



February 10, 2016

## **Ag Employer Labor Update From NCAE Annual Meeting 2/2-4, 2016.**

### General issues and concerns for 2016 and beyond:

- Low probability of any meaningful legislation to alleviate the immigration/work-eligibility issues around current workforce. In election year--- few/none willing to be “on point” for us in either house on hot-button issues.
- Growers/producers cannot continue to wait for a “home-run” on immigration reform-- need some forms of relief now.
- Ag Workforce Coalition (AWC) continues to be seen as positive and unprecedented coming-together of ag groups. Important to continue and maintain. Important that short-term mitigations/fixes with Congress detract from long-game. Working together with AWC to address.
- In 2015 NCAE submitted substantive public comment on --- fed. regulatory proposals. Several regulatory proposals or new enforcement priorities have already been put into place in 2016 (i.e. MOU between Wage & Hour and Justice) and we expect a “flood” of new regulation between now and June prior to end of current Administration (legacy building.) 2015 reg proposals NCAE commented on include:
  - Pesticide Worker Protection Standard (EPA) (impact in 2017)
  - Pesticide Applicator Certification Standard (EPA) (impact in 2017 or 2018)
  - Overtime rules (and exempt worker salary threshold) (DOL) (impact in 2016)
  - Written questions to DOL OFLC every quarter. (Immediate impact.)
  - Changes to Agricultural Worker Housing Standards (DOL) (impact 2017)
  - Changes to OSHA reporting requirements (OSHA) (impact 2016)
- Activists and Unions are working Congress, Administration, and agencies hard--- coupled with recent media (Buzzfeed and others) they have worked to position ag employers as traffickers, abusers, etc. --- this has raised concern among some congressional staff. Activist community appears poised to be more active at state level in 2016 and we have cause to be concerned for increased levels of litigation.
- DOL Wage and Hour (Jim Kessler presented and we have with others including Administrator Weil):
  - Will push joint-employment envelope farther,
  - Expect W&H investigation if an accident or negative press,
  - Are meeting with supply-chain partners at high levels to “encourage” stewardship programs to include labor issues,

**525 9<sup>th</sup> Street, NW  
Washington, DC 20004  
202-629-9320**

- Will continue to target agriculture as one of 3 or 4 industries they consider to be “repeat” offenders, they will continue to audit us aggressively,
- May push “hot-goods” attempts again (they will not agree to de-prioritize),
- Claim 80% “violations” in ag audits---
- Want to do more “outreach.”
- In response, we (NCAE) will include significant Wage & Hour compliance training/education in all upcoming meetings.
- OSHA (DOL.) New OSHA reporting requirements not widely understood in ag community. Larger growers/producers with professional HR components are up-to-speed, smaller ones generally unaware of 8 hr. reporting for illness, injury, death.
  - OSHA moving much more aggressively to inspect agricultural work-places. NCAE preparing “how to comply with OSHA visit” paper.

### H-2A and H-2B issues

- H-2A, the only legal ag foreign worker program, has more than doubled the past 5 years (about 140,000 workers in 2015) but still 10% or less total workers.
- H-2A expected to grow at 20%+ per year--- unless/until California accesses sufficient housing for major increase (see WA State growth rate--- CA would dwarf that)--- if housing resolved, CA could double H-2A in 2 years--- critical concern that current management by DOL, USCIS, and State could not accommodate.
- All three agencies aware of performance/capacity issues--- CIS and State adding resources --- DOL says budget issues prevent--- currently 30 day delays for H-2B.
- H-2B is non-ag, but many ag-related (“near-green”) and due to litigation, regulatory re-write, and federal staffing is currently in huge backlog--- both employers AND federal agencies are concerned H-2B backlog will damage H-2A processing---
- DHS visa waiver change (effective 2/19) may impact employers of Caribbean H-2As.
- Absconding is growing H-2A issue some businesses--- long story--- trying to get USCIS and State to enforce rule--- if let-go, entire program basis at risk.
- NCAE has list of H-2A issues/concerns to work on now (plus long-term legislative priorities--- including getting administration of program out of DOL.)
- California H-2A employers experiencing costly delays already (Chi processing and USCIS timeliness--- )
- AWC currently discussing short-term actions--- particularly ways to get agencies to process more timely---
- State Department has improved processing capacity at several embassies including Monterrey--- interview waivers are possible for returning workers---
- Next DOL OFLC quarterly H-2A/B stakeholder meeting is Feb. 23--- we have submitted questions---
- NCAE continues weekly H-2A Committee conference calls for NCAE Members.

Thanks to 2016 NCAE Meeting Sponsors and Presenters:

NCAE President: Fred Leitz, Leitz Farms

NCAE Vice-President: Joe Young, New England Apple Council

NCAE Treasurer: Jon DeVaney, Washington State Tree Fruit Association

NCAE Secretary: Diane Kurrel, U.S. Apple Association

Speaker: Dale Moore, Executive Director Public Policy, American Farm Bureau.

Speaker: Kam Quarles, Dir. Legislative Affairs, McDermott Will & Emery, LLP.

Speaker: Mary Alice Denis, Mgt. & Program Analyst for Outreach, USCIS.

Speaker: Jim Kessler, Chief, Immigration & Enforcement Policy, US DOL Wage & Hour.

Speaker: Lynn Jacquez, Principal, CJ-Lake LLC.

Speaker: Chris Schulte, Associate, CJ-Lake LLC.

Speaker: US Senator Thom Tillis (R-NC.)

Speaker: John Kran, Legislative Director, MI Farm Bureau.

Speaker: Paul Meador, President, Everglades Harvesting.

Speaker: William Thompson, Acting Administrator. US DOL OFLC

Speaker: Brian Pasternak, Dir. Temporary Programs, US DOL OFLC

Speaker: Fred Troncone, Senior Advisor, Office of the Ombudsman to USCIS.

Speaker: Carrie Anderson, Assistance Chief of Casework, Office of Ombudsman to USCIS.

Speaker: John Larrea, Visa Chief, Monterrey, US Department of State.

Speaker: Erin Williams, Visa Policy Analyst, US Department of State.

Speaker: Peter Feather, Ag Labor Affairs Coordinator, Office of the Chief Economist, USDA.

Speaker: Troy Frostad, HR Manager, Underwood Fruit & Warehouse Company

Speaker: Jeanne Malitz, President, Malitzlaw

Speaker: Mike Carlton, Director of Labor Relations, FL Fruit & Vegetable Association

Speaker: Libby Whitley, President, MAS Labor H2A LLC

Speaker: Frank Gasperini, Executive Vice President of NCAE

Sponsor: Leitz Farms

Sponsor: MAS Labor H2A LLC

Sponsor: Russell Costanza Farms

Sponsor: A. Duda & Sons

Sponsor: CJ Lake LLC

Sponsor: Labor Consultants International

Sponsor: FL Fruit & Vegetable Association

Sponsor: New England Apple Council

Sponsor: UnitedAg

Sponsor: Snake River Farmers Association

Sponsor: Farm Credit East

Sponsor: Ginny Muilenburg

Plan to join us in Las Vegas 11/30-12/2/16 for our 3<sup>rd</sup> Ag Employer's Labor Forum on these issues and more. We are looking for sponsors to help plan and promote the event and drive registration. ([Frank@NCAEonline.org](mailto:Frank@NCAEonline.org) , 202-579-0171 mobile.)

**525 9<sup>th</sup> Street, NW  
Washington, DC 20004  
202-629-9320**