



INFORMATIONAL MEMO:

**Small-Scale and Immigrant-Owned Farms and their Employees are Vulnerable to Unjust Labor Law Enforcement Practices in California**

The Sustainable Economies Law Center (SELC) has prepared this memo in order to share our recent experiences after 15 months of working with a group of farmers to address citations and fines they received from the California Department of Industrial Relations Division of Labor Standards Enforcement (DLSE). This experience has helped us uncover fundamental tensions in employment laws and their enforcement, which leave small-scale farms extremely vulnerable. In coming years, we will be working to address some of these problems through proposed regulatory changes and legislation. Part of our purpose in sharing this memo is to connect with farmers and organizations interested in supporting our efforts and giving input. **To stay informed, please send an email to Janelle Orsi ([janelle@theselc.org](mailto:janelle@theselc.org)) to let us know your interest.**

**The Story:**

In October 2012, the DLSE visited multiple Morgan Hill farms to audit for employment law violations. The DLSE cited at least three low-income immigrant farmers for minor errors on employee wage statements and issued fines amounting to 12% - 30% of each farmer's annual income. SELC and a group of volunteer attorneys attended appeal hearings with the farmers, and ultimately worked with the DLSE to reduce the fines. However, the underlying injustices remain unaddressed.

**Fanny Tam's Story:** Fanny Tam left Zhuhai, China, in 1986 to join her husband in California. Now a widowed, low-income farmer, she has two employees who work with her to farm three acres of Chinese vegetables. The DLSE fined Ms. Tam **\$6,000** for failing to write the pay period end date on wage statements she provided to employees. Her wage statement otherwise complied with all legal requirements, and Ms. Tam's mistake was entirely unintentional. The fine amounted to more than 25% of Ms. Tam's annual income. After a hearing, the DLSE reduced the fine to \$5,000. Paying the full \$5,000 fine would have forced Ms. Tam to cut her workers' hours and squeeze her own food and living expenses. She also considered leaving farming altogether as a result of her experience with the DLSE. SELC wrote letters and called the DLSE for nearly a year, until the DLSE finally agreed to reduce her fine to \$1,000. The outcome still feels unjust, because SELC believes that no one should have to pay \$1,000 for making such a small clerical error.

PAYROLL RECORD											
											DATE
EMPLOYEE [REDACTED]											
ADDRESS [REDACTED]											
EMPLOYER <i>Fanny Tam</i>										SOCIAL SECURITY NO. <i>7697</i>	
HOURS	SUN	MON	TUE	WED	THU	FRI	SAT	TOTAL HOURS	RATE	AMOUNT	
REG. TIME	0	8	8	8	8	8	0	80	8.25	660.00	
PREM TIME	0	8	8	8	8	8	0				
PIECE WORK	UNIT OF WORK										
SALARY FOR PAY PERIOD ENDING THIS DATE											
EMUNERATION (ROOM, BOARD, TIPS, ETC.)											
GROSS EARNINGS										660.00	
NUMBER OF EXEMPTIONS <input type="checkbox"/>											
FEDERAL INCOME TAX <i>4.20%</i>										27.72	
STATE INCOME TAX											
MEDICARE TAX <i>1.45%</i>										9.57	
SOCIAL SECURITY TAX											
INSURANCE <i>1%</i>										6.60	
CASH ADVANCE											
MERCHANDISE BOUGHT											
BONDS, ETC.											
OTHER:											
LESS TOTAL DEDUCTIONS										43.89	
NET EARNINGS THIS PAY PERIOD										616.11	
<input type="checkbox"/> CASH <input checked="" type="checkbox"/> CHECK NUMBER <i>230</i>											
TOTAL SAVINGS BOND CREDIT INCLUDING THIS DEDUCTION										RECEIVED BY <i>[Signature]</i>	

© 2008 D4743 EMPLOYER'S RECORD



**Siu Wah Mok's Story:** Siu Wah Mok is an elderly, low-income, immigrant farmer who began farming in Santa Clara County in 1975. As a retiree, he continues to grow Chinese vegetables on one and a half acres in Morgan Hill with his wife and a friend who has lived with them for many years. Mr. Mok and his wife's household income is less than \$13,000. This income derives entirely from social security payments, since the farm generally does not earn a profit. The DLSE cited and fined Mr. Mok **\$6,000**. Half of the fine resulted from the DLSE inspector's error: The inspector saw Mr. Mok's wife working in the greenhouse and did not take the time to determine that she is a business owner, not an employee. Mr. Mok had to appeal

his citation, attend a hearing, and demonstrate that he and his wife are business partners to avoid a \$3,000 fine. Had Mr. Mok not received free legal aid from SELC and a volunteer attorney, he likely would not have succeeded in appealing this erroneous citation. The DLSE also fined Mr. Mok \$1,500 for failing to write his own name and address on the wage statements he provided to his live-in employee. This was an innocent mistake that resulted from using an inadequate wage statement form purchased from an office supply store. After much effort, legal research, and communication with the DLSE, SELC negotiated this portion of the fine down to \$300. Mr. Mok told SELC that if he had to pay the original \$6,000 fine, he would have to quit farming and sell his small piece of land.

**Xay Duc Hoang** is an immigrant farmer whose nephew and two long-term family friends (a married couple) live with him and work with him on the farm. The DLSE fined Mr. Hoang **\$9,000** for two mistakes on his wage statements: He wrote his "doing-business-as" name instead of his own name and he did not include the last four digits of his employees' social security numbers, because the store-bought wage statement form did not include a space for this. After more than 100 hours of legal work by SELC and a volunteer attorney, the DLSE ultimately reduced the fine to \$1,800, which we feel is still an extremely high fine for an innocent clerical error.

### Key Takeaways:

- **The DLSE is issuing citations without adequate investigation:** The DLSE's lack of adequate translation, lack of inquiry into family relationships, and unfamiliarity with laws led to erroneous citations.
- **The DLSE is cracking down on farmers for very small errors:** Even where the citations were not erroneous, the DLSE is issuing enormous fines for extremely minor errors that any person could make.
- **Defending citations is very difficult:** It is key to note that hundreds of volunteer hours went into defending the farmers. If the farmers had not found free legal help (which is very rare for such cases), they would have paid legal fees greater than the fines, themselves.
- **Employees suffer as a result:** It is also important – and ironic – to note that *employees* of these farms would have been greatly harmed by the DLSE's fines. If the farmers had paid their fines of \$6,000 or \$9,000, the farmers would have had \$6,000 or \$9,000 less money to pay employees this year.
- **Small farms are at very high risk:** If the DLSE continues to issue enormous fines for such small errors, the DLSE could easily put vast numbers of small farms out of business.

**Changes Needed:** The following changes in the DLSE's practices could both ensure increased compliance with the law, and preserve the viability of small family farms:

- Use warnings or stop orders instead of fines for first-time violations
- Reduce penalties for minor violations and for mistakes made in good faith
- Train inspection agents on identifying employer/employee relationships, particularly on family farms
- Improve translation for enforcement sweeps, citations, stop orders, and appeal instructions
- Increase quantity and accessibility of outreach and education to help small farms comply with the law

Follow SELC's work on these issues at [www.theSELC.org](http://www.theSELC.org)!