

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 on:

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



**Worker  
Justice Center**  
*of New York*

1187 Culver Rd.  
Rochester, NY 14609  
585-325-3050

245 Saw Mill Rd. Suite 106  
Hawthorne, NY 10532  
845-331-6615

9 Main St  
Kingston, NY 12401  
845-331-6615

Find us on Facebook: [@WJCN](#) or on the web:

**1-800-724-7020**



**Worker  
Justice Center**  
*of New York*

*Dignity for every worker!*

Rochester • Hawthorne • 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 services and advocacy organization that provides free legal assistance and education to farm workers and other low wage workers in New York.

VERSION: JANUARY 2020 (1)

## YOUR PAY

- ❖ **Most agricultural workers** must be paid at least \$11.80 per hour for every hour worked in a week, even if paid by piece rate.
- ❖ 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 \$11.80 (or the wage rate that applies to you in NYC, Westchester or Long Island) **your boss must raise your pay to at least \$11.80/hour** (or the wage rate that applies to you).
- ❖ **If you were promised more than \$11.80 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 2020 is **\$14.29/hour**.

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

- ❖ 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



## ACCESS TO DRIVER'S LICENSES

The Driver's License Access and Privacy Act is scheduled to take effect in December 16<sup>th</sup> of 2019. This will allow for those without lawful status to apply for a Standard New York State Driver's License (**as class D, M, & E and non-CDL only**). This requires the same tests and fees as all other Standard License applicants.

**Please note, the license cannot be used for domestic air travel or for any other federal purpose.**

### Requirements:

- Apply for a learner's permit
- Pass a written exam
- Take a driver education course
- Pass a road test

When applying you must provide documents proving identity, age and residency. Applicants that do not have a Social Security Number (SSN) will have to sign an affidavit stating they have not been issued a SSN.

**Contact the Office for New Americans hotline for more information about how to apply? 1-800-566-7636**



## LIMITED ENGLISH PROFICIENCY (LEP)

Do you have difficulties understanding, writing, reading, or speaking English? Title VI of the Civil Rights Act gives people with Limited English Proficiency (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

## 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 **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

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



## 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 before or on your first day of work.

### PAY

Your rate of pay should be written in your contract. In 2020, the rate of pay in New York for agricultural workers on an H-2A visa is **\$14.29 per hour**. If you are being paid piece rate, your salary must add up to at least \$14.29 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.

### $\frac{3}{4}$ GUARANTEE

By the end of the contract, your employer must give 75% of the hours promised in the contract. If there is not enough work, the employer must 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  $\frac{3}{4}$  guarantee.

## DISCRIMINATION & EQUAL PAY

You have the right to work without being discriminated against. Your employer cannot treat you differently based on ethnicity, race, color, religion, gender, sexual orientation, disability, pregnancy, marital status, nationality, or age.

Discriminatory behavior can include refusing to hire you, refusing to promote you, firing you, 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.

**The prohibition on discrimination extends to all workplace benefits, including pay.** Employees must be paid equally unless the employer is able to demonstrate that pay differences are justified by a legitimate non-discriminatory reason.

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

## OVERTIME PAY



Starting on January 1, 2020, you are entitled to be paid overtime for hours worked over 60 at a minimum rate of 1.5 times your regular hourly rate. For example, if your hourly rate is \$12.50 per hour and you work 65 hours within a single work week, you are entitled to be paid \$12.50 per hour for the first 60 hours and \$18.75 per hour for the next five hours, which equals \$843.75 for the week.

If you are paid by the piece (ex: by the bin), at the end of the week your hourly pay must average at least the minimum wage rate for the first 60 hours plus an hourly rate that averages at least 1.5 times minimum wage for each hour you work over 60.

## HUMAN TRAFFICKING

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

If you have experienced any of these following conditions you may be a victim of Human Trafficking:

- ① You were offered one job but forced to work a different job upon arrival
- ② All/most of your pay goes towards paying off a debt with an employer or labor contractor
- ③ You are not allowed to leave your workplace or your employer-provided housing
- ④ You were threatened with deportation or law enforcement action
- ⑤ You were coached on how to talk to law enforcement officials
- ⑥ You were forced to perform sexual acts
- ⑦ You are under 18 and engaged in commercial sex
- ⑧ You are not free to contact friends and family



## END HUMAN EXPLOITATION

If you believe you are a witness or victim to any of these conditions, contact the Worker Justice Center's Trafficking Team at [1-800-724-7020](tel:1-800-724-7020) or, in case of an emergency, call 911.

## DOMESTIC VIOLENCE

You have the right to live free from abuse in this country. If your spouse or partner is physically, verbally, mentally, psychologically, and/or sexually abusing you, you have the right to access protections for you and your family 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
- WJCNJ Survivor Services Program (non-emergencies): 1-800-724-7020

## FAMILY PREPAREDNESS CLINICS

The Family Preparedness Clinics were created in partnership with Cornell Farmworker Program and Volunteer Legal Services Project of Monroe County to educate immigrant families about their legal rights, due to an increase in fear of family separation.

We can help you complete the following forms:



- \*Designation of Person in Parental Relationship
- \*Power of Attorney
- \*Designation of Standby Guardian
- \*Parent Permission to Travel and other forms

Bring with you a photo I.D., birth certificates and any document to prove you are the parent or legal guardian of your children.

***Important!*** We recommend that you bring the person with you to the clinic who will be designated legal guardian. The designated person must reside in New York State and be over 18 years old.

## DAY OF REST

Starting on January 1, 2020, you are entitled to at least 24 consecutive hours of rest each work week, regardless of the total number of hours you worked that week. 24 hours spent at rest because of weather or other circumstances counts as a day of rest. Your boss cannot force you to give up your day of rest or retaliate against you for exercising your right to a day of rest.

If you choose to work on your day of rest, you must be paid at least 1.5 times your hourly rate for each hour you work, regardless of how many hours you worked during the work week.

## EDUCATIONAL OPPORTUNITIES



Our Outreach and Education Program provides **free interactive workshops and presentations** on workplace safety and legal rights issues to farmworkers and services providers. We are available to present during evenings and weekends and can provide workshops in English, Spanish or Haitian Creole.

*Topics includes:*

- Know Your Employment Rights or Immigrant Rights
- Worker Rights and Protections
- Pesticide & Chemical Safety
- Dairy Farm Safety
- Help for Workplace Injuries
- Creating Health & Safety Committees

## CELL-ED

Learn English on your own time. Cell-Ed offers individual classes by phone 24 hours a day. You can use any phone to connect. The instructions are taught through phone calls and text messages.

**No internet required! To start please call:  
1-818-423-5533; Code: 66244.**

## KEEP RECORDS

You should keep written records of the hours you work each week and save your paystubs for at least 6 years. **You must be paid for every hour you worked!** Your record of hours worked might look like this:

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Date	1/5/20						
Start	6:00a						
Lunch	12-1p						
Finish	7:00p						
Total Hours	12						
Bins	12						
Total Wages	\$145						

## THE RIGHT TO ORGANIZE



Starting on January 1, 2020, you will have the right to organize in your workplace. This means you have the right to join with your fellow workers to improve your working conditions. This includes talking with your co-workers about ways to make your working conditions better, demanding those changes from your employer, or taking other forms of collective action to address problems such as wages, hours, safety, and discrimination.

You have the right to form a union and your employer cannot discourage organizing, discriminate against you for joining or being active in your union, or spy on your union activities. However, the new law also prohibits farmworkers from engaging in strikes, work stoppages, or slowdowns.

## 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, call us for assistance and information about your rights as a Survivor!**



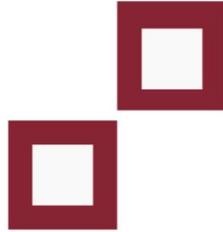
## SEXUAL ASSAULT, ABUSE & RAPE

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/wife, mate, or partner does not have the right to force you to do anything against your will or just because you are married.

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.

## 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 us.
- ❖ Your housing must be safe 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.**

## 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



## FREEDOM FROM RETALIATION



You have the right to be free from retaliation by your employer for exercising or attempting to exercise your labor rights. Retaliation includes firing, threatening, penalizing, or in any other manner discriminating against you. It also includes contacting or threatening to contact the United States immigration authorities, or threatening to report or reporting your immigration status, or a family member, or a household member's immigration status to a federal, state or local agency.

## WORKING WITH PESTICIDES



The Worker Protection Standard Protects Workers from Pesticide Exposure by requiring employers to provide the following:

- ❖ A central posting of recent pesticide applications.
- ❖ Notification to workers about treated areas so they may avoid inadvertent exposures.
- ❖ Personal Protective Equipment (P.P.E.) for handlers and early-entry workers.
- ❖ An ample supply of water, soap, and towels for routine washing and emergency decontamination.
- ❖ Training for all workers and handlers and a pesticide safety poster must be displayed.
- ❖ Transportation to a nearby medical facility and 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 or call 911. To receive free help with making an anonymous complaint following an exposure, to the Environmental Protection Agency (EPA) or Department of Environmental Conservation (DEC), CALL US! Or contact the DEC at 1-800-847-7332.**

## 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, and in some cases, lost wages due to the injury.

**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 the injury 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 C-3 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 if 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.**

**Advocate for Injured Workers  
328 State St. Schenectady, NY 12305  
Phone: 1-877-632-4996  
email: [advinjwkr@wcb.ny.gov](mailto:advinjwkr@wcb.ny.gov)**