

## Wage and Hour Division, Labor

## § 500.30

contemplated to continue indefinitely, is not temporary.

(3) *On a seasonal or other temporary basis* does not include the employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.

(4) *On a seasonal or other temporary basis* does not include the employment of any worker who is living at his permanent place of residence, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for his employer and is not primarily employed to do field work.

(t) *Secretary* means the Secretary of Labor or the Secretary's authorized representative.

(u)(1) *Solicitor of Labor* means the Solicitor, United States Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under these regulations.

(2) *Associate Solicitor for Fair Labor Standards* means the Associate Solicitor, who, among other duties, is in charge of litigation for the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(3) *Regional Solicitors* means the attorneys in charge of the various regional offices of the Office of the Solicitor.

(v) *State* means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam. *State agency* means a State agency vested with all powers necessary to cooperate with the U.S.

Department of Labor for purposes of entering into agreements to carry out the Act as provided in section 513 thereof.

(w) *Temporary nonimmigrant alien* means a person who has a residence in a foreign country which he does not intend to abandon and who comes temporarily to the United States, with approval of the Attorney General, to perform temporary service or labor.

(x) The *Wagner-Peyser Act* is the Act of June 6, 1933 (48 Stat. 113; codified in 29 U.S.C. 49 *et seq.*), providing, inter alia, for the establishment of the U.S. Employment Service. *Employment Service of the various States* means a State agency vested with all powers necessary to cooperate with the U.S. Employment Service under the Wagner-Peyser Act.

(y) The *Immigration and Nationality Act* (INA) as amended by the *Immigration Reform and Control Act of 1986* (IRCA) to effectively control unauthorized immigration to the United States and for other purposes, is set out in 8 U.S.C. 1101 *et seq.*

[48 FR 36741, Aug. 12, 1983; 48 FR 38374, Aug. 23, 1983, as amended at 54 FR 13329, Mar. 31, 1989; 56 FR 54708, Oct. 22, 1991; 62 FR 11747, Mar. 12, 1997]

### APPLICABILITY OF THE ACT: EXEMPTIONS

#### § 500.30 Persons not subject to the Act.

(a) *Family business exemption.* Any individual who engages in a farm labor contracting activity on behalf of a farm, processing establishment, seed conditioning establishment, cannery, gin, packing shed, or nursery, which is owned or operated exclusively by such individual or an immediate family member of such individual, if such activities are performed only for such operation and exclusively by such individual or an immediate family member, but without regard to whether such individual has incorporated or otherwise organized for business purposes.

(b) *Small business exemption.* Any person, other than a farm labor contractor, for whom the man-days exemption for agricultural labor provided under section 13(a)(6)(A) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(6)(A)) is applicable. That exemption applies to an agricultural employer who did not, during any calendar quarter of the preceding calendar year, use more man-days of agricultural labor than the limit specified under that statute.

(1) Currently the limit for exemption is 500 man-days.

(2) A *man-day* means any day during which an employee performs agricultural labor for not less than one (1)

hour. Agricultural labor performed by an employer's parent, spouse, child, or other member of his immediate family, i.e., step-children, foster children, step-parents and foster parents, brothers, and sisters is not counted as man-days.

(3) The man-days of agricultural labor rendered in a joint employment relationship are counted toward the man-days of such labor of each employer for purposes of the man-day test of this exemption.

(c) *Common carriers.* Any common carrier which would be a farm labor contractor solely because the carrier is engaged in the farm labor contracting activity of transporting any migrant or seasonal agricultural worker. A "common carrier" by motor vehicle is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, State or Federal agency.

(d) *Labor organizations.* Any labor organization, as defined in section 2(5) of the Labor Management Relations Act (29 U.S.C. 152(5)) (without regard to the exclusion of agricultural employees in that Act) or as defined under applicable State labor relations law.

(e) *Nonprofit charitable organizations.* Any nonprofit charitable organization or public or private nonprofit educational institution.

(f) *Local short-term contracting activity.* Any person who engages in any farm labor contracting activity solely within a twenty-five mile intrastate radius of such person's permanent place of residence and for not more than thirteen weeks per year.

(1) *Twenty-five mile intrastate radius* as used in section 4(a)(3)(D) of the Act means that engagement in a farm labor contracting activity may not go beyond a twenty-five mile intrastate geographical radius. Once this limit is transcended, the exemption no longer applies and the person becomes subject to the requirements of the Act. If, for example, a person or his employee solicits workers from a distance greater than twenty-five miles from his permanent residence or from across a State line, then the person has engaged in a named activity outside of the per-

mitted scope of the exemption, and is subject to the requirements of the Act. A person who uses lines of communication (such as U.S. Mail, telephone, or advertising) to recruit, solicit, hire, or furnish workers over a distance greater than twenty-five miles from his permanent residence or from across a State line for agricultural employment is also engaged in a named activity beyond the specified limit of the exemption and is subject to the Act. In the case of a corporation its permanent place of residence for these purposes shall be a single designated location.

(2) *For not more than thirteen weeks per year* as used in section 4(a)(3)(D) of the Act means that farm labor contracting activities may not be engaged in for more than thirteen weeks in a year. This does not mean, however,

that persons who engage in intrastate and short-range farm labor contracting activities are exempt for the first thirteen weeks of their farm labor contracting activities each year. The number of weeks of contracting activity during the prior year is also a factor. When the limit of weeks for the exemption is exceeded in a calendar year, the person is subject immediately to the Act and is also presumed subject to the Act in the next calendar year, unless it can be shown that the tests of section 4(a)(3)(D) are met.

(g) *Custom combine.* Any custom combine, hay harvesting, or sheep shearing operation. *Custom combine, hay harvesting, and sheep shearing operation* means the agricultural services and activities involved in combining grain, harvesting hay and shearing sheep which are provided to a farmer on a contract basis by a person who provides the necessary equipment and labor and who specializes on providing such services and activities.

(h) *Custom poultry operations.* Any custom poultry harvesting, breeding, debeaking, desexing, or health service operation, provided the employees of the operation are not regularly required to be away from their permanent place of residence other than during their normal working hours.

(i) *Seed production exemption.* (1) Any person whose principal occupation or

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business is not agricultural employment, when supplying full-time students or other individuals whose principal occupation is not agricultural employment to detassel, rogue, or otherwise engage in the production of seed and to engage in related and incidental agricultural employment, unless such full-time students or other individuals are required to be away from their permanent place of residence overnight or there are individuals under eighteen years of age who are providing transportation on behalf of such person.

(2) Any person to the extent he is supplied with students or other individuals for agricultural employment in accordance with paragraph (i)(1) of this section by a person who is exempt thereunder.

(j) *Shade grown tobacco.* (1) Any person whose principal occupation or business is not agricultural employment, when supplying full-time students or other individuals whose principal occupation is not agricultural employment to string or harvest shade grown tobacco and to engage in related and incidental agricultural employment, unless there are individuals under eighteen years of age who are providing transportation on behalf of such person.

(2) Any person to the extent he is supplied with students or other individuals for agricultural employment is accordance with paragraph (j)(1) of this section by a person who is exempt thereunder.

(k) *Employees of exempt employers.* Any employee of any person described in paragraphs (c) through (j) of this section when performing farm labor contracting activities within the scope of such exemptions and exclusively for such person.

### Subpart B—Registration of Farm Labor Contractors and Employees of Farm Labor Contractors Engaged in Farm Labor Contracting Activities

#### REGISTRATION REQUIREMENTS; GENERAL

##### § 500.40 Registration in general.

Any person who desires to engage in any activity as a farm labor contractor, as defined in the Act and these

regulations, and is not exempt, is required first to obtain a Certificate of Registration authorizing each such activity. Any employee of a registered farm labor contractor who performs farm labor contracting activities solely on behalf of such contractor, and who is not an independent contractor, must obtain a Farm Labor Contractor Employee Certificate of Registration authorizing each such activity. The employee's certificate must show the name of the farm labor contractor for whom the activities are to be performed. The contractor whose name appears on the employee's certificate must hold a valid Certificate of Registration covering the entire period shown on the employee's certificate.

##### § 500.41 Farm labor contractor is responsible for actions of his farm labor contractor employee.

(a) A farm labor contractor is responsible for assuring that every employee who is performing farm labor contracting activities on behalf of such contractor has obtained either a Farm Labor Contractor Employee Certificate of Registration or a Certificate of Registration as an independent farm labor contractor, as required by the Act and these regulations, prior to such employee's engagement in any activity enumerated in section 3(6) of the Act. A farm labor contractor who utilizes the services of another farm labor contractor who is not his employee must also comply with the provisions of § 500.71. The farm labor contractor is responsible for any violations of the Act or these regulations committed by his employee, whether or not the employee has registered as required by the Act.

(b) A Farm Labor Contractor Employee Certificate of Registration is valid only during the period in which the holder is an employee of the registered farm labor contractor named on the Farm Labor Contractor Employee Certificate. If prior to the expiration of the Employee Certificate, the holder, through a change in employment, should become an employee of a different registered farm labor contractor, a replacement Employee Certificate which names the new employer may be obtained by submitting to the