

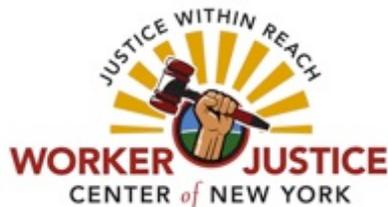
THIS PAMPHLET DOES NOT INCLUDE ALL OF YOUR LEGAL RIGHTS AND IT IS NOT LEGAL ADVICE. EVERY SITUATION IS DIFFERENT. FOR INFORMATION ABOUT YOUR SPECIFIC SITUATION, PLEASE CALL OUR OFFICE

## WHAT DOES IT MEAN TO HAVE A LAWYER?

Any conversation that you have with our office is private and protected by the law. Our clients make their own decisions about legal action and their case every step of the way. You have the right to withdraw a lawsuit at any moment if you change your mind. Our services are free.

**Contact the Worker Justice Center to receive a free and confidential consultation about your rights to:**

- Protection from job discrimination based on gender, nationality, race, or age
- Safety from domestic violence and human trafficking
- A healthy and safe workplace
- Organize your workplace



1187 Culver Rd.  
Rochester, NY 14609

9 Main St.  
Kingston, NY 12401

[www.wjcny.org](http://www.wjcny.org)  
1-800-724-7020



Rochester • Albany • Kingston



**GUIDE TO AGRICULTURAL WORKERS' RIGHTS IN NEW YORK**

**CALL US TOLL FREE: 1-800-724-7020**

**The Worker Justice Center of NY is a legal service organization that provides free legal assistance and education to farm workers and other low wage workers in New York.**

VERSION: JANUARY 2018

## YOUR PAY

- ❖ *Most* agricultural workers must be paid at least **\$10.40 per hour** for every hour worked in a week, even if paid by piece rate. Beginning in 2017, there are different minimum wages for workers in New York City, Westchester County and Long Island. Go to <https://labor.ny.gov/minimum-wage-lookup/> to determine the minimum wage that applies to you.
- ❖ If you are paid by piece rate (ex: by the bin) and at the end of the week your hourly pay averages less than \$10.40 (or the wage rate that applies to you in NYC, Westchester or Long Island) **your boss must raise your pay to at least \$10.40/hour** (or the wage rate that applies to you).
- ❖ If you were promised more than \$10.40 an hour, you must receive the pay you were promised.
- ❖ If you do the **same work** as contracted (H-2A) workers you must receive the **same pay**. The rate for the year 2018 is **\$12.83/hour**.
- ❖ You must be given a **wage stub or a pay slip** each week when you receive your pay. It must include:



- Total hours worked
- Rate of pay
- Total pay
- Number of boxes
- Piece rate
- Pay period
- All itemized deductions
- The employer's name, address, and telephone number

**If you have not been paid at the rate you were promised, or for all the hours you worked, then you were a victim of wage theft and you should call our office at 1-800-724-7020 for assistance.**

## POLICE & IMMIGRATION

In most cases, the police or immigration officials CAN question you. Keep in mind, however:

- ❶ You are only required to tell the police your name, but you do not have to answer additional questions
- ❷ You have the right to consult with an attorney before answering questions and to have an attorney present when answering questions
- ❸ If you decide to answer questions, you can change your mind and stop answering them at any time
- ❹ If you decide to answer questions or make any statements, the information you provide should be accurate and truthful

The Police CAN detain you or stop your car if:

- You violate a traffic law
- You are driving while intoxicated
- They have a specific tip about you
- You run away from them
- You tell them that you do not have your immigration papers

The police CANNOT detain you or stop your car only because:

- You do not speak English
- You are driving a car with out-of-state license plates
- You are dressed in work clothes
- Your ethnic appearance
- Your skin color



## SEXUAL HARASSMENT

You have a right to work in an environment free of sexual harassment. Sexual harassment is any unwanted sexual conduct, which includes: sexually suggestive comments; telephone calls or text messages that are sexual in nature; persistent or unwanted sexual attention; leering, whistling, or other sexually suggestive or insulting sounds or gestures; displayed pictures, calendars, cartoons, or other material with sexual content; and/or coerced sexual activity

**If you are a victim of sexual harassment, contact the Worker Justice Center of New York, at 1-800-724-7020 for assistance and information about your rights as a victim of sexual harassment.**

## EDUCATIONAL OPPORTUNITIES

Our Workplace Health and Safety Project provides **free interactive workshops and presentations** on workplace safety and legal rights issues to farmworkers and service providers.

We are available to present during evenings and weekends, and can provide workshops in Spanish or Haitian Creole. Call us to schedule a workshop. Topics include:



- Worker Rights and Protections
- Pesticide & Chemical Safety
- Dairy Farm Safety
- Help for workplace injuries

## KEEP RECORDS

You should keep written records of the hours you work each week and save your wage stubs for at least 6 years. Your record of hours worked might look like this:

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
<b>Date</b>							
<b>Start</b>							
<b>Lunch</b>							
<b>Finish</b>							
<b>Bins</b>							
<b>Totals</b>							

## DISCRIMINATION

You have the right to work without being discriminated against.

Your employer cannot treat you differently based on race, color, ethnicity, gender, sexual orientation, disability, pregnancy, creed, marital status, national origin or age.

Discriminatory behavior can be refusing to hire you, refusing to promote you, firing you, paying you differently, providing lesser or different working conditions or benefits to you, treating you differently in terms of job assignments, harassment, training or layoffs, or treating you differently than other employees in any other way

**Discrimination laws protect all workers, regardless of their citizenship and work eligibility.**

## HOUSING & CAMP CONDITIONS

- ❖ Housing provided by your employer is your home. You have the right to have anyone visit you at your home. You do not have to get the permission of the grower or crew leader to have visitors.
- ❖ A grower or crew leader needs a court order in order to evict you from your housing, even if you have been fired or you quit. **Only a judge can order you to leave your housing.** If the grower or crew leader is trying to evict you from your housing without a court order, call our office.
- ❖ Your housing must be safe and decent, and must meet all federal and state standards. In most situations, the owner of the camp must get a permit from the Health Department to run the camp and the permit must be posted at the camp.
- ❖ To enter your home, the police need one of the following:
  - A warrant
  - The permission of someone in the house
- ❖ The Police cannot enter your home:
  - Without first knocking and identifying themselves
  - Because the door is open or unlocked

**It is against the law for an employer to prevent you from having visitors to your home.**

## LIMITED ENGLISH PROFICIENCY (LEP)

Do you have difficulties understanding, writing, reading, or speaking English? Title VI of the Civil Rights Act gives people with LEP special rights. Under this law, agencies receiving federal funding must:

- ❶ Provide a free interpreter
- ❷ Translate all important documents into your language
- ❸ Let you know that they have these services available, with signs or pamphlets that say that they offer “Language Access” in their offices

## DOMESTIC VIOLENCE

You have the right not to be abused in this country. If your husband, mate, or partner is physically, verbally, mentally, psychologically, and/or sexually abusing you, you have the right to be protected from the abuse and the abuser.

In an emergency, you have the right to call 911 for police assistance. The following organizations also have advocates who can help you connect with local resources in your community:

- The National Domestic Violence 24-Hour Hotline: 1-800-799-7233
- NY 24-Hour Domestic & Sexual Violence Hotline: 1-800-942-6906
- WJCN Domestic Violence Project (non-emergencies): 1-800-724-7020



## SEXUAL ASSAULT/RAPE

Sexual assault, rape, and sexual abuse are NOT YOUR FAULT! Sexual assault, rape and sexual abuse can be verbal, visual, or anything that forces a person to join unwanted sexual contact or attention.

Sexual assault, rape, and sexual abuse are crimes, no matter if you are documented or not. Your husband, mate, or partner does not have the right to force you to do anything against your will, just because you are married to him.

If you are sexually assaulted, raped, or sexually abused, go to the hospital emergency room or your family physician immediately. Do not shower, bathe, douche, wash your hands, brush your teeth, or use the toilet. Don't change or destroy clothing. These are very important steps to take, in case you choose to contact the police and press charges against your abuser.

## CONTRACTED WORKER RIGHTS (H-2A)



### CONTRACT

If you are an H-2A worker, you should receive a copy of your contract. It has information about the work you are doing, what you should be paid, and the conditions of your job. You should receive this information in a language you understand by your first day of work.

### PAY

Your rate of pay should be written in your contract. In 2018, the rate of pay in New York for agricultural work is **\$12.83 per hour**. If you are being paid piece rate, your salary must add up to at least \$12.83 per hour. If it does not, your employer must pay the difference.



### TRANSPORTATION/VISA

You should be reimbursed for the travel costs to the farm from the place where you were recruited for the job within the first week after your arrival. You are entitled to be reimbursed for all visa costs, hotels, food and transportation. Your employer is obligated to pay for your transportation home. Always keep the receipts if you are not being reimbursed.



### ¾ GUARANTEE

By the end of the contract, your employer has to give 75% of the hours promised in the contract. If there is not enough work, the employer has to pay you for at least 75% of the hours promised.

# 75%

### TERMINATION

If you are fired and sent home without cause, your employer must still pay your transportation costs home, and fulfill the ¾ guarantee (see above)



## WORKPLACE SAFETY

- ❖ You should have access to:
  - Cool, clean drinking water with individual cups or from water fountains
  - Hand washing facilities with water, soap, and hand towels
  - Sanitary toilet facilities located near the workers
- ❖ If you work with **tractors** or **dangerous chemicals**, you have a right to be trained on how to safely use them
- ❖ If you work with **livestock**, you should be trained not only how to protect the animal but how to **protect yourself** from harm from the animal.
- ❖ You have a right to make an **anonymous complaint** with the Occupational Safety and Health Administration (OSHA) if you feel your workplace is unsafe. It is illegal for you to be fired for making a complaint. Call the Worker Justice Center for help with a complaint



## WORKING WITH PESTICIDES

The Worker Protection Standard Protects Workers from Pesticide Exposure:

- ❖ Central posting of recent pesticide applications is required.
- ❖ Workers must be notified about treated areas so they may avoid inadvertent exposures
- ❖ Personal protective equipment must be provided and maintained for handlers and early-entry workers.
- ❖ Your boss is required to provide transportation to a nearby medical facility and give information to the doctor about the specific pesticides used at your workplace. This information is very important in making sure that the doctor provides the correct treatment.
- ❖ It is your right to make a complaint about pesticide exposure without fear of retaliation or being fired.

**If you are exposed to pesticides on the job, seek medical attention immediately. To receive free help with making an anonymous complaint to the EPA following exposure, call us.**

## HUMAN TRAFFICKING

**You should not be prevented from leaving your job through force, fraud, or coercion.**

If you have experienced or are currently experiencing any of the following conditions you may be a victim of Human Trafficking:

- ❶ You were offered one job but forced to work a different job upon arrival.
- ❷ All/most of your pay goes towards paying off a debt with an employer or labor contractor.
- ❸ You are not allowed to leave your workplace or your employer-provided housing.
- ❹ You have been threatened with deportation or law enforcement action.
- ❺ You have been coached on how to talk to enforcement officials.
- ❻ You have been forced to perform sexual acts.
- ❼ You are under 18 and engaged in commercial sex.
- ❽ You are not free to contact friends and family.



If you believe you are a witness or victim to any of these conditions, contact the Worker Justice Center's Trafficking Team at [800-724-7020](tel:800-724-7020) or, in case of an emergency, call 911.

## WORKER'S COMPENSATION



If you are injured while working you have a right to receive Worker's Compensation benefits. These benefits pay for your medical care.

### To claim these benefits, you must:

- ❖ Get prompt medical care. If it is an emergency, call 911
- ❖ As soon as possible, tell your boss or the crew leader that you have been hurt and how and where it happened.
- ❖ Tell the clinic and doctor that you were injured on the job and that you would like help filing a Worker's Compensation claim (C-3). Ask for a copy of the medical report and maintain detailed written documentation of your injury, including the date, time, and location.
- ❖ File a claim form as soon as possible, but no later than 2 years after the injury. Remember, if you do not file a claim form or you allow your employer to cover your medical expenses out of pocket without filing a claim form, you will not receive insurance or legal protection for your case in the long run.

**Make sure you tell your doctor you were injured on the job. The doctor will help you with the Worker's Comp forms.**