support a total \$43.42 billion in wages, 898,689 jobs, and \$141.75 billion in economic output.<sup>25</sup> See Table 5 below for more information on the total direct, indirect, and induced economic impacts. It should be understood that agriculture and related industries would not be able to make the full range and scope of contributions

to the Colorado economy without the labor of farm and food processing workers.

Table 6. Food and Ag Industries Total Economic Impact in Colorado, 2020

	Jobs	Wages	Output
<b>Total Economic Output</b>	<b>898,689</b>	<b>\$43,424,553,600</b>	<b>\$141,748,236,700</b>
<b>Tax Impact</b>		<b>Business Taxes</b>	
Federal Taxes		\$10,564,793,400	
State Taxes		\$7,336,252,700	
<b>Total Taxes</b>		<b>\$17,901,046,100</b>	
<b>Exports</b>		<b>Export Value</b>	
Customs Value at Point of Shipment		\$1,725,940,300	
<b>Total Exports</b>		<b>\$1,725,940,300</b>	

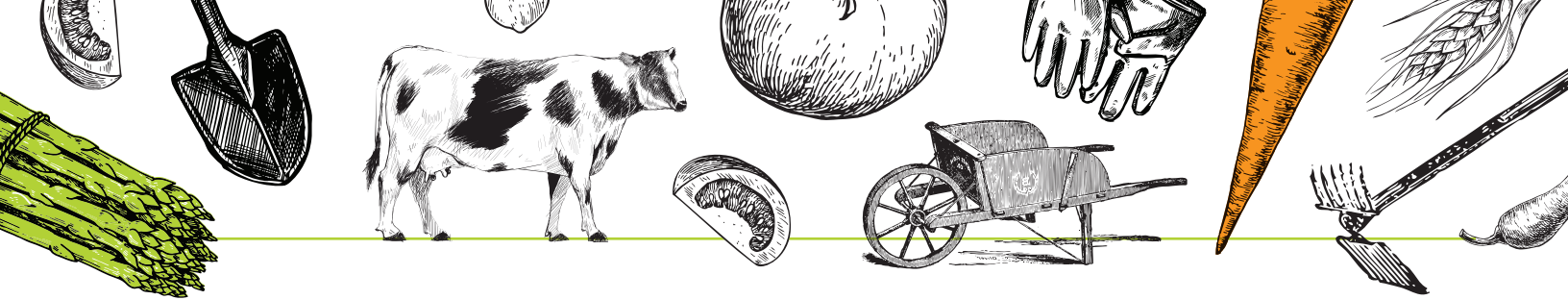
### IV. AGRICULTURAL WORKER EXEMPTIONS/ EXCLUSIONS

#### A. A BRIEF LEGISLATIVE HISTORY

Two pieces of Federal Legislation enacted in the mid-1930s, the National Labor Relations Act ("NLRA") and the Fair Labor Standards Act ("FLSA"), are the foundation for many worker and workplace regulations today and, in many ways, are responsible for the exemptions and exclusions that persist for agricultural workers today.

Exemptions/exclusions for agricultural workers began with the National Labor Relations Act ("NLRA") in the mid-1930s, where the definition of "employee" explicitly excluded agricultural laborers.<sup>26</sup> The NLRA protects most workers' rights to organize into unions and take other collective actions, but due to these exclusions, organizing an agricultural workers' labor union is difficult and mostly ineffective. To put a finer point on this, agricultural workers can actually be fired for joining a union or engaging in organizing activities and have no protected powers to compel a company to bargain with them even as a group. Importantly, scholarship on the history of this legislative definition reveals that the exclusion of agricultural workers was a remnant of Southern Democrats' compromises during the New Deal Congress considered necessary





to preserve Jim Crow in the South.<sup>27, 28</sup> Even if the NLRA had not exempted employers of agricultural laborers, jurisdictional standards affecting retail businesses with a gross annual volume of business of less than \$500,000 and non-retailers with indirect annual interstate commerce under \$50,000 would have exempted most small farms.<sup>29</sup>

This early history of exempting/excluding agricultural workers was carried from the NLRA into the Fair Labor Standards Act ("FLSA") in the late 1930s. "By the time the FLSA was drafted, the exclusion of agricultural workers from New Deal economic legislation had become such a fixed component of New Deal politics that the drafters no longer considered the issue."<sup>30</sup> The FLSA also exempts agricultural workers from overtime coverage, limits some child labor protections, and does not guarantee the federal minimum wage for various categories of agricultural employees including those who work for smaller farms or ranches that do not utilize more than 500 'man days' in any calendar quarter of the preceding year, which is the equivalent to employing seven full-time employees throughout a calendar quarter.<sup>31</sup>

*NLRA: According to the National Labor Relations Board, "Congress enacted the National Labor Relations Act ("NLRA") in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy."*

From its inception, family operated farms that did not hire additional labor would have been exempt from FLSA coverage - even without the agricultural exception. Consequently, only the larger farms stood to benefit from the express exclusion of

*FLSA: The Fair Labor Standards Act (FLSA) was enacted in 1938, which according to the US Department of Labor, "establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments"*

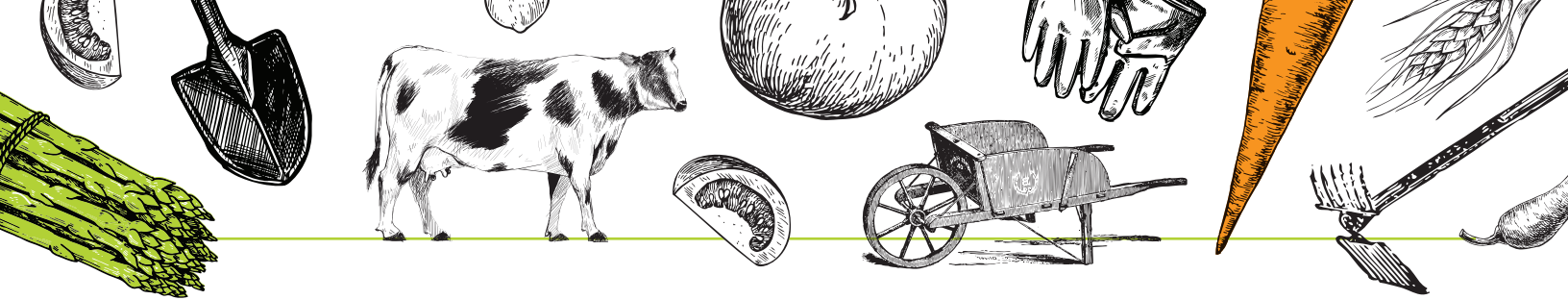
agricultural labor.<sup>32</sup> This disparity in protection -- paired with a Congressional record that lays bare the discriminatory intent of then-prominent Southern lawmakers<sup>33</sup> -- lends credence to the argument that the exclusion of the agricultural workers from the FLSA was racially motivated. This argument, often advanced by labor, civil rights and racial justice advocates, finds strong support among historians who agree that the exclusion of agricultural (and domestic) employees from the protections of major New Deal Era statutes should be understood as part of a pattern of racist exclusions.<sup>34</sup>

Due in part to this fraught history, there have been multiple pushes to reform the NLRA and FLSA. In 1966, Congress enacted amendments to the FLSA which partially incorporated agricultural workers into the minimum wage provision of the Act,<sup>35</sup> however, agricultural workers remained excluded from the maximum hours and overtime provision of the FLSA.<sup>36</sup>

In the 1970s, a court challenge in *Doe v. Hodgson*<sup>37</sup> framed the exclusion of agricultural workers from maximum hours and overtime legislation as a form of racial discrimination based on "disproportionate impact." The United States District Court did not, however, find a basis for this claim using a rational basis standard<sup>38</sup>. Subsequent Supreme Court decisions reiterated the need to meet this stricter standard when racial discrimination is alleged.<sup>39</sup>

In the early 1980s, Congress passed a wider set of farmworker reforms in the "Migrant





and Seasonal Agricultural Worker Protection Act” – commonly called MSPA or AWP. At the time of enactment in 1983, AWP created new protections for migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping. The AWP also required farm labor contractors to register with the U.S. Department of Labor (DOL). Importantly, however, like the FLSA, AWP does not apply to “small” agricultural employers. While AWP created some important improved protections for migrant and seasonal agricultural workers, it did not expressly require that legal and human service workers be able to access temporary labor camps<sup>40</sup> where migrant agricultural workers live. This exception raises concerns that agricultural workers may not be adequately aware of and able to exercise the protections to which they are actually entitled under the law.

During the latter part of the 20th century, agricultural exceptionalism cropped up once again, with agricultural workers being exempted from certain occupational health and safety standards that apply to the general workforce.<sup>41</sup> For example, the Occupational Health and Safety Act (OSHA) excludes agricultural employers and their workers from protections provided under most of the general industry standards including fall protections<sup>42</sup>, ladder safety<sup>43</sup>, and machine guarding.<sup>44</sup> Moreover, the OSHA standards that do apply to agricultural operations such as the field sanitation standards<sup>45</sup>, farm equipment safety<sup>46</sup>, and safety standards for temporary labor camps<sup>47</sup>, have limited effectiveness due to enforcement restrictions imposed by Congress which prevent inspections or documentation of reports of noncompliance at farms with 10 or less workers.<sup>48</sup>

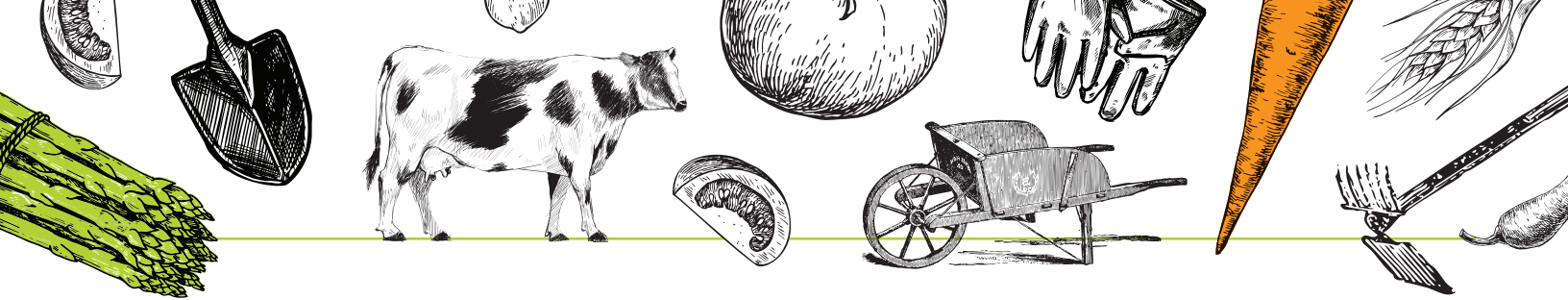
*Specifically, “agricultural laborer” defined in section 3(f) of the FLSA “includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) 2 of title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.” To note, although expansive, this definition does not include truck drivers employed to deliver farm products within the food system.*

In sum, the early definitions of agricultural workers and their exclusions under the NLRA and FLSA have persisted and been propagated through subsequent federal and state legislation (e.g. AWP, OSHA).<sup>49</sup> As a result, agricultural workers do not enjoy many of the protections that have long enabled employees in other sectors to exercise worker voice, earn fair wages, access critical services, and stay safe.

## B. STATE STATUES & REGULATIONS

The exclusion of agricultural laborers under the NLRA and FLSA forms a gap that could be bridged through state regulation -- and has been addressed in several other states.<sup>50,51</sup> In general, Colorado law mirrors federal regulations--maintaining the exclusions of agricultural workers -- on minimum wage, overtime, piece rate compensation, and labor union organizing. Federal statutes are mostly silent on meal and rest breaks, so states adopt their own. Some states, including Colorado, have created regulations guaranteeing meal & rest breaks for workers. However, many states, including Colorado, have also carried forward the practice of excluding agricultural workers (even though the nature of some agricultural work





necessitates accommodations to prevent ergonomic and environmental-related illness and injury).<sup>52</sup>

In recent years, Colorado has also enacted multiple laws to fill gaps in the federal regulations and create an employee-protective system of labor and employment laws. Unfortunately, agricultural workers have still been regularly excluded from coverage under both regulatory language and agency interpretations.<sup>53</sup> As a result, the people who work on farms and ranches throughout Colorado have not benefited from the steps that the state has taken toward promoting fairness for and the welfare of workers, further widening the gap between agricultural workers and the rest of the workforce.

In Colorado, the primary laws guiding labor practices can be found in Title 8: Labor & Industry of Colorado Revised Statutes.<sup>54</sup> In these statutes, for example in the Labor and Peace Act, Colorado explicitly excludes “farm and ranch labor” from its definition of an employee:

- “ ‘Employee’ includes any person, other than an independent contractor, domestic servants employed in and about private homes, and farm<sup>55</sup> and ranch labor, working for another for hire in the state of Colorado in a non-executive or non-supervisory capacity”<sup>56</sup>

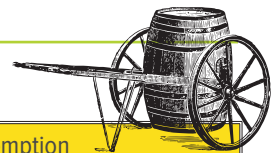
The exclusion of agricultural workers employees from protections is extended through Colorado’s Department of Labor and Employment rule

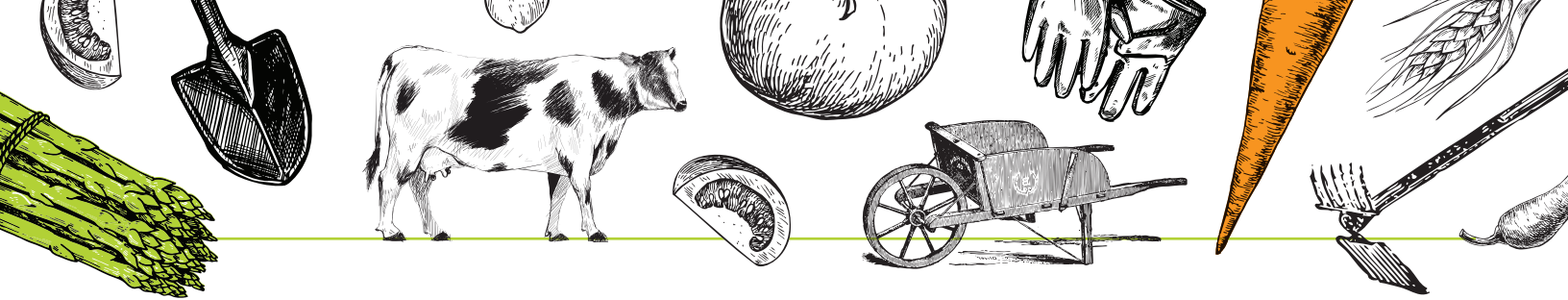
definitions, namely:

- “2.3.1: Workers in jobs in agriculture are exempt from Rule 3 (Minimum Wage), Rule 4 (Overtime), and Rule 5.1 (Meal Periods) if they are not covered by, or are exempt from, the minimum wage provisions of the federal Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.). Other jobs in agriculture are exempt from Rule 4 (Overtime) and Rule 5.1 (Meal Periods). In workdays requiring multiple rest periods under Rule 5.2, rest periods need not total exactly 10 minutes in each 4-hour period, as long as an employee: (A) receives rest periods that average, over the workday, at least 10 minutes per 4 hours worked; and (B) receives at least 5 minutes of rest in every 4 hours worked. 2.3.2
- 2.3.2: The Rule 2.3.1 exemption does not apply if an employer draws at least 50% of its annual dollar volume of business from sales to the consuming public (rather than for resale) of any services, commodities, articles, goods, wares, or merchandise.
- 2.3.3 “Jobs in agriculture” means jobs with work primarily within the same definition of “agriculture” as under 29 U.S.C. § 203(f) of the federal Fair Labor Standards Act. Jobs in agriculture also includes temporary employees employed directly by the Western Stock Show Association for the annual National Western Stock Show, who are exempt from all provisions of the COMPS Order.<sup>57</sup>

Table 7. Agricultural Workers Exemptions in Key Colorado Labor Protection Laws and Regulations

Statute/Regulation	Protections Included	Agricultural Worker Exemption
CDLE, Colorado Overtime and Minimum Pay Standards Order (COMPS Order) # 36, 7 CCR 1103-1	Overtime	Yes
Colorado Minimum Wage Order Regulation, 7 CCR 1103-1	Minimum Wage	Yes
CDLE, Colorado Overtime and Minimum Pay Standards Order (COMPS Order) # 36, 7 CCR 1103-1	Meal Periods and Rest Breaks	Yes
Colorado Revised Statutes, Title 8, Labor & Industry	Ability to Unionize and Strike/Boycott	Yes
Workers Compensation Requirements	Workers Compensation	No





Colorado does have stronger protections compared to other states for human trafficking and involuntary servitude<sup>58</sup> and some protections for children and minors working in the agricultural industry<sup>59</sup>. According to Colorado state law<sup>60</sup>, the minimum age at which a minor may work in agriculture during school hours is 16. The minimum age at which a minor may work in agriculture outside of school hours is 12.<sup>61</sup> For minors under 18, a maximum of 8 hours can be worked a day and 40 hours per week.<sup>62</sup> Up to 6 hours can be worked on a school day if under 16.<sup>63</sup> In seasonal employment involving perishable products paid by piece, minors age 14 or older may work up to 12 hours in a 24-hour period and up to 30 hours in a 72-hour period (but not more than 8 hours a day for more than 10 days in any 30-day period).<sup>64</sup> Nightwork is prohibited for minors under age 16 from 9:30 p.m. to 5 a.m. before a school day.<sup>65</sup> Colorado does not specify any limitations on the number of days per week that can be worked by minors under 16 who are engaged in agricultural work.

As a result of Colorado's labor protection laws and regulations, many<sup>66</sup> agricultural workers in Colorado are not covered to the same extent as other workers in Colorado in regard to minimum wages; overtime compensation; rest and meal periods; ability to strike; sanitation and workplace safety protections; workforce housing habitability and due process guarantees; and other worker protections. As discussed below, those who live in employer-provided housing also face additional challenges in accessing health, legal, and other services. By contrast, other states have expanded workplace rights and protections for agricultural workers in ways that supersede federal limitations (more detail below).

### 1) Exemptions from Colorado Minimum Wage for Agricultural Workers

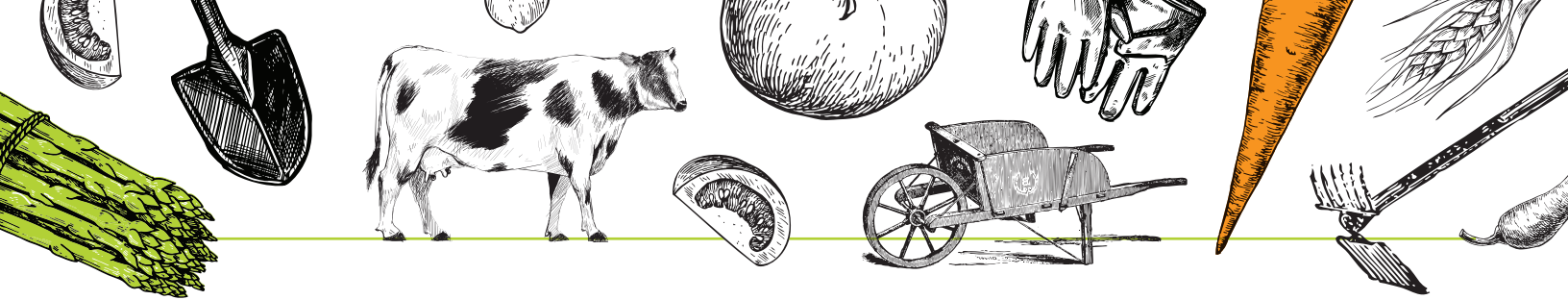
- **Non-Ag Workers in CO:** Most non-exempt, non-agricultural employees receive a minimum hourly wage for their work. Some employers may

choose to use a piece-rate compensation system to incentivize productive labor, but in those cases a minimum hourly wage must still be met.<sup>67</sup>

- **Ag Workers in CO:** Because the Colorado wage order includes the same exemptions as FLSA,<sup>68</sup> many Colorado agricultural workers are exempt from receiving the Colorado minimum wage. These exemptions include the following: i) the 500 'man day' exemption is one of the most significant exemptions from the FLSA minimum wage coverage for Colorado agricultural workers. This exemption applies to those employed by smaller ranches and farms that do not utilize more than 500 'man days' in a calendar quarter of the preceding year (approximately equivalent to 8 full time employees). Based on the data reported in the 2017 Census of Agriculture, approximately half of Colorado agricultural workers are likely to fall under this exemption.<sup>69</sup> ii) Local hand harvesters who are paid on a piece rate basis and worked less than 13 weeks during the preceding calendar year are exempt from the FLSA minimum wage coverage -- this means that they are not entitled to the equivalent of the federal minimum wage of \$7.25 per hour. However, if that local hand harvester in the same position had worked 14 weeks the preceding year, they would qualify for the Colorado minimum wage, which was \$12.00 per hour in 2020.<sup>70</sup> iii) There is an additional exemption for non-local minors age sixteen (16) or under who are employed as hand harvest laborers on the same farm as their parents and are paid at the same piece rate basis as their parents.<sup>71</sup> iv) Colorado's range worker exemption dates back to the 1960s and is based on the premise that range workers (typically shepherders, goat herders and range livestock workers) are in "constant surveillance of livestock that graze and reproduce on rangelands" and too work far away from their employer or supervisor to compute work hours.<sup>72</sup> Many range workers report that it takes close to 80 hours each week to complete all







of the work their bosses demand of them<sup>73</sup> but they are paid a flat rate. For example, H2A range workers are paid a flat monthly wage rate of \$1,633.33 in 2020 based on a 48-hour workweek at \$7.25 per hour. Range workers are also sharply limited in their ability to leave their place of work and the effective hourly rate for these workers has been estimated as approximately \$2 per hour.<sup>74</sup> Employers have sought to optimize this exemption to the extent that courts were required to step in and enforce limitations of the inappropriate application of the range worker designation to workers who should have been classified as ranch hands.<sup>75</sup>

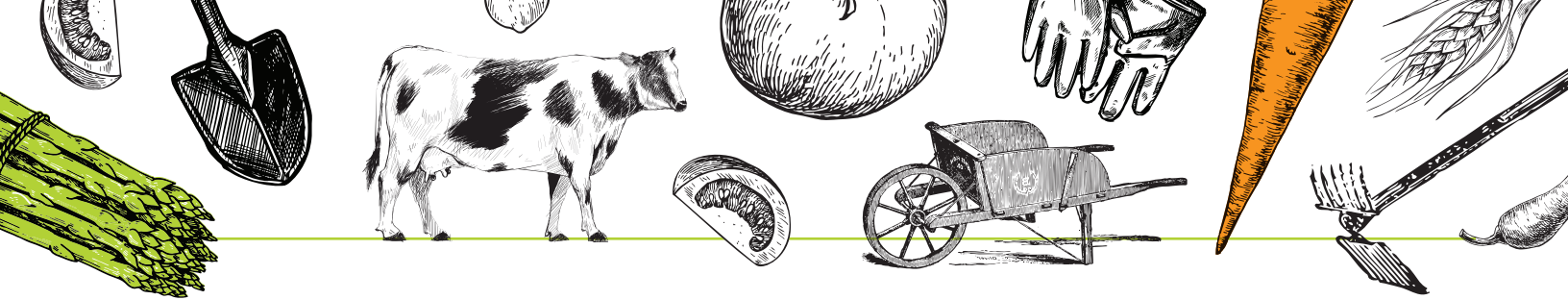
- **Alternatives:** States are not preempted from expanding the minimum wage beyond what the FLSA provides. For example, the minimum wage laws in California<sup>76</sup>, South Dakota, Wisconsin<sup>77</sup>, and New York<sup>78</sup> cover agricultural workers on the same terms as other workers. Several other states have also extended some minimum wage protections to agricultural workers, including: 1) Minnesota where the definition of “employee” contained in the Minnesota Fair Labor Standards Act excludes “any individual employed in agriculture on a farming unit or operation who is paid a salary greater than the individual would be paid if the individual worked 48 hours at the state minimum wage plus 17 hours at 1- 1/2 times the state minimum wage per week.” Although framed in exclusionary terms, this provision functionally includes agricultural workers in Minnesota’s minimum wage protections, while capping the amount of overtime pay an agricultural worker is entitled to receive.<sup>79</sup> ii) Hawaii also provides some minimum wage protections to agricultural workers. Under Hawaii state law the definition of employee does not include individuals engaged in coffee harvesting or anyone employed by employers of less than 20 people for any workweek. Despite this limited exception, Hawaii provides minimum wage protections for agricultural workers.<sup>80</sup>

## 2) Limitations on Overtime Compensation for Agricultural Workers

- **Non-Ag Workers in CO:** Most non-exempt, non-agricultural employees receive overtime pay for hours worked beyond 40 hours per week and also beyond 12 hours per day.<sup>81</sup>
- **Ag Workers in CO:** Colorado has adopted broad exemptions for agricultural workers by using the same definitions from the FLSA, including subsequent amendments that expand exemptions to a wider range of agricultural processing professions.<sup>82</sup>
- **Alternatives:** Five other states have adopted overtime compensation requirements for agricultural workers by statute. For example: i) California is phasing in required overtime compensation to agricultural workers after 10 hours a day of work or sixty hours a week<sup>83</sup>. ii) In Minnesota, agricultural workers are entitled to overtime compensation after working 48 hours in a week (unless they are paid on a salary basis) though the total amount of overtime pay is capped<sup>84</sup>. iii) Hawaii requires overtime pay for any agricultural worker who works over forty hours a week, but allows farm owners to select up to 20 weeks each year for which they would not be required to pay overtime until the employee reaches 48 hours in a week<sup>85</sup>. iv) In Maryland, agricultural workers receive overtime for all hours worked over 60 hours in one week<sup>86</sup>. v) A 2019 New York law established a farm laborers wage board to contribute to the establishment of an overtime pay system for farm workers.<sup>87</sup> Based on the recommendations of the board, overtime rates could be established that do not begin until 60 hours per week but the board is specifically instructed to consider gradually lowering the threshold. The outcome of this act remains to be seen as it only became effective on January 1, 2020.<sup>88</sup> vi) Finally, most recently, Washington became the first state to guarantee farmworker’s right to premium overtime pay through judicial







activity including the right to join a union and engage in collective bargaining. Concerted activity, however, is simply the right to act with or on behalf of co-workers to address work-related issues without retaliation. Examples of concerted activity include: talking with one or more co-workers about wages and benefits or other working conditions, circulating a petition asking for better hours, participating in a concerted refusal to work in unsafe conditions, openly talking about pay and benefits, and joining with co-workers to talk directly to an employer, a government agency, or to the media about problems in your workplace.<sup>102</sup> When a protected worker engages in concerted action, the employer cannot discharge, discipline, or threaten the worker for, or coercively question the worker about, the “protected concerted” activity.<sup>103</sup>

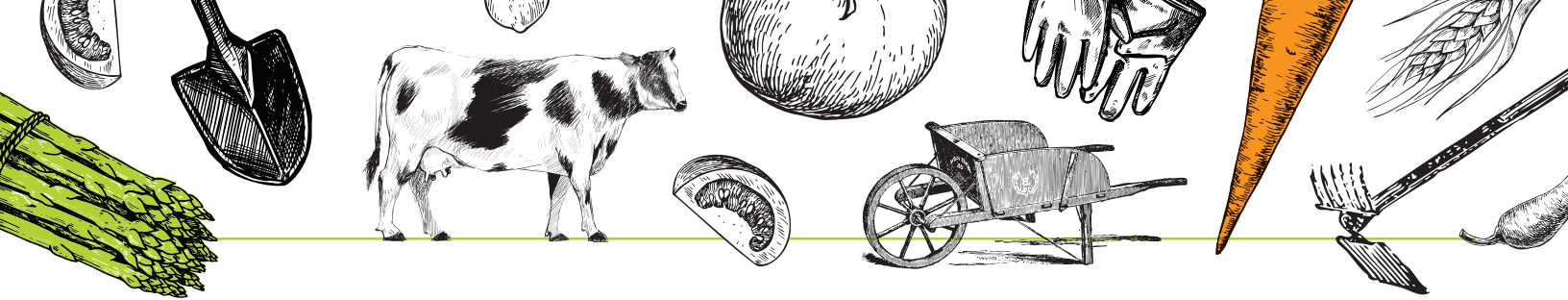
- **Ag Workers in CO:** Agricultural workers in Colorado do not enjoy a protected right to concerted activity for two primary reasons. First, agricultural workers’ ability to collectively bargain is significantly restricted by the federal NLRA as non-protected organizing. There is currently no law in Colorado that grants agricultural workers the right to join and organize labor unions, engage in concerted activity free from retaliation or to engage in collective bargaining with their employers. Secondly, agricultural workers’ have an extended timeline for such actions like boycotts or strikes and must provide at least a 30-day notice of their intention to strike.<sup>104</sup> Yet, the Colorado Labor Peace Act, which provides most employees the right to engage in collective bargaining and the right to join and organize labor unions, specifically excludes employees who work on farms and ranches from those covered by the act.<sup>105</sup> In effect, the intersection of these exemptions and requirements make collective action on behalf of agricultural workers impossible.
- **Alternatives:** Several states have adapted their laws to provide more opportunities for

agricultural workers to organize. For example: i) California passed its own Agricultural Labor Relations Act in 1975 to guarantee their farm and food workers the right to organize and collectively bargain just like employees in other industries. ii) In Washington, the state statute that establishes the right for individuals to organize unions and engage in concerted activity applies to agricultural workers - even nonunionized agricultural workers acting collectively to improve their working conditions.<sup>106</sup> iii) In Arizona, agricultural workers can engage in collective bargaining and there are protections from retaliation for labor activity including testifying before the labor board or court. However there are restrictions on strikes, picketing and boycotting.<sup>107</sup> iv) Most recently, in 2019 New York passed the Farm Laborers Fair Labor Practices Act granting agricultural workers the right to join and organize labor unions and engage in collective bargaining with agricultural employers.<sup>108</sup>

### 5) Limitations on Agricultural Workers’ Access to Health, Legal, and Other Social Services

- **Non-Ag Workers in CO:** While substantial barriers to access exist for many people, most non-agricultural employees are not prohibited or impaired by their employers from accessing health, legal, and other social services.
- **Ag Workers in CO:** In Colorado, agricultural workers living in employer-provided temporary labor camps may be, in effect, prevented from receiving health, legal, and other social services. In part some employers presume that the employer, rather than the worker, gets to decide whether or not the worker can have visitors outside of working hours.<sup>109</sup>
- **Alternatives:** The United States Congress has recognized the special barriers agricultural workers face in accessing medical, legal and social service assistance, especially for agricultural workers living in employer-provided housing, and has recommended





“outreach” as the “principal activity” to break down these barriers.<sup>110</sup> However, there is not a comprehensive or uniform federal and state legal framework concerning the right of legal and health outreach workers to access agricultural workers who may live in employer-provided housing. A consistent legal framework could ensure reasonable access for outreach workers to agricultural workers and their families, during the course of their employment. Such protections are justified given the fact that legal services and other outreach workers in Colorado continue to encounter some employers refusing to allow social services, medical providers and lawyers access their workers. In some states, the courts have ensured that lawyers and medical providers are not unreasonably denied access to agricultural workers living in employer-provided housing.<sup>111</sup> Other states like Wisconsin, Maryland, Florida and Oregon have enacted statutes that guarantee reasonable access for outreach workers.<sup>112</sup> For example, in Oregon, employers are prohibited from restricting access to employee housing by invited persons and “authorized” persons.<sup>113</sup> Multiple state’s Attorney Generals have issued Official Opinions that declare that agricultural workers in temporary labor camps have the right to receive visitors and that outreach workers have a right to access workers. For example, in 1998 the Attorney General of North Carolina issued an Opinion Letter making it clear that an attorney whom migrant agricultural workers invited into their housing on an employer’s farm was not trespassing<sup>114</sup> and in 2020 the Attorney General of North Carolina issued a new letter to address employers prohibiting migrant health workers from visiting employee housing, which has become even more common and dangerous during the COVID-19 pandemic.<sup>115</sup>

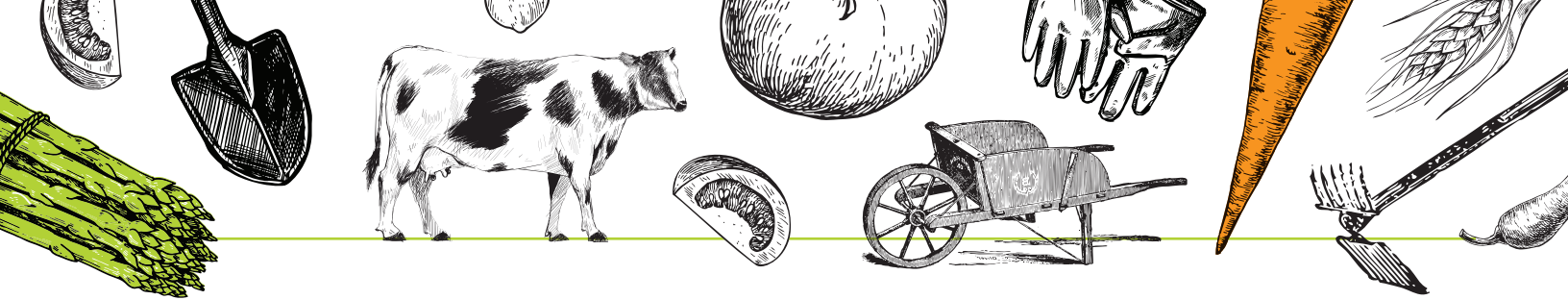
#### 6) Limitations on Sanitation and Workplace Safety Protections for Agricultural Workers

- **Non-Ag Workers in CO:** Most non-exempt, non-agricultural workplaces have easy access to

drinking water and toilets, as well as limited exposure to potentially harmful chemicals, odors, vibrations, etc.

- **Ag Workers in CO:** In Colorado, regulation and enforcement of workplace safety standards is split between the federal Occupational Health and Safety Administration, The Environmental Protection Agency, and the Colorado Department of Agriculture. i) Federal OSHA regulations require agricultural worker employers to meet field sanitation standards (e.g., access to drinking water, toilets, hand-washing facilities) and to provide safety equipment to protect workers from pesticides and other potentially harmful chemical and biological agents. However, appropriations riders have prohibited federal health and safety inspections at small farms and, in effect, exempted small farms from OSHA’s worker protection provisions, including inspections.<sup>116</sup> Moreover, OSHA has a checkered track record regarding field sanitation standard enforcement. The OSHA standard for field sanitation, for example, was only created “after a legal battle and an opinion by a federal appeals court castigating OSHA’s 14 years of ‘intractable’ ‘resistance’ as a ‘disgraceful chapter of legal neglect.’”<sup>117</sup> That said, OSHA does have a Whistleblower Protection Program<sup>118</sup> which encompasses twenty whistleblower protection laws which prohibit retaliation against employees who complain about unsafe or unhealthful conditions.<sup>119</sup> ii) The Federal Environmental Protection Agency (EPA) is principally responsible for approving, restricting and/or banning the use of specific organic and non-organic agricultural pesticide. iii) The Colorado Department of Agriculture is responsible for the Pesticide Applicator License training, certification, and enforcement programs<sup>120</sup> to ensure the responsible storage, transport and use of pesticides essential for the safety and health of agricultural workers and the surrounding communities.





- **Alternatives:** Currently agricultural workers have few opportunities to register complaints and seek enforcement of workplace safety protections with OSHA and the EPA. With sharp limits on federal inspections and enforcement, a long history of minimal enforcement activity, and the recognition that it is entirely impractical for individual agricultural workers to bring lawsuits to enforce their safety rights, it may be more effective to establish qui tam enforcement provisions that create a private right of action to discourage violations of safety regulations and protect these essential workers.<sup>121</sup>

### 7) Workforce Housing for Agricultural Workers

- **Non-Ag Workers in CO:** With the exception of some seasonal tourism, outdoor recreation, and camp counselors jobs, most non-agricultural employees do not receive housing from their employer.
- **Ag Workers in CO:** In Colorado, many seasonal, migrant, and temporary agricultural workers, however, rely on their employer for on/near-site housing or for arranging off-site housing. For many agricultural workers, housing is provided in facilities dedicated for agricultural workers' use. For those employers bringing in workers through the H-2A Program, it is a requirement that they provide adequate housing in compliance with federal, state and local laws. There are minimal federal health and safety standards applicable to agricultural worker housing issued by the Employment and Training Administration of the DOL or OSHA (depending on the construction date of the housing), most of which have not been updated since the 1980's.<sup>122</sup> The Colorado regulations that govern sanitary standards for temporary labor camps, found at 6 CCR 1010-11, were adopted in 1968 and do not appear to have been updated since. Both the federal and state standards appear to lack detailed enforcement mechanisms. Additionally, agricultural employee housing is excluded from the Colorado warranty of

habitability<sup>123</sup> and this lack of protection may result in inhospitable or unsafe living conditions. On the other hand, most agricultural workers living in employer provided housing are entitled to the due process protections provided in Colorado's eviction statutes.<sup>124</sup> Unfortunately there no data are available to assess the extent to which agricultural workers living in employer provided housing are evicted with or without due process.

- **Alternatives:** Agricultural workers' housing could be more regularly inspected to ensure the safety and adequacy of housing and utilities. These inspections may be conducted by local and state authorities or by and through Occupational Health and Safety Act (OSHA) staff. It is important to recognize that these agencies may need additional resources in order to systematically increase investigation and enforcement.

### 8) Strong Worker Compensation Protections

Colorado is one of the leading states in terms of requiring workers' compensation coverage for migrant and seasonal agricultural workers and does not include any exemptions based on the size of operation nor documentation status.

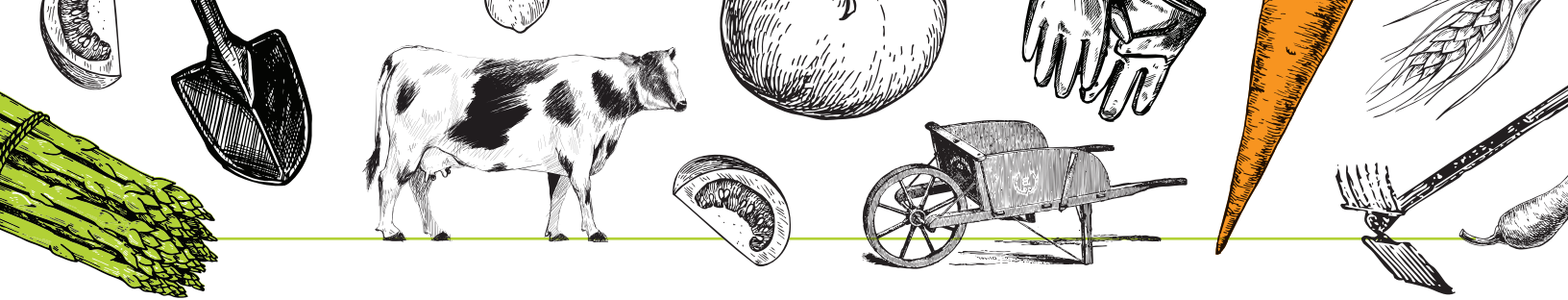
### 9) Unemployment Inclusion

Colorado is also one of the leading states in terms including agricultural workers in qualifying for unemployment. Agricultural employers that either paid cash wages of \$20,000 or more to one or more agricultural workers in a calendar quarter or employed ten or more agricultural workers for some portion of a day in each of 20 different weeks during a calendar year are liable for participating in Colorado's unemployment insurance program.

## C. LOCAL JURISDICTIONS

While beyond the scope of this brief, it is important to acknowledge the significant role that local counties and municipalities





play in supporting farm and food workers. Local jurisdictions often have governing and regulatory authority over zoning, land use and planning, housing standards, minimum wage, anti-discrimination policies, as well as, operational management of their policing, schools, and public health functions.

## V. COLORADO AGRICULTURAL WORKER IMPACTS

Agricultural work can be dangerous<sup>125</sup>, enforcement of employment and workplaces safety laws appears limited, and agricultural worker populations tend to be socially marginalized because of the transitory nature of their employment, language barriers, immigration status, and other social factors. These factors, combined with the legal exceptionalism described above, create a concerning situation for the essential workers who labor on Colorado’s farms and ranches.

## NATIONAL FARM WORKER INJURIES AND FATALITIES

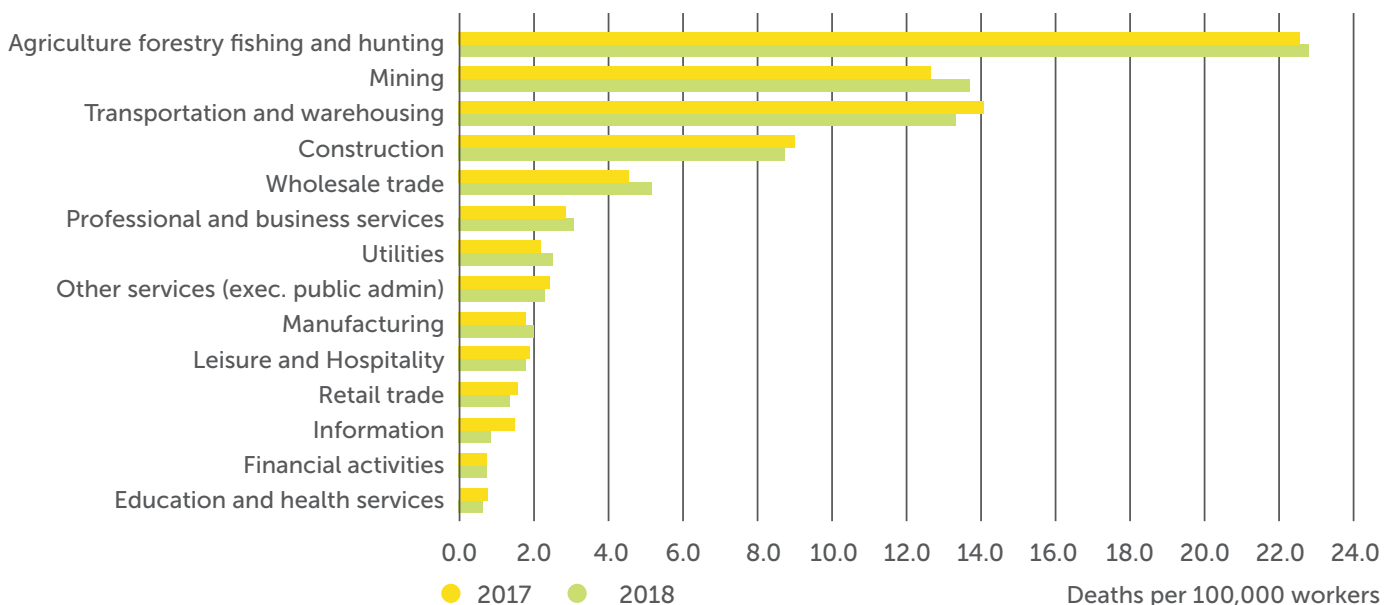
As reported by the US Bureau of Labor Statistics, workers in the agriculture, forestry, fishing and hunting industry have the highest overall rate of preventable fatal work injuries across all industries in the US (per 100,000 full time equivalent workers).<sup>126</sup> Common workplace risks for agricultural workers include injuries from physical or biological hazards, pesticide exposure, poor air quality, ergonomic injury, animal waste exposure, and zoonotic diseases.<sup>127</sup>

See Table 8. Source: NSC analysis of data from the BLS CFOI surveillance program<sup>128</sup>

## COLORADO OSHA INSPECTIONS AND ENFORCEMENT

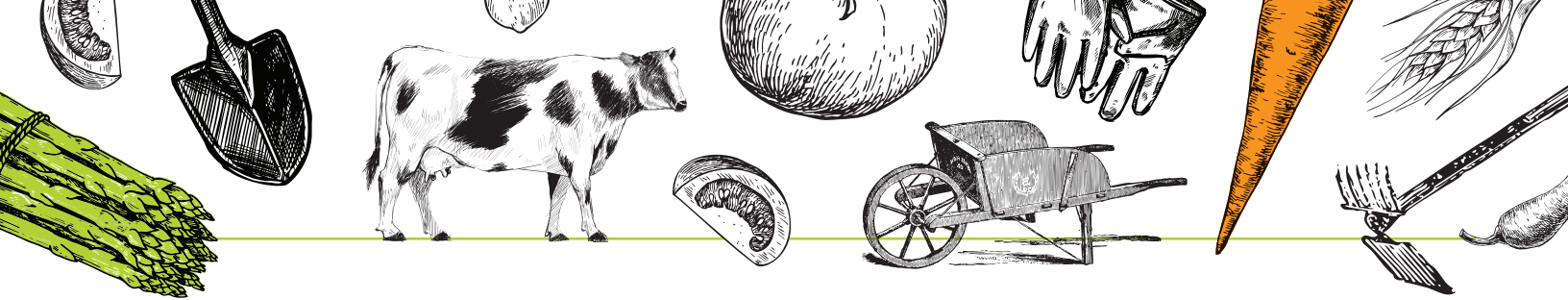
While Colorado specific information is not widely available, OSHA Enforcement data since 2010<sup>129</sup> show that only 0.625% of completed inspections

Table 8: Rate of preventable fatal work injuries by industry sector, 2017-2018



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in Colorado were for the agricultural industry. As compliance data is not available, it is impossible to know if this is due to the low number of total incidents, low number of registered complaints, or low number of investigated complaints.

Table 9. OSHA Enforcement

	Ag Industry NAICS11#### in CO
Complete Inspection	15
Partial Inspection	55
Records Inspection	0
Declined to Perform Scheduled Inspection	15

However, given the high incidence of workplace accidents and injuries in the agricultural sector nationally<sup>130</sup> it seems plausible that a higher rate of inspections is warranted and might meaningfully reduce risks of harm.<sup>131</sup>

### COLORADO DOL WAGE AND HOUR VIOLATIONS AND BACK WAGES

Additionally, Colorado’s Department of Labor Wage and Hour Division’s enforcement actions (since 2001) have resulted in the following violations and penalties<sup>132</sup>:

Table 10. FLSA Wage and Hour Violations

	Ag Industry NAICS11#### in CO
Violations	217
Back Wages for Violations of Minimum Wage Provisions	\$3,099
Back Wages for Violations of Overtime Provisions	0
<b>Total Back Wages*</b>	<b>\$142,057</b>

\* Figures are not exact due to rounding error

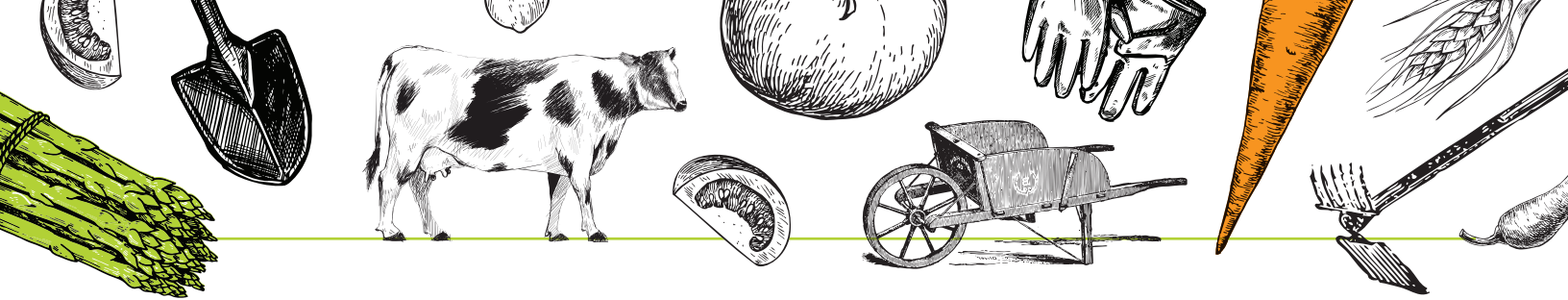
While the agriculture industry accounts for 0.34% of total back wages for FLSA violations, current rules stipulate that undocumented workers are not eligible to receive these funds directly<sup>133</sup> so funds are only given to other agricultural industry

businesses. Additionally, while there is a very low probability (just 1.1%) that any farm employer will be investigated by the Wage and Hour Division (WHD) of the U.S. Department of Labor, in any given year, over 70% of federal labor standards investigations of farms conducted by the WHD find violations. Concerningly, one-fourth of federal wage and hour violations detected in the agricultural sector are committed by farm labor contractors. Farm labor contractors continue to be the fastest-growing segment of farm employment, and thus there is additional cause for concern about increasing violations.<sup>134</sup>

The factors that drive marginalization of agricultural workers and contribute to their difficulty and discomfort in enforcing legal rights make it likely that wage irregularities including theft are largely unreported. National research indicates that agricultural workers are often more vulnerable to a range of abuses including: human trafficking<sup>135</sup>; child labor<sup>136</sup>; wage theft (with the US Department of Labor deeming agriculture a “low wage, high violation industry,” and finding that tens of thousands of agricultural workers have been denied their earned wages -- in direct violation of applicable laws -- over the past two decades. Across the US, employers illegally withheld a total of \$65 million in wages to 150,000 employees between 2001 and 2019)<sup>137</sup>; workplace violence (inclusive of sexual harassment and assault)<sup>138</sup>; and other labor law violations.<sup>139</sup> Yet, many of these violations go unreported.<sup>140</sup>

National research also indicates that farm workers have high rates of economic and social marginalization, for example: high rates of poverty<sup>141</sup>; disparities in health care access and health outcomes<sup>142</sup>; social marginalization<sup>143</sup>; limited mobility<sup>144</sup>; and impaired abilities to exercise legal rights and influence policies<sup>145</sup>. To illuminate the data compiled herein and better understand how these negative outcomes are experienced by agricultural workers, peruse the Stories from the Field collection of images and narratives compiled by Farmworker





Justice and photojournalist David Bacon.<sup>146</sup> Because Colorado does not currently extend legal protections to agricultural workers that are on par with those enjoyed by workers in other sectors, there is no reason to suspect that agricultural workers in Colorado have a materially different experience than agricultural workers elsewhere in the United States.



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## RECOMMENDED CITATION

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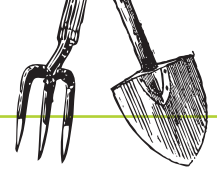
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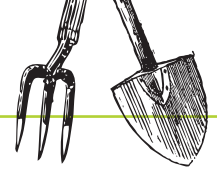




## ENDNOTES

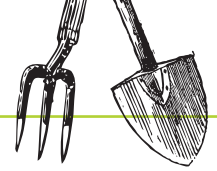
1. Helena Bottemiller Evich and Liz Crampton, *Trump deems farmworkers 'essential' but not safety rules for them. That could threaten the food supply.*, Politico (May 12, 2020), <https://www.politico.com/news/2020/05/12/trump-farmworkers-essential-coronavirus-safety-250142>; Miriam Jordan, *Farmworkers, Mostly Undocumented, Become 'Essential' During Pandemic*, New York Times (Apr. 2, 2020), <https://www.nytimes.com/2020/04/02/us/coronavirus-undocumented-immigrant-farmworkers-agriculture.html>; Memorandum from Christopher C. Krebs, Director, Cybersecurity and Infrastructure Security Agency (CISA), on Identification of Essential Critical Infrastructure Workers During COVID-19 Response (Mar. 19, 2020), <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>.
2. <https://covid19.colorado.gov/covid19-outbreak-data>: 29 Outbreaks in: Adams (1), Alamosa (2), Costilla (3), Denver (5), Garfield (1), Kit Carson(1), Larimer (2), Pueblo (2), Rio Grande (5), Saguache (2), and Weld (5) Counties. 245 workers in Farms/Dairies (149), Food Warehouse (86), and Agriculture - Other (10).
3. Adam Minter, *Covid Is Clobbering America's Farm Workers*, Bloomberg (Sept. 12, 2020), <https://www.bloomberg.com/opinion/articles/2020-09-12/covid-is-clobbering-america-s-farm-workers>.
4. *Id.*
5. Industry experts report agricultural workers do not report illnesses (zoonotic or otherwise) for a multitude of well-documented reasons (access to healthcare, inability to take time off, language/literacy barriers, etc.)
6. U.S. Dep't of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016*, Research Report No. 13 (2018), [https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS_Research_Report_13.pdf)
7. \_CDC, *Disproportionate Incidence of COVID-19 Infection, Hospitalizations, and Deaths Among Persons Identifying as Hispanic or Latino - Denver, Colorado March-October 2020*, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6948a3.htm>.
8. <https://covid19.colorado.gov/covid19-outbreak-data>
9. <https://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm#tab-2>
10. QCEW Employees, Non-QCEW Employees, Self-Employed, and Extended Proprietors via Emsi Q4 2020 Data Set
11. Estimates derived from EMSI by sorting for the most frequent occupational (SOC) codes in the agricultural industry (NAICS 11) and the most frequent occupational codes in the food manufacturing industry (NAICS 311). This method focused on the occupational sectors directly tied to food processing and farm workers to avoid counting other food occupations common in retail, for example, meat cutters.
12. Leah Douglas, *Mapping Covid-19 outbreaks in the food system*, Food and Environment Reporting Network (Dec. 4, 2020), (April 22 2020) <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants>;
13. Colo. Office of Economic Development and International Trade, *Cost of Living*, <https://choosecolorado.com/living/cost-of-living/> (last visited Dec. 14, 2020).
14. Quarterly Census of Employment and Wages (QCEW) collected by U.S. Bureau of Labor Statistics: QCEW Employees, Non-QCEW Employees, Self-Employed, and Extended Proprietors via Emsi Q4 2020 Data Set
15. <https://www.dol.gov/agencies/whd/agriculture/h2a>
16. Note: QCEW data does not expressly state whether the Race/Ethnicity category of "White" captures only persons who are white and do not also identify as non-Hispanic/Latino. In the absence of such a "non-Hispanic/Latino" designation, it is possible that some people who identify as both white and Latino are accounted for as White.
17. *Id.*
18. *Id.*
19. <https://www.dol.gov/agencies/eta/foreign-labor/performance>  
Note: H-2A Program Disclosure Data for 2019 generated by the OFLC of the USDOL states that 3,440 H2A worker positions were certified to work in Colorado; U.S. Dep't of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016*, Research Report No. 13 (2018), [https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/news/pdfs/NAWS_Research_Report_13.pdf)
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21. Colo. Dep't of Labor and Emp't, 7 CCR 1103-1, Colorado Overtime and Minimum Pay Standards Order #36 (effective Jul. 15, 2020) [hereinafter *COMPS Order #36*].
22. 20 C.F.R. § 655.122.
23. <https://www.dol.gov/agencies/whd/agriculture/mspa/farm-labor-contractors>
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25. Feeding the Economy, *Colorado Economic Impact*, <https://goodstone.guerrillaeconomics.net/reports/19a1b396-438b-4424-bdc6-cf28a463fe64> (last visited Dec. 14, 2020).
26. 29 U.S.C. § 152(3) (2020).
27. Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 27 Ohio St. L.J. 95 (2011).
28. Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1351 (1987) (quoting 1 H. SITKOFF, A NEW DEAL FOR BLACKS: THE DEPRESSION DECADE 45 (1978)) which notes "The combination of a seniority rule determining access to congressional influence, a one-party political tradition below the Mason-Dixon line, and Democratic weakness outside the South prior to 1930 resulted in legislative hegemony for the advocates of white supremacy."
29. NLRB, *About NLRB: Jurisdictional Standards*, <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/jurisdictional-standards> (last visited Dec. 14, 2020).
30. Linder, *supra* note 15, at 1353.





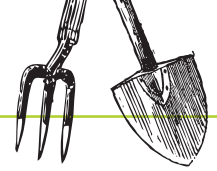
31. Certain local hand harvesters as well as sheepherders, goatherders and cattle range workers who are “principally engaged in the range production of livestock” are also exempt from the FLSA minimum wage provisions. See 29 U.S.C. §§ 213(a)(6)(A), (C) and (E).
32. Linder, *supra* note 15, at 1376.
33. For example, In opposing the FLSA on the floor of the House, Rep. J. Mark Wilcox of Florida said, “Then there is another problem of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. . . . You cannot put the Negro and the white man on the same basis and get away with it.” 82 Cong. Rec. 1404 (1937). Rep. Edward E. Cox of Georgia agreed, saying, “The organized Negroes of the country are supporting [the FLSA] because it will, in destroying state sovereignty and local self-determination, render easier the elimination of racial and social distinctions.” 82 Cong. Rec. App. 442 (1937).
34. Perea, *supra* note 14 at 96 n.1, citing, e.g., Paul Frymer, *Black & Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party* 27-28 (2008) (“The presence of Southern Democrats and their willingness to stray from the party line to block civil rights legislation not only prevented such legislation but necessitated that economic bills include provisions that either explicitly or, more often simply in a de facto manner, discriminated against large numbers of minority workers. The common method of this was for legislators to exclude categories of workers were African American and other minorities predominated, such as domestic and agricultural workers.”); Risa L. Goluboff, *The Lost Promise of Civil Rights*, 29 (2007) (“Like many of the New Deal’s economic protections, [the NLRA] excluded agricultural and domestic workers. Many of those workers were African American, so their exclusion marked a concession to southern white congressmen.”); Ira Katznelson, *When Affirmative Action Was White* 59 (2005) (“It is not hard to see why southern members were so intensely concerned with [the agricultural exclusion] ...The status of subaltern black labor in agriculture—a structure that often came close to resembling nineteenth-century conditions under slavery—was a consistent concern for southern members in the 1930s .... ”); Harvard Sitkoff, *A New For Blacks* 52 (1978) (Not much could be done “to protect Afro-Americans from being excluded from the labor union movement.... The civil rights groups pressing for the anti-discrimination amendment could not match the influence of those opposed to it.”).
35. Fair Labor Standards Amendments of 1966, Pub. L. 89-601, § 203(a), 80 Stat. 833, 833-34
36. Linder, *supra* note 15, at 1337.
37. 344 F. Supp. 964 (S.D.N.Y. 1972), *affrd*, 478 F.2d 537 (2d Cir.), *cert. denied*, 414 U.S. 1096
38. <https://ij.org/center-for-judicial-engagement/programs/the-notorious-rbt-rational-basis-test/>
39. *Washington v. Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252 (1977).
40. The term “labor camp” is commonly used to reference temporary agricultural worker housing, as evidenced in the OSHA regulations discussed below found at 29 C.F.R. § 1910.142. See also Colorado Code of Regulations at 6 CCR 1010-11.
41. 29 C.F.R. § 1928.21(b).
42. 29 C.F.R. § 1910.140.
43. 29 C.F.R. § 1910.23.
44. 29 C.F.R. § 1910.212.
45. 29 C.F.R. § 1928.110.
46. 29 C.F.R. § 1928.57. The protections provided under this section, however, do not apply to farm equipment manufactured prior to 1976. *Id.* at (a)(3).
47. 29 C.F.R. § 1910.142.
48. See Occupational Safety and Health Admin., U.S. Dep’t of Labor, CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, <https://www.osha.gov/enforcement/directives/cpl-02-00-051>
49. For a more comprehensive inventory of farmworker issues and protections in the United States see this 2011 report from the United Farm Workers and Bon Appétit Management Company Foundation. #Bon Appetit Management Company Foundation and United Farm Workers, *Inventory of Farmworkers Issues and Protections in the United States* (March 2011),
50. LeRoy & Hendricks, *supra* note 25, at 512.
51. Rodman, Sarah O., et al. “Agricultural exceptionalism at the state level: Characterization of wage and hour laws for US farmworkers.” *Journal of Agriculture, Food Systems, and Community Development* 6.2 (2016): 89-110: <https://foodsystemsjournal.org/index.php/fsj/article/view/450>
52. See Sarah Bronwen Horton, *They Leave their Kidneys in the Fields (Illness, Injuries, and Illegality Among U.S. Farmworkers)* (2016) (“Heatstroke is the leading cause of work-related death for farmworkers. Members of this occupational group bear a higher risk of heatstroke than outdoor workers in any other industry, including construction. According to the Centers for Disease Control and Prevention (CDC), all the heat deaths in farm work recorded between 1992 and 2006 were among men, and foreign-born Latinos accounted for 71% of such deaths.”); CDC, *Heat-Related Deaths Among Crop Workers United States, 1992-2006* (Jun. 20, 2008), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm>; <https://www.osha.gov/pls/publications/publication.athrhz?pType=Industry&pID=571>; P.A. Schulte et al., *Advancing the framework for considering the effects of climate change on worker safety and health*, 13 *J. of Occupational and Environmental Hygiene* 847-865 (Nov. 1, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5017900/>
53. Labor Peace Act, Colo. Rev. Stat. § 8-2-101(11) (2020); see Jonathon B. Chase, *Migrant Farm Worker in Colorado—Life and the Law*, 40 *U. Colo. L. Rev.* 45, 74 (1967) (discussing the exclusion of agricultural laborers from protections under federal and state law).
54. Colo. Rev. Stat. §§ 8-1-101 et. seq. (2020).
55. Colo. Rev. Stat. § 8-3-104(11)(f) (2020) “For purposes of this subsection (11), ‘farm’ means stock, dairy, poultry, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, and other structures used for the raising of agricultural or horticultural commodities, provided such structures are utilized for at least fifty percent of the total output produced.”
56. Colo. Rev. Stat. § 8-3-104(11)(a) (2020).
57. *COMPS Order #36*, *supra* note 9.orn)





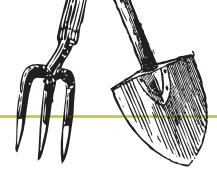
58. See Colo. Rev. Stat. § 18-3-503 (making it a felony under Colorado state law to traffic people for involuntary servitude).
59. U.S. Dep't of Labor, *State Child Labor Laws Applicable to Agricultural Employment* (Jan. 1, 2020), <https://www.dol.gov/agencies/whd/state/child-labor/agriculture#Colorado>.
60. Colo. Rev. Stat. § 8-12-105(2) (2020).
61. Colo. Rev. Stat. § 8-12-107(1)(e) (2020).
62. Colo. Rev. Stat. § 8-12-105(4) (2020).
63. Colo. Rev. Stat. § 8-12-105(2) (2020).
64. Colo. Rev. Stat. § 8-12-105(5) (2020).
65. Colo. Rev. Stat. § 8-12-105(3) (2020) (this provision exempts babysitters).
66. Note: due to different classifications, nuanced exceptions for specific roles, farm size exemptions, direct sales exemptions, and other details for each regulation, Colorado does not currently have estimates of the number and percent of exempted worker for each regulation
67. *COMPS Order #36*, *supra* note 9, Rule 3.1; see also Colo. Dep't of Labor and Emp't, 7 CCR 1103-1, Colorado Overtime and Minimum Pay Standards Order #37, Rule 3.1 (proposed; to be effective Jan. 1, 2021) [hereinafter *COMPS Order #37*].
68. See *COMPS Order #36*, *supra* note 9, Rule 2.3 (adopting the exemptions from the Fair Labor Standards Act).
69. See USDA, NASS, 2017 Census of Agriculture, Table 7 "Hired Farm Labor - Workers and Payroll:2017," [https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_2\\_US\\_State\\_Level/st99\\_2\\_0007\\_0007.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_US_State_Level/st99_2_0007_0007.pdf). (19,792 out of the total 36,733 hired farm workers worked on farms with 9 workers or less.)
70. See 29 U.S.C. § 213(a)(6)(C) (2020).
71. *Id.* at § 213(a)(6)(D).
72. 29 C.F.R. § 780.329(c) (2020).
73. Jennifer J. Lee and Kyle Endres, *Overworked and Underpaid: H-2A Herders in Colorado*, Colorado Legal Services Migrant Farm Worker Division (Jan. 14, 2010), <https://humantraffickinghotline.org/resources/overworked-and-underpaid-h-2a-herders-colorado>.
74. *Id.*
75. *Saenz Mencia v. Allred*, 808 F.3d 463, 466-67 (10th Cir. 2015). In 2015, the U.S. Court of Appeals of the Tenth Circuit the Court ruled against the ranch operator and found that the FLSA exemption does not apply to workers misclassified as 'range workers' who are not actually spending the majority of their time working out on the range, but instead performing the job more similar to that of a ranch hand.# This ruling has made it clear that Colorado operators will not be able to misclassify workers as 'range workers' in order to avoid paying higher hourly wage to non-herders working for ranch operations.
76. Cal. Dep't of Ind. Rel., Minimum Wage Order, MW-2019 (Jan. 1, 2020), <https://www.dir.ca.gov/iwc/wageorderindustries.htm> (last visited Oct. 19, 2020); Cal. Dep't of Ind. Rel., Wage Order #14, 4 (2019). California provides some of the most robust labor protections for agricultural workers in the United States. The California Labor Code applies to all people "employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise," subject to very limited exceptions irrelevant to agricultural workers. Accordingly, when the California Industrial Welfare Commission issues its General Minimum Wage Order, farmworkers are covered.
77. See Wis. Stat. §104.02 (2020); S.D. Codified Laws §60-11-3 (2020); Cal. Lab. Code § 1171 (2020); N.Y. Lab. Law § 670 *et seq.* (2020).
78. New York Senate Bill S6578, (codified at N.Y. Lab. Law § 670 *et seq.* (2020)), <https://www.nysenate.gov/legislation/bills/2019/s6578>. New York enacted the "Farm Laborers Fair Labor Practices Act" in 2019 with the express purpose of applying minimum wage standards to agricultural workers. The law mandated that all employers pay agricultural workers at least the minimum wage established for other industries within New York.
79. Minn.Stat. § 177.23 subd 7(2) (2020).
80. Haw. Rev. Stat. § 387-2 (2020).
81. *COMPS Order #36*, *supra* note 9, Rule 4.
82. *Id.*, Rule 2.3.3 (adopting the definition of "agriculture" from 29 U.S.C. § 203(f) of the federal Fair Labor Standards Act).
83. Cal. Dep't of Ind. Rel., Wage Order #14, 4 (2019). California's phase-in approach is planned to eventually provide overtime after 8 hours a day and 40 hours a week.
84. Minn. Stat. § 177.25 (2020).
85. Haw. Rev. Stat. § 387-3 (2020).
86. Md. Code, Lab. & Empl. § 3-420 (2020).
87. New York Senate Bill S6578, (codified at N.Y. Lab. Law § 670 *et seq.* (2020)), <https://www.nysenate.gov/legislation/bills/2019/s6578>.
88. N.Y. Lab. Law § 674-a (2020).
89. *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 475 P.3d 164, 174 (Wash. 2020)
90. *Id.* at 175.
91. Gabe Guarente, *Washington Supreme Court Decision Grants Farmworkers Overtime Pay*, Eater (Nov. 5, 2020), <https://seattle.eater.com/2020/11/5/21551773/dairy-farm-workers-overtime-pay>.
92. *COMPS Order #36*, *supra* note 9, Rule 5.
93. *COMPS Order #36*, *supra* note 9, Rule 2.3.1.
94. *Id.*
95. Minn Stat. § 177.253 (2020).
96. Wash. Admin Code. § 296-307-09512 (2020); Wash. Admin. Code. § 296-131-020(2) (2020).
97. Wash. Admin. Code. § 296-307-09740 (2020).
98. Or. Rev. Stat. § 839-020-0050 (2020).
99. Cal. Code Regs. tit. 8 §§ 11130, 11140 (2020).
100. Cal. Code Regs. tit. 8 §§ 3395(c)-(d) (2020).
101. Cal. Code Regs. tit. 8 § 3395(d)(3) (2020).
102. NLRB, Concerted Activity at <https://www.nlrb.gov/about-nlrb/rights-we-protect/the-law/employees/concerted-activity> (last accessed Jan 11, 2021)
103. *Id.*
104. Colo. Rev. Stat. Ann. § 8-3-113(2) (2020).





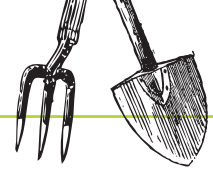
105. Colo. Rev. Stat. Ann.. § 8-3-104(11)(a) (2020).
106. See Wash. Rev. Code 49.32.020 (2020); *Bravo v. Dolsen*, 888 P.2d 147 (1995).
107. Ariz. Rev. Stat.. §§ 3-3101-3125, 23-1381-1395 (2020).
108. Certain provisions of New York's new law regarding re family and supervisory employees are subject to a temporary restraining order issued in *NYSVGA v Cuomo*, 2019 WL 7578367 (W.D.N.Y. Dec. 31, 2019).
109. See Lee & Endres, *supra* note 68; see also, Labor Camp Access Human Rights Complaint, Submission to U.N. Special Rapporteur on Extreme Poverty and Human Rights (Dec. 13, 2012).
110. Legal Servs. Corp., *Special Legal Problems and Problems of Access to Legal Services of Veterans, Native Americans, People with Limited English-Speaking Abilities, Migrant and Seasonal Farmworkers, Individuals in Sparsely Populated Areas: A Report to Congress As Required by Section 1007(h) of the Legal Services Corporation Act of 1974, As Amended*, at 34-36 (1978) (on file with authors) [hereinafter, *LSC Study*]. When the Legal Services Corporation Act was passed in 1974, Congress directed the new Legal Services Corporation (LSC) to study special barriers to access to justice for migrant and seasonal farmworkers, among other groups. This decades-old study remains the most comprehensive inquiry into this topic and its findings are just as relevant today. The study identified that isolation in remote locations; short length of time in the area; language; economic dependence upon employers; and cultural isolation are the primary barriers restricting access to justice.
111. *State v. Shack*, 58 N.J. 297 (1971) (criminal trespass statute does not apply to those of recognized charitable groups entering private land to provide aid to those workers who need it); *Folgueras v. Hassle*, 331 F. Supp. 615 (W.D. Mich 1971) (farmer's ownership of the migrant labor camps does not give him the right to constitutionally deprive migrants living in the camp to associations, information and friendships); *Rivero v. Montgomery County, Maryland*, 259 F.Supp.3d 334 (D. Md. 2017) (legal service organization was allowed to continue with its claim that it was a violation of their First Amendment rights to infringe on their right to disseminate information to farm workers residing on the property of their employer); *Mid-Hudson Legal Services, Inc. v. G&U, Inc.*, 437 F. Supp. 60 (S.D.N.Y. 1977) *rev'd on other grounds*, 578 F.2d 34 (2d Cir. 1978) (First Amendment right to free speech and association of legal services providers entitles them to visit farm employees residing on the farm owners); see also *State v. DeCoster*, 653 A.2d 891 (Me. 1995); *State v. Fox*, 82 Wash.2d 289 (WA 1973); *Petersen v. Talisman Sugar Corp.*, 478 F.2d 73 (5th Cir. 1973); *Franceschina v. Morgan*, 346 F. Supp. 833 (S.D. Ind. 1972).
112. Wis. Stat. §103.925 (2020); Or. Rev. Stat. §§ 659A.250-659A.262 (2020); Cal. Labor Code §1152 (2020); Fla. Stat. §381.00897 (2020); Md. Code Crim Law §6-406(d)(2)(i) (2020); 105 Mass. Code Regs. 425.100 (2020); 43 PA C.S. Labor § 1301.403 (2020);
113. Or. Rev. Stat. § 659A.250-659A.262 (2020) (defining "authorized persons" as including government officials, certified education providers, local health officials, representatives of religious organizations, legal services.)
114. See 1998 NC. Atty. Gen., Letter from August 21, 1998 from NCDOJ Andrew A. Vanore, Jr. to Keith Warner; see also 2019 Virginia Op. Atty. Gen., Formal Opinion No. 18-044; 1991 New York State Department of Labor, Formal Opinion No. 91-F7; 1978 Fl. Op. Atty. Gen., Formal Opinion No. 078-65; 1975 NJ. Op. Atty. Gen., Formal Opinion No. 11-1975; 1972 Mich. Op. Atty. Gen., Formal Opinion No. 4727.
115. October 6, 2020 Letter from NC Att. Gen., to NC Dep't of Health and Human Services, <http://www.ncfhp.org/wp-content/uploads/2020/10/NC-Attorney-General-Opinion-2020-COVID.pdf>
116. Legal Services Corporation, *LSC Agricultural Worker Population Estimate Update* (Jan. 30, 2015), [https://www.lsc.gov/sites/default/files/LSC\\_Report\\_AgWrkr\\_Update\\_Jan\\_30\\_2015.pdf](https://www.lsc.gov/sites/default/files/LSC_Report_AgWrkr_Update_Jan_30_2015.pdf).
117. *Farmworker Justice Fund v. Brock*, 811 F.2d 613, 614 (D.C. Cir. 1987).
118. OSHA, *OSHA's Whistleblower Protection Program*, <https://www.osha.gov/Publications/OSHA3638.pdf> (last visited Dec. 14, 2020).
119. Employees seeking relief and protection under the whistleblower program, "must allege four key elements: (1) the employee engaged in activity protected by the whistleblower protection law(s) (such as reporting a violation of law);(2) the employer knew about, or suspected, that the employee engaged in the protected activity; (3) the employer took an adverse action against the employee; and (4) the employee's protected activity motivated or contributed to the adverse action.OSHA, *OSHA Online Whistleblower Complaint Form*, <https://www.osha.gov/whistleblower/WBComplaint.html#:~:text=OSHA%20administers%20more%20than%20twenty,other%20rights%20under%20the%20Act> (last visited Dec. 14, 2020).
120. Colo. Dep't of Agriculture, *Division of Plant Industry*, <https://www.colorado.gov/pacific/agplants/pesticide-appliator-certification-and-licensing-program> (last visited Dec. 14, 2020).
121. To preserve public resources while ensuring adequate enforcement of state worker protection laws, a state can pass legislation that delegates to private attorneys general of the authority to enforce such laws on behalf of the state. Consistent with age-old qui tam doctrine, the party acting as private attorney general is entitled to recoup an incentive award capped at a legislatively determined percentage of the recovery remitted to the state. *Qui tam* provisions typically preserve the state's right to intervene in the action for the purposes of dismissing it with prejudice, settling it, or pursuing it on the state's own behalf. See, e.g., Miriam Gilles and Gary Friedman, *The New Quit Tam: A Model for the Enforcement of Group Rights in a Hostile Era*, 98 Tex. L. Rev. 489 (2020), <https://texaslawreview.org/the-new-qui-tam-a-model-for-the-enforcement-of-group-rights-in-a-hostile-era/>.
122. The ETA housing standards set forth at 20 C.F.R. §654.401 *et seq.* apply to housing constructed or under construction before March 4, 1980 whereas all other housing constructed since that date must comply with the OSHA temporary labor camp standards at 29 C.F.R. §1910.142.
123. Colo. Rev. Stat. § 38-12-511 (2020).
124. See Colo. Rev. Stat. § 13-40-101 *et seq.*
125. William Kandel, *Profile of Hired Farmworkers, A 2008 Update*, U.S. Dep't of Agriculture (July 2008), <https://www.ers.usda.gov/publications/pub-details/?pubid=46041> "While farmworkers face workplace hazards similar to those found in other industrial settings, such as working with heavy machinery and hard physical labor, they also confront factors more common to agricultural production such as pesticide exposure, sun exposure, inadequate sanitary facilities, and crowded and/or substandard housing."
126. National Safety Council, *Work Safety Introduction*, <https://injuryfacts.nsc.org/work/work-overview/work-safety-introduction/> (last visited Dec. 14, 2020).





127. Claire Fitch, Carolyn Hricko, and Robert Martin, *Public Health, Immigration Reform and Food System Change*, Johns Hopkins Center for a Livable Future, Department of Environmental Health & Engineering, & Johns Hopkins Bloomberg School of Public Health (Spring 2017), <https://clf.jhsph.edu/sites/default/files/2019-04/health-immigration-reform-and-food-system-change-report.pdf>.
128. National Safety Council, Work Safety Introduction, <https://injuryfacts.nsc.org/work/work-overview/work-safety-introduction/> (last visited Dec. 14, 2020).
129. [https://drive.google.com/file/d/1YrdN1MFYVXHJhGoUEh\\_gE-gouHQcQ8w0/view?usp=sharing](https://drive.google.com/file/d/1YrdN1MFYVXHJhGoUEh_gE-gouHQcQ8w0/view?usp=sharing)
130. National Safety Council, *Work Safety Introduction*, <https://injuryfacts.nsc.org/work/work-overview/work-safety-introduction/> (last visited Dec. 14, 2020).
131. Institute for Work & Health. *Institute for Work & Health systematic review on regulatory enforcement finds strong evidence for effectiveness of inspections with fines and citations*. Published: August 10, 2015, <https://www.iwh.on.ca/newsletters/at-work/81/inspections-with-penalties-linked-to-lower-injuries-iwh-review> (last visited Mar. 24, 2021); Tompa, Emile PhD; Dolinschi, Roman MA; de Oliveira, Claire PhD; Irvin, Emma BSc A Systematic Review of Occupational Health and Safety Interventions With Economic Analyses, *Journal of Occupational and Environmental Medicine*: September 2009 - Volume 51 - Issue 9 - p 1004-1023 doi: 10.1097/JOM.0b013e3181b34f60
132. USDOL Dep't of Wage and Hour data at: <https://drive.google.com/file/d/1sEUlvXGU4CWcUw-fP6bC4xFnSwg2Qb4/view?usp=sharing>
133. See *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883, 900-05 (1984) (discussing the speculative nature of backpay remedies for undocumented workers lacking work authorization).
134. <https://www.epi.org/publication/federal-labor-standards-enforcement-in-agriculture-data-reveal-the-biggest-violators-and-raise-new-questions-about-how-to-improve-and-target-efforts-to-protect-farmworkers/>
135. Center for Public Policy Studies, *Colorado Human Trafficking Fact Sheet* (Mar. 2013), <http://www.htcourts.org/wp-content/uploads/CO-HT-Fact-Sheet-3.12.13.pdf?Factsheet=HT-CO>; Juliana Vengoechea Barrios, *Labor Trafficking in the Americas in Context: a Look into the Guest Worker Program*, *Anuario Mexicano de Derecho Internacional*, 639–659 (2013); Meredith Sell, *Is Labor Trafficking Being Overlooked in Colorado*, 5280 (Jul. 5, 2019), <https://www.5280.com/2019/07/is-labor-trafficking-being-overlooked-in-colorado/>.
136. Fitch et al., *supra* note 97 (“The U.S. General Accounting Office\* estimated that between 169,000–200,000 youths in the U.S. work in migrant agricultural jobs—those which require a worker to travel so that the worker is unable to return to his/her permanent residence in the same day—though others estimate that the actual number, including undocumented youth, might be as high as 500,000”); National Center for Farmworker Health, *Child Labor in Agriculture Factsheet*, <http://www.ncfh.org/child-labor.html> (last visited Dec. 14, 2020).
137. U.S. Dep't of Labor, *Low Wage, High Violation Industries*, <https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries> (last visited Dec. 14, 2020); Pramod Acharya, *Agricultural workers still denied millions in wages each year*, Midwest Center for Investigative Reporting (Aug. 7, 2020), <https://investigatamidwest.org/2020/08/07/agricultural-workers-still-denied-millions-in-wages-each-year/>.
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139. Seth M. Holmes, *Fresh Fruit, Broken Bodies: Migrant Farmworkers in the United States* (2013).
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141. Kristen Borre, Luke Ertle, and Mariaelisa Graff, *Working to eat: Vulnerability, food insecurity, and obesity among migrant and seasonal farmworker families* 53 Am. J. Ind. Med. 443-462 (Apr. 2010); U.S. Dep't of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2013-2014*, Research Report No. 12 (2016), at iii, 37-38, [https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS\\_Research\\_Report\\_12.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_12.pdf); U.S. Dep't of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016*, Research Report No. 13 (2018), [https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS\\_Research\\_Report\\_13.pdf](https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf); Alemayehu Bishaw, *Poverty: 2000 to 2012*, American Community Survey Briefs (Sept. 2013), <https://www2.census.gov/library/publications/2013/acs/acsbr12-01.pdf>. B
142. Rural Health Information Hub, *Rural Migrant Health*, <https://www.osha.gov/enforcement/directives/cpl-02-00-051> (last visited Dec. 14, 2020); National Center for Farmworker Health, *Data from the 2011-2012 National Agricultural Workers Survey*, <http://www.ncfh.org/naws-fact-sheet.html> (last updated Jan. 2015); Giulia Earle-Richardson, et al., *Occupational injury and illness among migrant and seasonal farmworkers in New York State and Pennsylvania, 1997-1999: pilot study of a new surveillance method*, 44 Am. J. Ind. Med. 37-45 (Jul. 2003); Don Villarejo, et al., *The Health of California's Immigrant Hired Farmworkers*, 53 Am. J. Ind. Med. 387-397 (Apr. 2010); American Medical Association, *Disparities in Health Care: Code of Medical Ethics Opinion 8.5*, <https://www.ama-assn.org/delivering-care/ethics/disparities-health-care> (last visited Dec. 14, 2020); Arthur L. Frank, et al., *Issues of Agricultural Safety and Health*, 25 Annual Review of Public Health 225-245 (Apr. 21, 2004); *The Kresge Foundation, Health-related Inequities Among Hired Farm Workers and the Resurgence of Labor-intensive Agriculture* (2012), <http://kresge.org/sites/default/files/Health-farm-worker-white-paper.pdf>.





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