

LABOR ISSUES IN FULL BLOOM THIS SPRING FOR CALIFORNIA AGRICULTURE EMPLOYERS: HERE'S WHAT YOU NEED TO KNOW

Insights
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California employers in the agriculture industry are facing challenges this spring after two major developments last month. First, new rules took effect requiring employers to provide a special written notice to H-2A employees. Second, farmworker allegations came to light regarding union organizers' coercion and misuse of federal funding benefits. We'll give you the key points you need to know about these latest developments and what you should do next.

California's New Notice Requirements for Agricultural Employers

Gov. Gavin Newsom signed legislation last year making changes to the state's "wage theft notice" requirements. We'll break down what the notice is, how it changed, and how it impacts agricultural employers.

What's the Wage Theft Notice?

Since 2012, the [Wage Theft Prevention Act](#) has required California employers to provide a written notice containing certain information to each nonexempt employee at the time of hire. Initially, the law only required the notice to contain basic wage and hour information, but amendments to the law have expanded what the notice must cover.

What Changed?

[AB 636](#) was enacted in October 2023 and amended the Wage Theft Prevention Act by requiring:

Related People



Rebecca Hause-Schultz
Partner

[916.210.0391](tel:916.210.0391)



Alden J. Parker
Regional Managing Partner

[916.210.0404](tel:916.210.0404)

- **all employers** to include additional information in the wage theft notice regarding the existence of a federal or state disaster declaration applicable to any county in which the employee will work; and
- **agricultural employers** to provide a new supplemental notice to California farmworkers admitted through the federal H-2A agricultural visa program.

The legislature stated that the new requirements for H-2A employers were needed because the number of foreign agricultural workers admitted to the state is dramatically increasing, and many of those workers do not speak English and are not familiar with their basic legal rights.

When Do the Changes Take Effect?

AB 636 generally took effect on January 1, 2024. But H-2A employers operating in California were required to give workers a copy of a supplemental notice template developed by the Labor Commissioner beginning on March 15, 2024.

The California Department of Industrial Relations (DIR) published the template – [which you can find here](#) — just days before that requirement took effect.

How Has the Industry Responded to the New Supplemental Notice Requirement?

The DIR’s Supplemental Notice raised concerns for industry stakeholders and industry groups because it contains inaccuracies. Fisher Phillips’ Agricultural Team worked with industry leaders to write a letter to the DIR demanding immediate changes to the Supplemental Notice due to the confusion it will create in the H-2A workforce as a result of its:

- inaccurate information about “wage rights” such as compensable travel time, meal periods, and paid sick leave accruals;
- confusing language regarding mandatory employer-provided meals and an employer’s ability to make deductions from a worker’s wages for those meals;
- mislabeling H-2A employees who live in employer-provided housing as “tenants” rather than “licensees” and



Joshua H. Viau

Co-Regional Managing Partner

404.240.4269

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incorrectly stating that those employees have rights as tenants; and

- inappropriately including contact information of “nongovernmental organization” advocacy groups.

What's Next?

We hope the DIR will publish a revised notice sometime soon. But until then, you should work with your legal counsel to ensure compliance with this requirement.

Union Organizers Target Farmworkers in California

The National Council of Agricultural Employers (NCAE) [issued a press release last month](#) regarding new allegations involving unions and advocacy groups.

What Happened?

California farmworkers claimed that they were tricked into signing a union card to receive the \$600 relief payment for which they were eligible through the U.S. Department of Agriculture's Farm and Food Worker Relief (FFWR) Grant Program, according to the NCAE's press release. The FFWR Grant Program began in March 2023 and was designed to help farmworkers defray expenses they incurred related to the COVID-19 pandemic.

The union organizers may have targeted California farmworkers due to the [state's new card check law](#), which took effect last year and made it much easier for agricultural workers to organize into unions. Last year, farmworkers in New York – another state with an agricultural card check law – made nearly identical allegations regarding organizers misusing the FFWR Grant Program to trick workers into signing union authorization cards.

What's Next?

Agricultural employers should be on notice that labor organizing groups are using federal funding benefits to promote their services to your employees. You should also expect union organizers to continue sweeping efforts to unionize using card checks. You should act now to develop management training sessions on current practices in organizing – especially if you are located in California or New York – and be prepared with legal counsel and a response plan.

[Editor's Note: The DIR published a revised supplemental notice in May. The [new version](#) in large part incorporates the revisions suggested by Fisher Phillips' Agricultural Team and includes a few additional clarifying changes.]

Conclusion

We will continue to monitor these developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to [Fisher Phillips' Insight System](#). If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our California offices](#), or any attorney on [our Agriculture Team](#).