

Are We --- Ready?

Is my organization ready for an audit?

DOL – WHY SHOULD I CARE?

- TAMPA — Federal farm labor law violations continue to sully the reputation of this county's most lucrative crop — strawberries.
- David Weil, administrator for the U.S. Department of Labor's Wage and Hour Division, was in Tampa Wednesday to discuss a multiyear investigation that uncovered widespread labor law violations among agricultural businesses in Central Florida.
- The citrus industry is making improvement, with fewer violations this year than last, Weil said. But the **strawberry industry has made little improvement over the past five years.**
- The enforcement initiative focused on hand-harvested crops — strawberries, citrus, tomatoes, blueberries and watermelons. The department did not release specifics on what violations individual cases involved.


DOL

- There are about 100 strawberry growers in this region.
- The ongoing initiative will continue to send investigators in to the farm fields and packing houses to check for compliance with federal laws. Violations will be dealt with through the courts and through fines, officials said.

- TBO

Bad Press

- L.A. Times Article “Hardship on Mexico's farms, a bounty for U.S. tables.” Dec. 2014
 - A Times reporter and photographer find that thousands of laborers at Mexico's mega-farms endure harsh conditions and exploitation while supplying produce for American consumers.



Behavioral Safety/Change – Creating a Culture of Continuous Improvement

- **What is behavioral safety/change?**
- **What difference does it make?**
- **How can behavioral safety help my operation?**



Promoting Safety Through Awareness and Training

The Way We've Always Done It !



IS YOUR ORGANIZATION READY FOR THAT UNEXPECTED VISIT?

- WHY WILL THEY VISIT ME?
- WHEN THEY ARRIVE WHAT CAN I EXPECT?
- IF I DON'T HAVE THE INFORMATION THEY WANT, WHAT THEN?

- **Public, private, and nonprofit managers and employees, as well as volunteers have become increasingly aware that legal issues have an impact on the agricultural industry.**
- **Southeast Florida has groups of lawyers suing for wrongful termination of employment**

- A tort is an act that harms another.
- It has been committed when a person commits an act or fails to act, without right, and as a result another is harmed, directly or indirectly.
- A tort may lead to a civil action for personal injuries or property damage.
- Torts include intentional acts, negligence, and strict or absolute liability.

- **Liability is the state of being legally responsible for something one should do or avoid.**
- **There are different kinds of liability.**
- **The first is vicarious liability and the second is individual liability.**

- **Vicarious liability - Company ('s) could be liable for the negligent acts or omissions of its employees, acting within the scope of their duties.**
- **The liability for the employee's actions is passed on to the employer.**

- Individual liability - Company ('s) may not be liable for an employee's actions **if the employee acts outside the scope of his or her duties**. Acts with malice, or acts with reckless disregard for the rights of others. Under these circumstances, the employee may be individually liable.

REGULATORY ENFORCEMENT VERSUS CIVIL OR CRIMINAL ACTIONS

- Regulatory enforcement:
- Citations by enforcement agencies:
 - Department of Labor (DOL)
 - Occupational Safety and Health Administration (OSHA),
 - Environmental Protection Agency (EPA), etc.

GUILTY

GUILT BEYOND A REASONABLE DOUBT

NOT GUILTY

GUILT HIGHLY LIKELY

GUILT LIKELY

PROBABLY GUILTY

POSSIBLY GUILTY

SUSPECTED

PERHAPS

MAY NOT BE

POSSIBLY NOT

UNLIKELY

PROBABLY NOT

LESS THAN LIKELY

HIGHLY UNLIKELY

PROVEN NOT GUILTY

REGULATORY ENFORCEMENT VERSUS CIVIL OR CRIMINAL ACTIONS

Civil actions:

- Preponderance of the evidence
- Most probable
- May include regulatory enforcement resulting in fines levied by enforcement agency
- Civil lawsuit proceedings
- Most commonly results in monetary awards to plaintiff

DOL, OSHA, FIRE DEPT, EPA/DEP, DEPT. OF AG!

- *THE RULES AND REGULATIONS COME FROM:*
- CFR 1910 STANDARDS
- NFPA & LIFE SAFETY CODES
- EPA / DEP
- BEST MANAGEMENT PRACTICES
- LOCAL LAWS AND REGULATORY BODIES
- **COURT DECISIONS!**
- KNOW YOUR LAWS AND WHAT IS LAW

DOL Mission Statement

- To foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.
- **Normally, DOL conducts inspections without advance notice.**

INSPECTION PRIORITIES

- **DOL** cannot inspect all farm operations it covers each year. The agency seeks to focus its inspection resources on the most hazardous workplaces in the following order of priority:

IMMINENT DANGER SITUATIONS

- Hazards that could cause Death or Serious physical harm-receive top priority. Inspectors will ask employers to correct these hazards immediately or remove endangered employees.

COMPLAINTS

- Allegations of hazards or violations also receive a high priority. Employees may request that they remain anonymous when they file complaints.



REFERRALS

- Hazard information from other federal, state, or local agencies, individuals, organizations or the media receive consideration for inspection.



Targeted Inspections

- Inspections aimed at specific farm groups, commodities, or individual workplaces that have experienced high rates of injuries and illnesses also receive priority

FOLLOW-UPS

- Checks for abatement of violations cited during previous inspections-are also conducted by the agency in certain circumstances.

ONSITE INSPECTIONS

- Preparation- Before conducting an inspection, DOL compliance officers research the inspection history of a worksite using various data sources, review the operations and processes in use and the standards most likely to apply.
- **They do their homework before they come!**

PRESENTATION OF CREDENTIALS

- The onsite inspection begins with the presentation of the compliance officer's credentials, which include both a **Photograph and a Serial Number.**

OPENING CONFERENCE

- The compliance officer will explain why DOL selected the workplace for inspection and walk around procedures, employee representation and employee interviews.
- The employer then selects a representative to accompany the compliance officer
- An authorized representative of the employees; if any, also has the right to go along.
- The compliance officer will **consult privately with a reasonable number of employees** during the inspection.

WALKAROUND

- Following the opening conference, the compliance officer and the representative will walk through the portions of the workplace covered by the inspection, inspecting for hazards that could lead to employee injury or illness.
- *Required Documentation will also be reviewed.*

WALKAROUND CONT.

- During the walk around, compliance officers may point out some apparent violations that can be corrected immediately. Fix Them! Attitude is key!
- While the law requires these hazards must still be cited, prompt correction is a sign of good faith on the part of the employer.
- Compliance officers try to minimize work interruptions during the inspection.

CLOSING CONFERENCE

- After the walk around, the compliance officer holds a closing conference to discuss the findings.
- The compliance officer discusses possible courses of action an employer may take following an inspection, which could include an informal conference with DOL or contesting citations and proposed penalties.
- The compliance officer also discusses consultation and employee rights.

RESULTS

- DOL must issue a citation and proposed penalty within **six months** of the violation's occurrence.

Citations describe DOL requirements allegedly violated, list any proposed penalties and give a deadline for correcting the alleged hazards.

Violations are categorized as other-than-serious, serious, willful, repeated and failure to abate.

DOL ENFORCEMENT OPTIONS

- **Marginal violation**--minor violation with minimal potential for harm
- **Serious violation**--substantial probability that death or serious physical harm could result, and the **employer knew or should have known** of the hazard
- **Aggravated/Willful violation**--intentional disregard, or plain indifference

PENALTIES

- Penalties may range up to **\$12,500** for each serious violation and up to **\$125,000** for each willful or repeated violation. Penalties may be reduced based on an employer's good faith, **inspection history**, size of business. For serious violations, DOL may also reduce the proposed penalty based on the gravity of the violation. **No good faith adjustment will be made for alleged willful violations.**

NEGOTIATED FINES AND VOLUNTARY COMPLIANCE

- Negotiation of citations and fines
- Often in the form of a hearing
- May eliminate fines if steps are taken to correct violations

APPEALS

- When DOL issues a citation to an employer, it also offers the employer an opportunity for an informal conference with the DOL Area Director to discuss citations, penalties, abatement dates or any other information pertinent to the inspection.
- The agency and the employer may work out a settlement agreement to resolve the matter and to eliminate the hazard.
- *DOL's primary goal is correcting hazards and maintaining compliance rather than issuing citations or collecting penalties.*

APPEALS

- Alternatively, employers have **a defined period of time** after receipt of citations and proposed penalties to formally contest the violations and/or penalties by sending a written notice to the Area Director.

What can you do?



- Be prepared – Inspect your facilities
- Document, Document, Document!
- Review policies and documentations
- Continually Train Staff
- Stay up-to-date with law changes
- Create a culture of continuous improvement – **Behavioral Safety!**

- If an inspector visits your facility and ask questions, **REMEMBER ! Acting professional and showing courtesy will go along way.**
- **WE ALL NEED TO BE PROACTIVE AND NOT REACTIVE.**

THANK YOU FOR YOUR TIME!

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