

# Many lessons learned during winter meeting season



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Many of us, including me, have just concluded the winter meeting season. Since the beginning of the year, I have had the privilege of participating in no fewer than four annual meetings, counting my own NCAE meeting in Washington, D.C. Also included have been the American Honey Producers Association, Agricultural Safety and Health Council of America, and your own USCHI meeting in Omaha. Every year I am reminded of the optimism of American agriculture: No matter how difficult the economy, weather, labor availability concerns, or other worries, all of you are looking forward to the next season with hope and plans to have a great year despite the obstacles.

We learned many things at these meetings, including the expectation that the U.S. Department of Labor Wage and Hour Division will continue to follow agricultural employers closely. WHD officials told us that when they investigate agricultural employers, they write at least one violation 80 percent of the time. We are considered one of three or four industries with high violation rates, so WHD will focus on us again this year. We also know that WHD will be looking to apply joint-employer status everywhere they can during their enforcement actions, so it is increasingly important to harvesters relative to any contractors you hire and to the growers and others you work with that the work relationships be clearly spelled out in your contracts and carefully adhered to.

We also learned that OSHA will be increasingly involved in agricultural businesses. The federal Occupational Safety and Health Act, also called OSHA, requires employers to provide a safe working environment for employees. One key change to OSHA regulations that you must know about and be prepared to comply with as employers is that

you are required to report to OSHA any workplace fatality within eight hours of its occurrence. Yes, WITHIN EIGHT HOURS. You are required to report all work-related inpatient hospitalizations, amputations, and losses of an eye within 24 hours. In other words, if someone ends up in the hospital from a work-related injury or illness, you are required to report that to OSHA within a day. While we do not know all the avenues through which OSHA learns of these incidents if you do not report them, we do know through stories shared by farmers across the country that OSHA has increasingly shown up on farms that had deaths or hospitalizations weeks and even months after the fact and cited them for failure to report as well as for any current or ongoing safety violations. It is important to report as required.

NCAE is completing a white paper on how to comply with OSHA inspections. Work-related injuries are often a family tragedy to start with, and citations and fines months after the fact just seem like piling on and are something to be avoided. Because it is hard to remember everything, particularly in the face of an emergency, we recommend that you put a copy of the reporting page in the attached link in your notebook or other records that you keep for emergency response with you to remind you of processes and reporting requirements for your daily business needs. Visit the website [www.osha.gov/recordkeeping/](http://www.osha.gov/recordkeeping/) to see OSHA recordkeeping requirements.

An additional lesson learned about OSHA inspectors is that when they arrive, you will need to plan to work with them at that time. As safety enforcement agents, they generally have business access on demand.

We learned that employment of H-2A visa holders increased last year and will grow again in 2016. We also learned that the U.S. Department

of Labor is experiencing significant delays processing H-2B visas as I write, and there is not cause for optimism that they will not encounter similar delays for H-2A processing in the spring. What this means for harvesters hiring H-2A visa holders is that you need to be proactive from Day 1. Start with an agent who has a track record of success getting harvesters their workers. Work closely with that agent, and do not delay calling for more help early in the process. You must not hesitate to call on your congressional representatives quickly if advised to do so by your agent. If the process bogs down again this year, history suggests that the squeaky wheels get the help — so don't wait! Ask for help. To quote one of the lawyers many of you have worked with or heard speak at your meetings, "A stitch in time saves nine."

Remember that government at all levels increasingly depends on fines and sanctions for funding, and the enforcement agencies progress and agents at all levels advance in their careers by taking action.

No matter how busy the harvesting season gets, a basic and growing part of your business success will hinge on how well you comply with a huge array of federal, state, and local regulations. To comply, you have to understand, and to succeed, your records must clearly support your compliance. The world has changed, good intentions are no longer enough to sustain a business model, and every one of us who runs a small or large business must include a significant regulatory compliance and recordkeeping component. The paper-pusher in us is now as important to business success as our knowledge and experience in the trade and our capitalization. Like it or not, it just is. Those who can accept and assimilate this will be the ones still in business in coming years.