

Farmworker Health in Environmental Justice Policy

*Adapted from Farmworker Health in Environmental Policy by Olivia St. Pierre.*¹

I. Overview

Farmworkers are a distinct environmental justice community that face a myriad of justice issues while performing an occupation that is essential to the daily operations and security of the United States. Farmworkers lack the labor and environmental protections assured to workers in other industries, experience food insecurity and unsafe housing conditions, and many are likewise without access to affordable and convenient healthcare services. The true gravity of the risks faced by farmworkers is obscured due to systematic racism, fractured immigration policy, and underreporting in public health analysis.

Migrant and seasonal agricultural workers (“farmworkers”)² in the United States face systemic mistreatment and a myriad of justice issues while performing the essential occupation³ of harvesting food.⁴ While farmworkers make up the backbone of the American food system, they are frequently subject to labor rights violations, poor working and living conditions, significant exposures to pesticides, heat stress exposure, and other undue environmental and occupational hazards.⁵ The true gravity of the risks faced by farmworkers is obscured due to systematic racism, fractured immigration policy, and underreporting in public health analysis.⁶

Farmworkers are an Environmental Justice Community.⁷ *Environmental Justice Communities*, as defined by the U.S. Environmental Protection Agency (EPA), are communities where there is: (1) disproportionate exposure to environmental hazards and (2) increased vulnerability to said hazards.⁸ The EPA further defines *Overburdened Communities* as “Minority, low-income, tribal, or indigenous populations or geographic locations in the United States that

¹ Olivia St. Pierre, Farmworker Health in Environmental Justice Policy, Vermont Law School (unpublished advanced writing requirement) (on file with Vermont Law and Graduate School Environmental Justice Clinic), *available at* <https://drive.google.com/file/d/1lkGiC0JUXfOCEHHk4Z9YvSoEPoISiu6c/view>.

² The terms “farmworkers” and “agricultural workers” may be used synonymously to describe people hired as laborers in the agricultural industry. *Id.*

³ The CDC identifies “essential workers” as those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the United States (U.S.). During the COVID-19 pandemic, the CDC’s Advisory Committee on Immunization Practices Frontline identified three subsets of essential workers: Essential Healthcare Workers (1a), Essential Non-Healthcare Workers (1b), and Other Essential Workers (1c). Agricultural and Food Production workers are considered essential under category 1b due to a heightened exposure risk to SARS-CoV-2 due to their work-related duties often being performed in close proximity (<6 feet) to coworkers. Centers for Disease Control and Prevention (CDC), *Interim List of Categories of Essential Workers Mapped to Standardized Industry Codes and Titles*, <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html> (last visited July 25, 2022).

⁴ C. D. Thompson & M. F. Wiggins, *The Human Cost of Food: Farmworkers’ Lives, Labor, and Advocacy* (2002).

⁵ Rebecca Berkey, *Environmental Justice and Farm Labor* (2017).

⁶ Bonnar Prado, *supra* note 6.

⁷ Thomas A. Arcury & Sara A. Quandt, *Pesticide Exposure Among Farmworkers and Their Families in the Eastern United States: Matters of Social and Environmental Justice*, *Latino Farmworkers in the Eastern United States: Health, Safety, and Justice*, p.103-129 (Jan. 9, 2009).

⁸ E.O. 12898.

potentially experience disproportionate environmental harms and risks. This disproportionality can be a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors.”⁹ While many environmental justice communities are defined in geographical terms, some (such as people with disabilities, farmworkers, and other disadvantaged social groups) are geographically dispersed. Farmworkers dispersed across the United States collectively form an identifiable environmental justice community, facing disproportionate exposure to environmental and chemical hazards, increased occupational vulnerabilities, and a lack of access to process.

Farmworkers are particularly vulnerable to cumulative impacts within their occupational roles and in their communities. The EPA describes increased vulnerabilities attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations.¹⁰ When multiple environmental and socioeconomic stressors compound, they often act cumulatively and contribute to persistent environmental health disparities.¹¹ For farmworkers, socioeconomic stressors interact with the cumulative environmental and occupational harms experienced by this community and have a profound impact on one’s ability to access healthcare resources and public services.

II. State Law Snapshot: Farmworkers Rights

Few states have frameworks in place to provide environmental justice remedies to farmworkers. California and Washington are the only two states that have expanded pesticide requirements.¹² Only four states offer overtime pay benefits for agricultural workers - California, Colorado, Washington, and New York. Because federal laws have long excluded farmworkers from labor, wage, and hazard protections, and states have liberty to govern labor and pesticide regulations for themselves, it is up to state governments to take the initiative to lead by example and broaden protections for their farmworkers.

A. California

⁹ Environmental Protection Agency (EPA), *EJ 2020 Glossary*, <https://www.epa.gov/environmentaljustice/ej-2020-glossary#:~:text=Disproportionate%20Effects%20%2D%20Term%20used%20in.income%20populations%20or%20indigenous%20peoples> (last visited July 25, 2022).

¹⁰ EPA, *supra* note 11.

¹¹ *Id.*

¹² Farmworker Justice, *Occupational and Environmental Health*, https://www.farmworkerjustice.org/advocacy_program/occupational-and-environmental-health/ (last visited July 29, 2022).



State Snapshot: California

Farmworker Minimum Wage: \$15 for companies with more than 26 workers, and \$14 for companies with less than 25 workers. H-2 employees additionally must earn wages no lower than the Adverse Effect Wage Rate (*see Glossary*), which was \$14.77 in 2021.

Overtime Pay: Yes, for hours worked after 8 hours / day or 40 hours / week at companies with more than 26 workers.

Mandatory Rest Period / Hours Cap: In 2020, the state established a mandatory 24-hour consecutive rest period to be included per calendar week.

Health Insurance / Access to Medical Care: Yes, state-funded Medi-Cal Medicaid for low-income individuals regardless of immigration status under 26 years old.

Heat Protection: Employers must establish a “Heat Stress Protection Program” with plans for two temperature tiers per OSHA, and provide at least one-quarter of clean drinking water to employees for each hour worked under Cal. Labor Code §3395

Pesticide Regulations: Promulgated by California Department of Pesticide Regulations

Drivers Licenses for Undocumented Workers: Yes.

Housing: Farmworker Housing ordinances are set on a county-by-county basis, but generally must comply with county and state building codes.

Farmworker Advocacy Groups: Countless! [Center for Farmworker Families](#), [La Cooperativa Campesina](#), [House Farm Workers!](#), and [United Farm Workers](#) to name a few.

B. Colorado



State Snapshot: Colorado

Farmworker Minimum Wage: \$12.56 an hour

Overtime Pay: Yes, for hours worked over 60 hours / week through December 31st, 2022, and an extra hour of pay on days worked more than 15 consecutive hours.

Mandatory Rest Period / Hours Cap: Mandated 10-minute break every two hours on days with “increased risk conditions” (*see Appendix A*).

Health Insurance / Access to Medical Care: No health insurance for undocumented workers, documented workers eligible for Medicaid under state law and the Affordable Care Act. The state also guarantees a “Right to see Healthcare Providers”.

Heat Protection: No formal declaration; mandated breaks, shade, and water must be provided to workers on days with “increased risk conditions”.

Pesticide Regulations: Pesticide Act, Title 35, Article 9, C.R.S

Drivers Licenses for Undocumented Workers: Yes.

Housing: Must comply with state building codes.

Farmworker Advocacy Groups: [Colorado Farmworkers](#)

C. New York



State Snapshot: New York State

Farmworker Minimum Wage: \$13.20 throughout the state, \$15 in NYC, Long Island, and Winchester County.

Overtime Pay: Yes, for hours worked over 60 hours / week.

Mandatory Rest Period / Hours Cap: In 2020, the state established a mandatory 24-hour consecutive rest period to be included per calendar week.

Health Insurance / Access to Medical Care: Though the state currently has no health insurance offered to undocumented workers, the pending bill “Coverage For All”, which was introduced to the state legislature in 2022, would create a state-funded health coverage for individuals who earn up to 200% of the federal poverty line including undocumented folks.

Heat Protection: None as of May 2022.

Pesticide Regulations: Regulations promulgated by the Bureau of Pesticides Management within the Department of Environmental Conservation.

Drivers Licenses for Undocumented Workers: Yes.

Housing: Standards are set forth in the NYCRR Part 15 – Migrant Farmworker Housing.

Farmworker Advocacy Groups: [Worker Justice Center of New York](#), [Cornell Farmworker Program](#), and [Rural Migrant Ministry – Justice for Farmworkers Campaign](#).

D. Washington



State Snapshot: Washington

Farmworker Minimum Wage: \$14.49, and \$12.32 for minors under 16 years.

Overtime Pay: Yes, for hours worked over 55 hours / week through December 31st, 2022. Dairy workers have been entitled to overtime for hours worked over 40 hours since 2020.

Mandatory Rest Period / Hours Cap: All workers must be allowed a paid rest period, free from duties, of at least 10 minutes for every 4 hours worked. Employers may not restrict restroom use to during rest periods.

Health Insurance / Access to Medical Care: Two limited state-funded programs for undocumented individuals. **Medical Care Services** provides insurance to individuals who already qualify for State Family Needs – Survival of Certain Crimes, Housing and Essential Needs (HEN), or Aged, Blind, and Disabled (ABD) cash programs. **Alien Emergency Medical** provides individuals with a “qualifying emergency medical condition” such as emergency room care, a cancer treatment plan, dialysis, and COVID-19 testing, with corresponding coverage.

Heat Protection: Temporary Emergency Heat and Smoke rules promulgated by the Department of Labor and Industries were put into place for 180 days in 2021 and are expected to take effect again in 2022. The emergency heat stress rule also extend the mandatory rest period to provide shade and a 10-minute cooldown period every two hours when temperatures reach above 100 * F.

Pesticide Regulations: Pesticide Control Act and Pesticide Application Act.

Drivers Licenses for Undocumented Workers: Yes.

Housing: Housing must meet building construction standards set forth in W.A. Admin. Code 246-359, and have county-approved water supply, sewage, and waste disposal.

Farmworker Advocacy Groups: [Laurel Rubin Farmworker Justice Project](#), [Northwest Justice Project – Farmworker Unit](#), [Community-to-Community Development](#).

While these snapshots give a general overview of farmworker protections and environmental justice in California, Colorado, New York State, and Washington, other states are

in the process of reconciling their laws to reflect equitable protections for farmworkers. Farmworker Justice has an interactive map that breaks down farmworker rights under state employment laws that visualizes wage and overtime requirements as well as workers compensation.¹³

III. Emerging Issues and Future Trends

Many emerging issues and future trends impact farmworkers. One issue farmworkers face is shortcomings with data collection. Due to the varying legal status of farmworkers in the U.S., and other barriers to survey such as language access, rural positionality, and distrust towards outsiders, it is difficult to obtain quantitative data that reflects the true demographics of the farmworker population in the U.S. A second issue farmworkers face is barriers to public participation. Most notably, language access and transportation are the most profound barriers that farmworkers encounter, especially undocumented individuals. The third major issue that farmworkers face falls under the umbrella of occupational hazards. Pesticide exposure and their cumulative impacts, heat stress, lack of labor safeguards, and adverse impacts on the social determinants of health are among the most serious cross cutting issues contributing to occupational hazards.

¹³ Farmworkers Justice, *Farmworkers' Rights Under State Employment Laws: An Interactive Map*, <https://www.farmworkerjustice.org/general-map/> (last visited July 29, 2022).