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THE CHANGING LEGAL STATUS OF MINNESOTA FARM EMPLOYEES

By DONALD B. PEDERSEN†

This article covers the current legal status of farm employees in Minnesota by examining relevant federal and Minnesota law relating to wage and hour laws, child labor, occupational safety and health, farm labor contractors, workers' compensation, unemployment compensation, and labor. This brief survey stresses the importance of counselling farm employers who occasionally hire an extra hand on the family farm as well as those who hire full-time or seasonal employees for large-scale operations.

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I. INTRODUCTION AND HISTORICAL BACKGROUND

In the past farm workers employed in the production of crops, livestock, and commodities have been excluded systematically from most social and labor legislation on the state and federal level. This pattern of exclusion is explained in part by the fact that farm workers as a group have lacked political power. Their interests have either been ignored or have been the subject of trades and deals, euphemistically termed "political compromise," preceding the enactment of such legislation. Until recently, rural lawmakers primarily represented the inter-

1. See, e.g., W. HOPKINS, SOCIAL INSURANCE AND AGRICULTURE 1, 14-16 (Committee on Social Security Social Science Research Council Pamphlet No. 5, 1940); Note, Agricultural Labor Relations—The Other Farm Problem, 14 STAN. L. REV. 120, 127 (1961). Several factors contribute to this result. First, farm workers, especially during the Depression, tended to be more migratory and less affluent than other laboring groups. Also, they constituted a minority of the agricultural work force; operators still performed most of the work themselves. Most important, farm workers, particularly those on the West Coast and in the South, were typically non-white minorities; Chicanos, Blacks, and Orientals represented a significant portion of the agricultural labor force. Recent decisions, in light of the development of classifications based on race, see, e.g., Brown v. Board of Educ., 347 U.S. 483 (1954), and alienage, see, e.g., In re Griffiths, 413 U.S. 717 (1973), being "suspect," have taken judicial notice of this fact and, on occasion, expressed doubts as to the constitutionality of farm worker exclusions from social legislation as being, as applied, a denial of equal protection. See Gutierrez v. Glaser Crandell Co., 388 Mich. 654, 672-73, 202 N.W.2d 786, 793-94 (1972) (T.G. Kavanagh, J., concurring). See generally Developments in the Law—Equal Protection, 82 HARV. L. REV. 1065 (1969).

2. See W. HOPKINS, supra note 1, at 1.

3. For example, the exclusion of agricultural workers was necessary to gain sufficient support in the rural areas to pass the first workers' compensation acts. See S. HOROVITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS 215 (1944). In addition, the courts have noted the inappropriateness of scrutinizing such compromises. In Romero v. Hodgson, 319 F.
ests of farm and agribusiness employers and agreed to support employee-oriented social legislation only if agricultural employees were excluded.

It was argued that the cost of minimum wages, unemployment taxes, workers' compensation premiums, safety schemes and other benefits would be impossible for the average farm employer to absorb. Moreover, it was assumed that the inclusion of farm employees under labor organization legislation would compound the problem as workers would soon successfully organize and demand higher wages together with other benefits. Also, farming was viewed as a good industry to subsidize. This could be accomplished in part by

Supp. 1201 (N.D. Cal. 1970) (three-judge court) (2-1 decision), aff'd mem., 403 U.S. 901 (1971), the majority found "political compromise" a rational basis for excluding farm laborers from the California and federal unemployment compensation acts:

When the legislature chooses to inaugurate a reform . . . it is often forced to make compromises which, whether in the name of politics or economics, are often impossible of explanation in strictly legal terms. Realizing this, the Courts have refused to require that the State remedy all aspects of a particular mischief or none at all.

Id. at 1203. But see Tussman & tenBroek, The Equal Protection of the Laws, 37 CALIF. L. REV. 341, 349-51 (1949) (rationalizations for underinclusiveness based on political expediency should be subject to closer scrutiny).

4. See, e.g., W. HOPKINS, supra note 1, at 1.


From the 1920's up through the Depression, farm income was significantly less than that of urban industry. Immediately prior to the Depression, one-fourth of American farm operators yielded less than $600 annually from their efforts, one-half produced less than $1,000. W. HOPKINS, supra note 1, at 4. Moreover, most of the income to farmers was "imputed." The labor of the farmer and his family and the interest from his own capital investment were not easily valued or transferred. Lack of cash flow also helped to perpetuate the custom of paying hired help in kind, e.g., providing meals and lodging as part of wages.

However, modern economic study has shown the cost of the programs could be passed on to the consumer because of the inelastic demand for such goods. Inelastic demand is characterized by a stable demand in spite of an increase or decrease in price. Only a relatively fixed quantity of agricultural products can be consumed, therefore an increase in price will be paid by the consumer. See Davis, Death of a Hired Man—Agricultural Employees and Workmen's Compensation in the North Central States, 13 S.D.L. REV. 1, 8 & n.37 (1968).
leaving agriculture unburdened by costs imposed on other industries.\(^6\) Finally, it was strongly asserted that the extension of social and labor legislation to cover farm employees would impose impossible record-keeping tasks on farm employers. In short, such programs simply could not be administered.\(^7\) Viewed historically, through the perspective of the era of proliferation of very small family farms\(^8\) and in the context of the Great Depression it is possible to understand why these arguments carried the day. The farm economy was different,\(^9\) the social conscience with respect to farm employees had yet to awaken, and the arguments seemed to make sense.

In recent years, these arguments have found less favor in legislative chambers and successful efforts have been mounted to include some and occasionally all farm employees under the coverage of a variety of laws. A milestone was the inclusion of a significant number of farm employees under the Social Security Act of 1954.\(^10\) This step had a

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10. Federal Insurance Contributions Act (Social Security Amendments of 1954), ch. 21, §
modest although helpful impact on the lives of covered workers and their families," but arguably a significant impact on subsequent legislative efforts involving farm workers. The fact that the social security system, with its administrative complexity, worked reasonably well, and the fact that farm employers were able to comply with record-keeping requirements, suggested that social welfare programs could be implemented without undermining the farm or general economy. Thus, as old arguments ceased to be persuasive, the legal status of farm employees began to change. The process continues at an accelerated rate on both the state and federal level.

While the law has come a considerable distance on paper, one must carefully weigh representations that the actual lot of farm workers has improved significantly. Compliance with statutes and regulations, even for the conscientious farmer, is difficult. The recent flurry of legislative and administrative activity has generated many inconsistencies in the law and a variety of partial exclusion provisions which when viewed simultaneously introduce a complexity in the farm worker social programs unknown in other segments of American industry.

This article is an effort to "catch" the current\(^\text{12}\) status of federal and state law as it affects the working and living conditions of persons employed\(^\text{13}\) on Minnesota farms in tasks related to the "production"\(^\text{14}\) of food and fiber. Topics to be covered include wage and hour laws, child labor, occupational safety and health, farm labor contractors, workers' compensation, unemployment compensation and labor relations law. No attempt will be made to provide a lasting summary in these areas, since the law is in an experimental and transitional phase.


11. At the time of its enactment, the Act was expected to extend benefits to 2.6 million additional farm workers. 3 U.S. CODE CONG. & AD. NEWS 3717 (1954). For an excellent study on the effect of the implementation of the Social Security system on Minnesota farms, see M. TAVES & G. HANSEN, MINNESOTA FARMERS AND SOCIAL SECURITY (University of Minnesota Agricultural Experiment Station Bull. No. 467, 1963).

12. The cut-off date for the material in this article was June 1, 1976.

13. This article does not cover persons in "exchange" labor arrangements.

14. Readers familiar with the treatment of agricultural employment in state and federal legislation will appreciate the difficulty of defining the term "production," especially in wage and hour laws and federal social security regulations. See, e.g., Gordon v. Paducah Ice Mfg. Co., 41 F. Supp. 980 (W.D. Ky. 1941). Although definitional problems will be noted here if critical, the general scope of this article is limited to field workers, i.e., persons who perform the on-farm tasks short of "processing," such as caring for livestock. "Processing" is a term of art. Under some legislation its definitional problems are acute. For purposes of this article, "processing" includes transformation, both on and off the farm, of raw food and fiber products into materials other than that which results from initial harvesting or corresponding on-farm activities.
The objectives are more limited: first, to provide an elementary survey for the Minnesota lawyer who must counsel farm employers and employees now; second, to point out the considerable confusion in areas where state and federal regulations overlap and where complex exemption provisions exist; third, to stress the potential applicability of many laws affecting farm employees whether the employment is as the only extra hand or as one of many full-time or seasonal employees; and finally, to contribute to compliance efforts by making some obscure material more accessible.

II. WAGE AND HOUR LAWS AND MINNESOTA FARM WORKERS

Minnesota farm employers engaged in the production of crops, livestock or commodities should be aware of several wage and hour acts. These include the proposed Sugar Act of 1975, the Fair Labor Standards Act of 1938, and the Minnesota Fair Labor Standards Act. Under federal law some, but far from all, on-farm production employees are covered by special minimum wage provisions. Federal overtime pay requirements, however, do not cover any of these workers. At state level, Minnesota has a special minimum wage law for farm employees. It covers some persons who are covered by the federal provisions and some who are not.

A. Proposed Sugar Act of 1975

While the enactment of a new Sugar Act now appears remote, it is important to note special minimum wage provisions which existed in past sugar legislation and to comment on proposals for reenactment. The Sugar Act of 1937, later replaced by the Sugar Act of 1948, was the first special minimum wage law to affect farm employees. The Act of 1948, which expired on December 31, 1974, conditioned the payment of federal sugar subsidies upon the payment by the farmer of a special minimum wage to persons employed in production, cultiva-

15. "Special" as the term is used in this article does not refer to "special sub-minimum" wage levels applicable to certain student workers.
tion, or harvesting of sugar beets or sugarcane. If a farmer failed to pay the special minimum wage, his subsidy payments, to the extent of unpaid wages, were payable directly to the workers. Wage rates were set annually by the Secretary of Agriculture after regional hearings.

Under the now-expired legislation, a serious question arose whether the Secretary of Agriculture under rule-making power granted in the Act could regulate matters other than wage rates. The Secretary took the position that his authority was limited and that he could not promulgate regulations requiring written contracts and arbitration panels for wage disputes, establishing housing standards, requiring mileage payments to workers and similar matters. The question as to the extent of the Secretary’s authority was raised in Angel v. Butz but the court did not resolve the issue.

The “Sugar Act of 1975” as pro-

20. Sugar Act of 1948, ch. 519, tit. III, § 301(c), 61 Stat. 930 (expired Dec. 31, 1974) (formerly 7 U.S.C. § 1131(c) (1970)). This section also gave the Secretary the power to regulate rates paid by a producer-processor to other producers for sugar beets or sugar cane.

The burden of showing compliance with this section was on the producer. Courts strictly construed the payment provision and appeared to require either direct payment to the workers themselves or, if alternative procedures were used, extremely firm assurance that the wage actually was being paid to the worker. See Salazar v. Hardin, 314 F. Supp. 1257 (D. Colo. 1970) (holding void as against the policy of the Act regulation which allowed producer to satisfy condition precedent of payment by payment to crew leader). See also Rodriguez v. Zimbelman, 317 F. Supp. 921 (D. Colo. 1970) (impermissible for producer to withhold from worker’s wages amounts which sugar company had advanced to worker for transportation and subsistence in return for promissory note and then assigned to producer).


22. As of February 18, 1974 the wage rates were the following: minimum hourly rate $2.30; minimum piece work per acre rate $16.50 for sugar beet thinning, $21.50 for hoeing, $25.75 for hoe-trimming, and $14.00 for weeding. 7 C.F.R. § 862.10 (1975).

It has been suggested the Secretary has favored the demands of the employers more than laborers in setting the wage rates. See Scott & Jones, The USDA and Wages in the Sugar Crop Industry, 25 LAB. L.J. 18, 29-30 (1974). Also, the annual wage determinations by the Secretary generated an inordinate amount of litigation both as to the setting of the rates themselves, see, e.g., Freeman v. United States Dep’t of Ag., 358 F. Supp. 1305 (D.D.C. 1973), and their treatment of it by producers, see, e.g., Rodriguez v. Zimbelman, 317 F. Supp. 921 (D. Colo. 1970) (amounts withheld by employer); Salazar v. Hardin, 314 F. Supp. 1257 (D. Colo. 1970) (method of payment.).


24. Representatives of a group of workers brought a class action to declare the wage rates established for the region of Colorado invalid as being arbitrary and capricious since the Secretary failed to promulgate regulations on non-wage matters proposed by the workers at the regional hearings. These included written contracts for labor performed, arbitration panels for wage disputes, penalties for employment of aliens unlawfully in the United States, housing without cost to workers, and mileage for interstate transportation of workers. Id. at 262 n.2. The
posed in H.R. 3158\textsuperscript{25} would restore the old law intact as it related to wage and hour requirements and would not resolve the problems which plagued its administration or the questions left unanswered in Angel \textit{v. Butz}. Until new legislation is enacted,\textsuperscript{26} growers should observe the wage and hour provisions of the Fair Labor Standards Act\textsuperscript{27} and the Minnesota Fair Labor Standards Act.\textsuperscript{28}

\textbf{B. Fair Labor Standards Act of 1938}

It is essential to an understanding of the coverage afforded farm employees under the Fair Labor Standards Act of 1938\textsuperscript{29} to delineate three aspects of that legislation: equal pay for equal work; overtime pay; and special minimum wage provisions. Equal pay for equal work has been required since 1964.\textsuperscript{30} Overtime pay is presently not required.

trial court held the broad authority of the Act authorized the Secretary to make regulations pertaining to the demands of the workers, \textit{id.} at 263, but granted a summary judgment in favor of the Secretary on the basis of the facts presented. On appeal, the Court of Appeals for the Tenth Circuit expressly declined to comment on the correctness of the trial court's determination of the authority of the Secretary, \textit{id.} at 263 n. 4, and affirmed the decision of the lower court. It based its decision on the grounds that even if the Secretary erroneously believed he was without authority to promulgate regulations in areas other than wages and even if this consideration, in part, influenced his decision, the result could be tolerated so long as the improper purpose was not the sole criterion used, since the Secretary in so doing was acting in a legislative rather than a judicial capacity. \textit{id.} at 264, \textit{citing} Palmer \textit{v. Thompson}, 403 U.S. 217, 224-26 (1970) (closing of public swimming pools to avoid segregation) \textit{and} United States \textit{v. O'Brien}, 391 U.S. 367, 382-86 (1968) (statute punishing burning of draft card not invalid because Congress may have intended, in part, to stifle dissent). Thus, the issue of the extent of the rule-making power of the Secretary, though presently moot, remains an open question. \textit{Compare, e.g.,} Citizens to Preserve Overton Park \textit{v. Volpe}, 401 U.S. 402 (1971) (exercise of judicial function). \textit{See} I K. Davis, \textit{Administrative Law Treatise} \S 5.05, at 314 (1958). \textit{See generally id.} \S\S 5.01, 5.03, 5.05.


26. There is no assurance that another Sugar Act will be enacted. Control still exists over the sugar market even though the Sugar Act of 1948 has expired. Under the Trade Expansion Act of 1962, the President has the authority to establish sugar quotas. \textit{See} Trade Expansion Act of 1962 \S 201(a), 19 U.S.C. \S 1821(a) (1970). On November 16, 1974, President Ford issued a proclamation affecting consumption of sugar on or after January 1, 1975, which precluded a rise in the tariff on imported sugar which would otherwise have occurred on December 31, 1974, upon the expiration of the Sugar Act. The proclamation will remain in effect until otherwise proclaimed or superseded by law. \textit{See} Presidential Proclamation No. 4334, 39 Fed. Reg. 40739 (1974), \textit{reprinted in} 4 U.S. Code Cong. \& Ad. News 8238 (1974).

27. \textit{See} notes 29 to 52 \textit{infra} and accompanying text.

28. \textit{See} notes 53 to 61 \textit{infra} and accompanying text.


for farm employees within the scope of this study. This leaves for
detailed consideration the special minimum wage provisions.

Prior to 1966, farm employees, other than those covered by the
Sugar Act, were not covered by federal minimum wage provisions. In 1966 the Fair Labor Standards Act was amended to extend special
minimum wage protection to certain classes of farm workers. Exem-
ptions, however, continue to limit coverage.

Five significant categories of farm employees remain unprotected.
The first category constitutes the bulk of farm employees. It exempts
the employees of a farmer using not more than 500 "man-days" of
agricultural labor in any calendar quarter of the preceding calendar


31. See text accompanying notes 16 to 28 supra. If any conflict arises between the Fair Labor Standards Act and other federal or state wage legislation, the legislation which grants the great-

32. For an early discussion of the case law under the previous exemption, see H. Wecht, Wage-Hour Law Coverage 127-38 (1951).


35. Studies on the effect of setting minimum wages in the agricultural sector indicated the 1966 amendments, pursuant to classical supply-demand theory, resulted in an increase in wages and a
decrease in the number of farm workers. See Gardner, Minimum Wages and the Farm Labor Market, 54 AM. J. AG. ECON. 473 (1972); Lianos, Impact of Minimum Wages Upon the Level and Composition of Agricultural Employment, 54 AM. J. AG. ECON. 477 (1972).

36. In 1974, it was estimated the overall effect of the 500 man-day and other exemptions was to include only 513,000 agricultural employees on two percent of the nations farms and to leave 719,000 agricultural workers without coverage. Scher & Catz, Farmworker Litigation Under the Fair Labor Standards Act: Establishing Joint Employer Liability and Related Problems, 10 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 575, 577 & n.17 (1975), citing H.R. REP. NO. 93-913, 93d Cong., 2d Sess. 9, 22 (1974).

37. Scher & Catz, supra note 35, at 577 n.17. See also note 35 supra.

38. 29 U.S.C. § 203(f) (1970) defines "agriculture" as follows:

Agriculture includes farming in all its branches and among other things includes the
cultivation and tillage of the soil, dairying, the production, cultivation, growing, and
harvesting of any agricultural or horticultural commodities (including commodities
defined as agricultural commodities in section 1141j(g) of Title 12), the raising of
livestock, bees, fur-bearing animals, or poultry, and any practices (including any
forestry or lumbering operations) performed by a farmer or on a farm as an incident
to or in conjunction with such farming operations, including preparation for market,
delivery to storage or to market or to carriers for transportation to market.

For a compilation of cases describing activities included and excluded from this definition, see 1 CCH LAB. L. REP., WAGES-HOURS ¶ 25,242.10 (1975). Excluded activities are covered by FLSA provisions outside the scope of this article.
year. The "man-days" of virtually all employees, other than family members, count toward the 500 man-day test even though some of those days are accumulated by employees who fall into another exempt category and are thus unprotected under any circumstances.

The remaining four categories of unprotected employees are members of an unincorporated farmer's immediate family; hand harvest laborers paid the prevailing piece rate in what is generally a piece rate operation in the region, and who commute daily from their permanent residences and were employed in agriculture less than 13 weeks in the preceding calendar year; hand harvest laborers under the age of 17 years when employed on the same farm as their parents if paid the same piece rate as paid to older persons employed on the farm; and cowboys and shepherds employed in the range production of livestock.

As indicated, the "man-days" of unprotected workers, other than members of the farmer's immediate family, count toward the 500 man-day calculation. Therefore, employment of persons in three of the four unprotected categories may push a farmer over 500 man-days in a given calendar year and bring special minimum wage protection to workers on the farm other than themselves. Accordingly, a farmer


It should be noted, however, that if a worker is jointly employed by two or more employers at the same time, the hours of all the employers are used in totaling the hours for the 500 man-day test. See 29 C.F.R. § 791.2 (1975). The test for joint employment is a liberal one. All that is usually required is that the several operations not be completely disassociated from one another. Thus, where an employee performs work which simultaneously benefits two or more employers at different times during the workweek, a joint employment relation generally will be considered to exist. Examples are where there is an arrangement for the sharing of an employee's services, see, e.g., Mid-Continent Pipe Line Co. v. Hargrave, 129 F.2d 655, 658-59 (10th Cir. 1942) (watchmen), where one employer is acting in the interest of the other employer in relation to the employee, Fair Labor Standards Act § 3(d), 29 U.S.C. § 203(d) (Supp. IV, 1974); see, e.g., Greenburg v. Arsenal Bldg. Corp., 144 F. 2d 292, 294 (2d Cir. 1944) (per curiam), rev'd in part on other grounds sub nom. Brooklyn Sav. Bank v. O'Neil, 324 U.S. 697 (1945), or where the employee is under the common control of both employers, see, e.g., Dolan v. Day & Zimmerman, Inc., 65 F. Supp. 923 (D. Mass. 1946); cf. Rice v. Keystone View Co., 210 Minn. 227, 231, 297 N.W. 841, 843 (1941) (workers' compensation). See generally 29 C.F.R. § 791.2 (1975); 1 CCH LAB. L. REP., WAGE-HOURS ¶ 25, 242.30 (1975).

40. The exemption does not apply if the farm in question is part of a conglomerate and if the clause at 29 U.S.C. § 213(g) (Supp. IV, 1974) nullifying the exclusion is applicable.


44. 29 U.S.C. § 213(a)(6)(D) (1970). It has been suggested that this exclusion is aimed at young migrant workers who are usually less productive because of inexperience.


who has satisfied the 500 man-day test may still have employees who need not be paid the special minimum wage. As a result of recent legislation updating rates, those employees entitled to the special federal minimum wage must be paid at least $2.00 per hour during 1976, $2.20 during 1977, and $2.30 after December 31, 1977.

Farmers who have employees who are currently entitled to the special minimum wage, together with farmers who reasonably expect to use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year are subject to federal record-keeping requirements. Forms have not been prescribed, but regulations set forth the required content of the records. Farmers who have not met the 500 man-days test, but who reasonably expect to use more than 500 man-days in a calendar quarter of the current calendar year must keep payroll records which include name, home address, sex, occupation, notation of status as family member, hand harvest laborer, or as cowboy or shepherd together with number of man-days worked. Those farmers who have met the 500 man-day test must in addition keep detailed time, wage rate, hours worked, total earnings and other records. It is normally possible to comply with either record-keeping requirement by preserving payroll records since information demanded in connection with wage and hour investigations can be provided by recomputing or extending the payroll data. Unfortunately, no systematic means of informing all farm employers of the special minimum wage has been established. At a minimum, all farm employers should be advised to acquire a copy of the current record-keeping regulations.

C. The Minnesota Fair Labor Standards Act


47. Note an employee who is otherwise exempt and who does non-exempt work during a workweek is for that particular week non-exempt as to all hours. See 1 CCH LAB. L. REP., WAGES-HOURS ¶ 25,242.06 (1975).

48. 29 U.S.C. § 206(a)(5) (Supp. IV, 1974). Observe that the employer may credit reasonable cost of board and lodging furnished if these items are customarily furnished. See 29 U.S.C. § 203(m) (Supp. IV, 1974).


50. See 29 C.F.R. § 516.33(b) (1975). Payroll records which include name, home address, sex, occupation, notation of status as family member, hand harvest laborer, cowboy or shepherd together with the number of man-days worked by all other employees are sufficient to meet the record-keeping requirements imposed on the farmer who reasonably expects to use more than 500 man-days in a calendar quarter of the current calendar year.

51. See 29 C.F.R. § 516.33(c) (1975).

52. These are set forth at 41 Fed. Reg. 19529 (1976).

The Act currently imposes a $1.80 per hour minimum wage, which was consistent with the federal special minimum wage for agricultural workers in 1975. Effective October 1, 1976, employees 18 years of age or older must in some instances be paid at the minimum rate of $2.10 an hour. The Act covers farm employees 18 years of age or older only if working on a farming unit which employs at least the equivalent of two full-time workers and which, on any given day, employs more than four employees. According to the statute, the equivalent of one full-time worker is 40 weeks of employment in a calendar year. Presumably, those under age 18 do not count in computing full-time worker equivalents nor the actual number of workers.

Suppose a particular Minnesota farmer annually employs five adult hired-hands for a period of 20 consecutive weeks, five days per week. Each year thirteen of the weeks routinely fall in one calendar quarter and seven in another. Assuming that the five employees have the same work schedule, this farmer has used the equivalent of two and one-half full-time workers and also has had more than four persons employed on any given day. Both aspects of the Minnesota test are satisfied and the minimum wage must be paid. However, this same farmer does not fall under the federal special minimum wage requirements since he has never used 500 man-days in a calendar quarter. Thirteen weeks multiplied by five (working days) multiplied by five (employees) amounts to only 325 man-days as a maximum in any quarter. Thus, the farmer in this example would be required to comply with the Minnesota special minimum wage but not the federal. While less probable, it is nevertheless possible to contemplate circumstances where the federal and not the state law would apply. If a farmer hired enough 17 year-old workers (who are not hand harvest laborers) to meet the 500 man-day test, the federal special minimum wage would apply. However, because
persons under 18 employed in agriculture are not covered under the Minnesota statute, compliance with the state minimum wage is not required. 58

Farm employers required to comply with the Minnesota minimum wage law must also observe overtime provisions totally absent from federal law. The Minnesota FLSA provides that work in excess of 48 hours per week must be compensated at time and one-half. 59 Furthermore, employers subject to the state FLSA must maintain records for a period of three years. 60 In instances where the employer fails to pay the required minimum wage, employees are provided a state statutory remedy, a private civil action for recovery of compensation due plus costs, reasonable attorney's fees, and liquidated damages equal to the wage recovery. 61

D. Constitutional Challenges to Special Wage and Hour Laws

To date, constitutional challenges to the federal special minimum wage law and to special wage and hour legislation in states other than Minnesota have been grounded on the theory that setting minimum wages for certain classes of agricultural employment that are lower than those for employment generally is a denial of equal protection of the law. The same argument has been advanced to challenge exclusions. To date such challenges have been unsuccessful. 62 The historic legislative arguments which fostered the exclusions and special treat-

58. MINN. STAT. § 177.23, subd. 7(2) (Supp. 1975).
59. MINN. STAT. § 177.25, subd. 1 (1974).
60. MINN. STAT. § 177.30 (1974). This section provides such records must show the name of the worker, his address and occupation, rate of pay, amount paid each pay period, hours worked each day and each work week and other information which may be required by regulation.
61. MINN. STAT. § 177.33 (1974). This section further provides that any agreement between the parties that the employee shall work for less than the applicable wage rate is no defense to such an action.

Agricultural employers, regardless of the skills of their employees or the activities engaged in, are accorded a special treatment and classification of their employees not accorded any other private or public employer. Such treatment is impermissible, clearly discriminatory and has no rational basis.
ment of farm employees have been echoed by the courts as overriding justifications for any discriminatory treatment of farm employees as a class.\(^63\)

### III. Children as Employees on Minnesota Farms

State and federal laws place numerous restrictions on the availability of children for employment on Minnesota farms. These include the Federal Fair Labor Standards Act of 1938, the proposed Sugar Act, and the Minnesota Child Labor Standards Act. These laws are aimed not only at the farm operator who uses a large number of seasonal workers, but also at the sole proprietor who occasionally hires a neighbor's child. Farm employers who fail to comply with the laws may suffer loss of certain subsidies and incur civil or criminal penalties.\(^64\)

#### A. Fair Labor Standards Act of 1938

In 1938, Congress enacted the basic child labor provisions of the Fair Labor Standards Act providing for the imposition of criminal penalties\(^65\) on producers and certain shippers of what have come to be

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\(^{63}\) Id. at 668, 202 N.W.2d at 791. In a concurring opinion, T. G. Kavanagh, J., found the scheme rational but nonetheless unconstitutional as applied since the "seasonal" workers affected were largely composed of Chicanos, Blacks, and American Indians and the statute thus constituted a "suspect" classification on the basis of race. Id. at 672-73, 202 N.W.2d at 793 (T. G. Kavanagh, J., concurring).

\(^{64}\) Romero v. Hodgson, 403 U.S. 901 (1971), aff'g mem. 319 F. Supp. 1201 (N.D. Cal. 1970) (three-judge court), in conjunction with a later Supreme Court decision appears to have settled the question for the present. In Romero, the Supreme Court summarily affirmed an appeal from a decision of a three-judge court which had upheld the farm worker exclusions in both the federal and California state unemployment compensation statutes. This was followed by a 1975 Supreme Court decision which held that a summary affirmation or dismissal by the Court of an appeal within its obligatory appellate jurisdiction is entitled to precedential weight. See Hicks v. Miranda, 95 S. Ct. 2281, 2289 (1975) (5-4 decision), citing Doe v. Hodgson, 478 F.2d 537, 539 (2d Cir. 1973), cert. denied, 414 U.S. 1096 (1974), Ohio ex rel. Eaton v. Price, 360 U.S. 246, 247 (1959) and C. Wright, HANDBOOK OF THE LAW OF FEDERAL COURTS § 108, at 495 (2d ed. 1970). See also Richardson v. Ramirez, 418 U.S. 24, 53 (1974). Previously, the circuit courts had been in disagreement on this particular issue. Compare Port Auth. Bondholders Protective Comm. v. Port of New York Auth., 387 F.2d 259, 262 n.3 (2d Cir. 1967) (Friendly, J.) with Dillenburg v. Kramer, 469 F.2d 1222, 1225 (9th Cir. 1972) ("[a] summary affirmation without opinion in a case within the Supreme Court's obligatory appellate jurisdiction has very little precedential significance"). Thus, Romero must be viewed as the Supreme Court's current statement on the issue. This, of course, would not prevent a state court from giving the equal protection or similar clause of its own constitution a more expansive reading.


termed "hot goods." Recent amendments have added significant civil penalties.66 "Hot goods" are items produced in the United States by any employee in an establishment, including a farm, where "oppressive child labor" has been "employed"67 within 30 days preceding removal of the goods from the premises.68 Unless a statutory exception applies, all work performed in agriculture by employees under the age of 16 is "oppressive child labor."69 Accordingly, "oppressive child labor" is a concept which can be understood only by threading through a series of statutory exceptions and qualifications to the basic rule just stated.70

The exemptions, revised by Congressional action in 1975, provide some instances where agricultural labor performed by children under age 16 will not be considered "oppressive." These are work by a child 14 years or older performed during non-school hours;71 work by a child 12 or 13 years of age performed during non-school hours with parental consent or on the same farm where the parent is employed;72 and work by a child under age 12 performed during non-school hours on the parent's farm or with parental consent on a farm that is not required to meet federal special wage provisions.73

If the provisions of the Fair Labor Standards Act were no more elaborate than this, the law would be rather simple, albeit inadequate. However, the rules stated in the preceding paragraph are subject to one overriding qualification—when a child under age 16 is employed in agriculture pursuant to one of the above-stated exceptions, the work may still be considered "oppressive" if it is "particularly hazardous." Additional provisions of the statute make work by persons under the age of 16 "particularly hazardous" in the statutory context74 if the task includes among other things operating most self-propelled and power-driven farm machinery, handling of a number of types of agricultural chemicals, performing tasks inside storage bins and silos, or working around breeding animals.75

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67. The term "employed" is statutorily defined as "to suffer or permit to work." 29 U.S.C. § 203(g) (1970). A child may be "employed" under the child labor law without being paid wages.
74. 29 U.S.C. § 203(l) (1970) prohibits employment in occupations found by the Secretary of Labor to be particularly hazardous. 29 C.F.R. pt. 570, subpt. E-1 (1975) was promulgated pursuant to this section.
75. See 29 C.F.R. § 570.71(a) (1975).
The "particularly hazardous" rule is subject to three important exceptions which allow children to be employed in otherwise forbidden activities without subjecting the employer to sanctions. The first exception covers employment by the parent or person "standing in the place of the parent" on a farm owned or operated by that parent or person. The second involves limited and supervised employment of a "student learner" who is enrolled in an accredited vocational-agricultural school program. The third contemplates the employment of children age 14 and 15 in the operation of certain tractors and machinery if the child has had approved vocational-agricultural training in tractor and machinery operation or has been trained in the 4-H tractor program. The current law, both state and federal, is summarized in chart form on page 72 following the discussion of the Minnesota child labor laws.

Consequently, a child under the age of 16 who is employed to drive a tractor must fall into one of the exceptions to the general rule against employing children under that age and also must fall into one of the three exceptions to the rule against his employment in a "particularly hazardous" activity. The list of absolutely forbidden employment would be lengthy but for purposes of this study two representative examples will suffice. Regardless of training, or parental consent, a neighbor child, age 13, on vacation from school during the summer cannot be hired to drive tractor or operate most other self-propelled machinery. A 15 year-old neighbor child cannot be employed to work with anhydrous ammonia under any circumstances. A farmer who runs afoul of the law must nevertheless pay the child for the work performed according to current wage rates and in compliance with any applicable hour laws.

One unsettled area is whether violation of the federal child labor law by the employer gives rise to a private cause of action. In Breitwieser v. KMS Industries, Inc., the Court of Appeals for the Fifth Circuit determined existing remedies for the death of an individual under the state workers' compensation statute, although miniscule, and the criminal and civil sanctions which could be enforced against the farmer to be adequate and therefore declined to imply a private civil remedy. The dissent, and other critics of the case, argued that

76. 29 C.F.R. § 570.70(b) (1975).
77. 29 C.F.R. § 570.72(a) (1975). However, this section provides that 5 of the 11 categories of "particularly hazardous" employment are still out of bounds for "student learners."
78. 29 C.F.R. § 570.72(b) (1975).
80. 467 F.2d 1391 (5th Cir. 1972), cert. denied, 410 U.S. 969 (1973). See also Rickett v. Jones, 494 F.2d 185 (5th Cir. 1974).
there was no justification for denying an implied federal cause of action, since none of the sanctions enumerated by the majority ran to the benefit of the injured party.  

\[B. \text{Proposed Sugar Act of 1975}\]

Certain long-standing federal child labor standards died with the expiration of the Sugar Act of 1948. If Congress unexpectedly enacts H.R. 3158, the "Sugar Act of 1975," in its proposed form before the end of the current legislative session, the new legislation would reinstate the child labor restrictions of the expired Act. This would mean farmers who wish to qualify for full subsidy payments would have to again comply. In particular, children under 14, unless members of the farmer's immediate family, may not be employed. Children aged 14 and 15 could be employed but their work-day cannot exceed eight hours unless they are members of the farmer's immediate family. One who owns at least 40 percent of a crop would be considered a farmer for purposes of these restrictions. It has been proposed that the Secretary be authorized again to reduce subsidy payments by $10 per child for each day or part of a day during which the child is employed in violation of the Act. It should be noted that farmers who comply with the "Sugar Act of 1975," if enacted, would not be excused from compliance with the Fair Labor Standards Act or more stringent state child labor laws.

\[C. \text{Minnesota Child Labor Laws}\]

Minnesota has laws and regulations which apply to all farm operators who employ children. In 1974, the statutes were substantially revised and a new set of regulations were promulgated by the Minnesota Department of Labor on December 27, 1974. Consistent with federal law, Minnesota statutes provide that no child under the age of 16 may work during the locally established school hours without an "employment certificate." Agricultural


82. See notes 17 to 22 supra and accompanying text.


84. Id. This provision was not in the 1937 version of the Sugar Act and first appeared in Act of June 25, 1940, ch. 423, 54 Stat. 571, as amended, Act of Dec. 26, 1941, ch. 638, 55 Stat. 872.

85. See note 26 supra.


employment is included.\textsuperscript{89} Children ages 14 and 15 may be employed during school hours if the "employment certificate" has been issued by the school district superintendent or other authorized person.\textsuperscript{90} The only other exception is employment by the parent.\textsuperscript{91} The parent, however, is not relieved from complying with compulsory school attendance laws.\textsuperscript{92} A previous state statute which allowed children 14 years of age or older to work in a permitted occupation about the home with the permission of their parents between April 1 and November 1 was amended to excuse school attendance only between April 1 and October 1 and then only for students in regular attendance at the Northwest School of Agriculture at Crookston or the Southern School of Agriculture at Waseca.\textsuperscript{93}

The general prohibition against employment of children under the age of 14\textsuperscript{94} is qualified to permit the hiring of 12 and 13 year old laborers for agricultural work if the permission of the parent or guardian is obtained.\textsuperscript{95} The Act does prohibit the employment of children under age 16 between the hours of 9:30 p.m. and 7:00 a.m. or for more than 40 hours per week or more than eight hours in any 24-hour period.\textsuperscript{96} This last restriction does not apply if the permission of the parent has been obtained.\textsuperscript{97} None of the restrictions discussed in this paragraph apply if the child’s parent is the employer.\textsuperscript{98}

In 1973, the Minnesota Supreme Court in \textit{State Farm Mutual Automobile Insurance Co. v. Hilk}\textsuperscript{99} indicated that a statutory proscription\textsuperscript{100} against employing children under the age of 16 in jobs deemed dangerous to life, limb, health or morals ruled out virtually any type of farm work. This, in effect, would have eliminated child labor on Minnesota farms. In a rapid response, the legislature amended the statute to allow employment of a child in any agricultural pursuit permitted under the Federal Fair Labor Standards

\begin{footnotesize}
\begin{enumerate}
\item[90.] \textsc{Minn. Stat.} § 181A.05 (1974).
\item[91.] \textsc{Minn. Stat.} § 181A.07, subd. 4 (1974).
\item[92.] \textsc{See Minn. Stat.} § 120.10 (1974), as amended, (Supp. 1975).
\item[93.] Act of Mar. 15, 1967, ch. 82, § 1, [1967] Minn. Sess. Laws 162, amending \textsc{Minn. Stat.} § 120.10, subd. 3 (1965).
\item[94.] \textsc{Minn. Stat.} § 181A.04, subd. 1 (1974).
\item[95.] \textsc{Minn. Stat.} § 181A.07, subd. 1 (Supp. 1975).
\item[96.] \textsc{Minn. Stat.} § 181A.04, subds. 3-4 (1974).
\item[97.] \textsc{Minn. Stat.} § 181A.07, subd. 1 (Supp. 1975).
\item[98.] \textsc{Minn. Stat.} § 181A.07, subd. 4 (1974).
\item[99.] 296 Minn. 8, 206 N.W.2d 360 (1973).
\end{enumerate}
\end{footnotesize}
Act. Thus, compliance with federal "oppressive child labor" standards as they relate to "particularly hazardous" work will satisfy state law.

A problem of increasing importance is whether a family farm corporation of which the parent is a stockholder qualifies as a "parent" employer under these provisions. If so, none of the child labor restrictions would apply. If not, all the provisions would apply, except those involving parental permission. A partial answer is contained in the regulations dealing with "particularly hazardous" employment, which treat a family farm corporation employer of which a parent is a member as a "parent." There is nothing in other regulations or statutes, however, which indicates whether a "family farm corporation" of which the parent is a stockholder is a "parent" for purposes of the various provisions of the state child labor act discussed above. When confronted with the issue, it may be that the Minnesota Supreme Court will consider the underlying rationale preserving parental discretion when the child works at home and read "parent" to mean "family farm corporation" where the child's parent is not only a stockholder but a corporate employee engaged in the operation of the farm.

These provisions, as well as the federal provisions, are summarized in the chart on the following page.

D. Proof of Age Regulation

The Minnesota Child Labor Standards Act requires every employer to obtain proof of age of any minor employee pursuant to statute and to retain such proof of age for the duration of the minor's employment.

A federal regulation is presently under consideration which would require a farm employer to secure from every employee under the age of 17 a proof of age and to keep it on file. This regulation is designed to implement a 1974 amendment to the Fair Labor Standards Act and to give greater effectiveness to the laws regarding minimum ages for the employment of children. If the regulation is promulgated, farmers who fail to comply will be subjected to civil penalties and, in the event of willful violations, criminal penalties.

102. See notes 65 to 79 supra and accompanying text.
103. CLS 8.
## Summary of State and Federal Law as of June 1, 1976 on Employment of Children in Agriculture

<table>
<thead>
<tr>
<th>Age</th>
<th>Performed during non-school hours</th>
<th>Parental consent</th>
<th>Parent's farm</th>
<th>Same farm on which parent employed</th>
<th>Parent's farm or Vo-Ag course</th>
<th>Vo-Ag or 4-H training</th>
<th>Employed by Parent</th>
<th>Employment by Person Other than Child's Parent††</th>
<th>7 a.m.-9:30 p.m., only ≤40 hours and ≤8 hrs in any 24 hr period without parental permission</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;12</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NOT PERMITTED</td>
</tr>
<tr>
<td>12-13</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>14-15</td>
<td>✓</td>
<td></td>
<td></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>(or obtain employment certificate)</td>
</tr>
</tbody>
</table>

Note that the employer must satisfy the most stringent of all requirements imposed by both federal and Minnesota law. For example, although a child under the age of 12 can be employed under federal law by satisfying certain conditions, he cannot be employed in agricultural labor except by a parent since it is not permitted under Minnesota law.

†Particularly hazardous activities include operating tractors and machines, working around breeding animals, working in storage bins, and handling chemicals, including anhydrous ammonia. Children cannot be employed in connection with working in storage bins or handling chemicals even by satisfying the additional requirements.


**Source: 29 C.F.R. §§ 570.70-.72 (1975)


††CAVEAT: It appears to be unsettled whether employment by the family farm corporation is considered employment by the child's parent for purposes of Minnesota law.
IV. EMPLOYEE SAFETY AND HEALTH CONDITIONS ON MINNESOTA FARMS

A farm employer in Minnesota may be subject to numerous safety and health regulations emanating from a variety of sources including units of local government, the Minnesota Departments of Health and of Labor and Industry, the United States Departments of Labor-Manpower Administration and of Labor-Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency. This article will focus on existing safety and health regulations promulgated by the Occupational Safety and Health Administration (OSHA) and the Minnesota Department of Labor. These cover the areas of employment related housing, storage and handling of anhydrous ammonia, pulpwood logging, slow-moving vehicles, farm tractors, and shielding farm machines. Existing regulations on field reentry adopted by the Environmental Protection Agency also will be considered. In addition, the work of the OSHA Standards Committee on Agriculture will be commented on.

A. Existing Safety and Health Regulations

The Williams-Steiger Occupational Safety and Health Act of 1970 imposes a "general duty" on employers to provide a workplace free of recognized hazards. In addition to observing the "general duty" as defined by the courts, the farm employer must comply with certain safety and health regulations. The Occupational Safety and Health Administration (OSHA) is given the responsibility of promulgating such regulations. With the exception of agriculture, the impact of such regulations on most American industry has already


110. A farm employer is considered to be an "employer engaged in a business affecting commerce who has employees" and is therefore subject to the Act. 29 C.F.R. § 1975.4(b)(2) (1975) provides: "Any person engaged in an agricultural activity employing one or more employees comes within the definition of an employer under the Act, and therefore, is covered by its provisions. However, members of the immediate family of the farm employer are not regarded as employees for the purposes of this definition." Presumably, employees of a family farm corporation are employees for purposes of the Act. See Comment, The Occupational Safety and Health Act of 1970, 34 LA. L. REV. 102, 102 & n.6 (1973).


been substantial.\textsuperscript{112}

The Williams-Steiger Act also encourages states to adopt safety and health plans. A state may file a plan which, if approved by the United States Department of Labor, will allow it to establish and enforce its own safety and health standards, if at least equivalent to the federal standards.\textsuperscript{113} Minnesota filed such a plan\textsuperscript{114} and enacted the Minnesota Occupational Safety and Health Act of 1973\textsuperscript{115} which gave broad rule-making power to the Minnesota Commissioner of Labor and Industry. The Commissioner, in turn, promulgated state regulations (MOSHC)\textsuperscript{116} which adopt the federal OSHA standards by reference.

While the developmental schedule of the Minnesota plan called for local enforcement of standards for agriculture by July, 1975,\textsuperscript{117} the official position of the United States Department of Labor is that the enforcement of federal standards in Minnesota is not to be diminished. Thus, there still may be inspections of facilities and investigations of complaints by federal agents.\textsuperscript{118}

\begin{flushright}
\textsuperscript{14} See 29 C.F.R. § 1952.200 (1975). A copy of the Minnesota plan together with the modifications of May 1, 1975 can be inspected and copied at the State Capitol Building, Legislative Reference Library, St. Paul, Minnesota 55155. 29 C.F.R. § 1952.201 (1975).
\textsuperscript{16} Promulgated pursuant to the rule-making power contained in MINN. STAT. § 182.657 (1974). The state will continue to adopt new federal standards without hearings. See MINN. STAT. § 182.655(2) (1974). However, unless the state acts on an almost daily basis, the state regulations will tend to lag behind the federal ones in content. Minnesota retained some existing state standards dealing with matters not covered by federal regulations including general environmental control; transportation of employees; ship and ladders; protection from falling materials; ventilation of garages; elevator dumb waiters; escalators; elevator construction and installation; and construction requirements for moving parts, steam boilers and manlifts. See MINN. STAT. § 182.655(12) (1974); Minn. Occupational Safety & Health Code Regs. 40-129 (1975) [hereinafter cited as MOSHC]. MOSHC currently is contained in volume 6 of the Minnesota Regulations.
\textsuperscript{17} 29 C.F.R. § 1952.203(g)(1975).
\textsuperscript{18} See 29 C.F.R. §§ 1952.202-.203 (1975). At the state level, enforcement of housing regu-
\end{flushright}
In assessing the impact of OSHA regulations on agricultural employees, the most striking fact is the limited number of applicable regulations. Of the hundreds of pages of substantive regulations promulgated under the Williams-Steiger Act the only regulations applicable to farm employment are those included in 29 C.F.R., Part 1928. These regulations cover employee housing, storage and handling of anhydrous ammonia, pulpwood logging operations, warning signs on slow-moving vehicles, farm tractor roll-over protection devices and shielding of farm machines. In addition, field reentry after application of pesticides is pertinent, although no longer regulated by OSHA. The Environmental Protection Agency (EPA) has appropriated regulation of field reentry. Within the enumerated areas covered by OSHA, the existing regulations have had questionable impact. As will be explained, they are either circumscribed in nature, the subject of proposed amendments, inconsistent with regulations of other agencies, or rendered ineffectual by apparent drafting errors. As a


120. 29 C.F.R. § 1928.21 (1975) provides:


(a) The following standards in Part 1910 of this Chapter shall apply to agricultural operations:

(1) Temporary labor camps—§ 1910.142;
(2) Storage and handling of anhydrous ammonia—§ 1910.111 (a) and (b);
(3) Pulpwood logging—§ 1910.266;

(b) Except to the extent specified in paragraph (a) of this section, the standards contained in Subparts B through S of Part 1910 of this title do not apply to agricultural operations.

result there are enforcement problems. Lack of funding for enforcement further compounds the problem.

The Minnesota Department of Labor and Industry adopted the federal OSHA regulations by reference in MOSHC 1.\textsuperscript{122} Thus, Minnesota has acquired, intact, the problems and limitations inherent in the federal regulations. The nature of the limitations is best illustrated by a discussion of each of the enumerated areas.

1. Employment Related Housing

The current OSHA regulations dealing with sanitation in "temporary labor camps" appear at 29 C.F.R. § 1910.142 (1975). These are made applicable to facilities supplied by agricultural employers by 29 C.F.R. § 1928.21(a)(1) (1975).\textsuperscript{123} MOSHC 1 incorporates this material by reference.

The term "temporary labor camp" is not clearly defined in the regulations. However, it seems reasonable to assume that it refers to most facilities supplied as living or cooking quarters to seasonal farm employees, whether they are local or out-of-state workers. OSHA regulations and the identical MOSHC regulations cover a variety of matters including site, shelter, water supply, toilet facilities, sewage facilities, laundry and bathing set-ups, lighting, and cooking and dining facilities. Many of these matters are also covered by different standards enumerated in local building and housing codes, and Minnesota landlord-tenant law.\textsuperscript{124}

In addition, at least two additional sets of administrative regulations currently may apply to farm employee housing in Minnesota. Farmers using the United States Department of Labor recruiting service in obtaining employees must comply with Manpower Administration regulations governing housing.\textsuperscript{125} Also, since 1969, the Minnesota Department of Health has had a regulation applying to "migrant labor camps"\textsuperscript{126} which is similar to that of the Manpower

\textsuperscript{122} There is always a question whether MOSHC has been brought up to date to include new OSHA regulations. See note 116 supra.

\textsuperscript{123} See note 120 supra.

\textsuperscript{124} See, e.g., MINN. STAT. § 504.18 (1974), which has been construed to impose a "covenant of habitability" on all lessors of residential property. See also Fritz v. Warthen, 298 Minn. 54, 57-58, 213 N.W.2d 339, 341 (1973). The landlord may not evict a tenant in retaliation of a good faith request for repairs or a good faith report to a housing inspector. MINN. STAT. § 566.03, subd. 2(1)-(2) (1974), construed in Parkin v. Fitzgerald, Minn. 4, 240 N.W.2d 828 (1976).


\textsuperscript{126} Rules and Regulations of the Minnesota State Board of Health governing Migrant Labor Camps Reg. 204 (1974) [hereinafter cited as MHD]. MHD currently is contained in the
Administration. The regulation requires a permit and compliance with established standards where one or more buildings are used as living quarters by "seasonal or temporary migrant agricultural workers." This regulation seems to apply to employers of both local and out-of-state workers.

The OSHA and MOSHC regulations vary in many respects from Manpower Administration and Minnesota Health Department regulations. Since the Manpower Administration and Minnesota Department of Health regulations are not identical, though similar in most respects, and since the provisions of all these regulations may simultaneously apply to a given working site, there is a proliferation of unnecessarily conflicting standards which makes compliance difficult.

In an attempt to alleviate this situation, OSHA has taken the position that compliance with the Manpower Administration regulations will be considered substantial compliance with OSHA regulations. Thus, the safest route for a Minnesota farmer to follow at the moment may be compliance with the Minnesota Health Department regulations which, in most respects, are patterned after the federal Manpower Administration regulations.

13th volume of Minnesota Regulations.

127. See id. 204(a)(1), (b), (r)(1).

"The greatest number of camp permits issued in any one season has been approximately 600. The number of camps in active use varies mainly with changes in the sugar beet industry, and is currently increasing as three new processing plants begin operation." Letter to the author from Frederick F. Heisel, Director, Division of Environmental Health, Minnesota Department of Health, March 24, 1975.

128. At present, Minnesota Health Department Regulations call for annual inspections. MHD 204(b)(3). However, inspection activity has been spotty at best. "Although the Legislature authorized the State Board of Health to regulate migrant labor camps in 1951, no money has ever been appropriated for enforcement. Limited programs of regular inspections were initiated through direct Federal grants a dozen years ago, but have been financed in recent years by diversion of funds from other health programs." Letter to the author from Frederick F. Heisel, Director, Division of Environmental Health, Minnesota Department of Health, March 24, 1975.

129. The present inconsistencies are so numerous that it would take pages to list them. Compare, e.g., 29 C.F.R. § 1910.142(l) (1975) (requires bathing facilities without setting forth the proximity they must be to living quarters and requires one shower head for every ten people) and MOSHC 1 (1975) (incorporates the requirements of 29 C.F.R. § 1910.142(l) (1975) by reference) with 20 C.F.R. § 620.12(a) (1975) (provides that the bathing facilities shall be within 200 feet of each living unit and one shower head for every fifteen people must be provided) and with MHD 204(k)(1) (requires bathing facilities located within 400 feet of each living unit and one shower head be provided for every fifteen people). 20 C.F.R. § 620.1(b) (1975) provides that for conflicts between Manpower Administration and state or local regulations, the latter will prevail if more stringent. One inconsistency is tolerable, but to be required in all instances to check all of these regulations to see which is more stringent is an unreasonable task to impose on any farm operator.

The Department of Labor has proposed changes in the OSHA regulations. The hope is that once these are promulgated, the Manpower Administration will follow suit and thus render the two sets of federal regulations identical.\(^{131}\) Revision of the OSHA regulations, however, was met by stiff opposition from both employer and employee groups. On December 29, 1974, OSHA ordered additional hearings.\(^{132}\) Those hearings have concluded and the record was closed in March of 1975.\(^{133}\) While delays in this area have become discouraging, it is still possible that 1976 may be the year for the emergence of uniform regulations.

2. Storage and Handling of Anhydrous Ammonia

A drafting error has had the curious effect of nullifying certain regulations dealing with the handling of anhydrous ammonia in farm operations. 29 C.F.R. § 1910.111(a) and (b) set forth general standards governing anhydrous ammonia systems. In addition, subdivisions (g) and (h) of that same section cover the specific area of anhydrous ammonia systems mounted on farm vehicles. However, 29 C.F.R. § 1928.21 (1975), which enumerates the specific OSHA regulations that apply to agricultural operations only mentions sections 1910.111(a) and (b). It does not mention sections 1910.111(g) and (h), which deal with systems mounted on farm vehicles. The effect is to nullify those provisions.

An amendment was proposed in 1973 to correct this error, but was not acted upon.\(^{134}\) Obviously, this same error was transferred over to the Minnesota regulations, since they adopt the federal regulations.

3. Pulpwood Logging

While outside the scope of farm employment under consideration here, the pulpwood logging regulations do provide a contrast in approach which is interesting. The listing of regulations which apply to agriculture lists the standards for employment in pulpwood logging.\(^{135}\) Not only are the provisions of that immediate pulpwood logging section made effective, but also regulations from other sections


\(^{133}\) Telephone conference between the author and Wendell Glazier, Office of Standards Development, OSHA, March 11, 1975.


since 29 C.F.R. § 1910.266 includes a general incorporation of all relevant OSHA standards. None of the other regulations which affect agriculture contain similar inclusionary language. Once again, MOSHC 1 provides Minnesota with regulations identical to the federal in this area.

4. Slow Moving Vehicles

Vehicles which by design travel at less than 25 miles per hour on public roads must display a slow-moving vehicle emblem, a fluorescent yellow-orange triangle with a dark red reflective border. It is important to note that the general regulatory provision of which the slow-moving vehicle emblems section are a part, 29 C.F.R. § 1910.145, also contains other important regulations requiring warning signs designed to alert persons to biological and radiation hazards.

Unfortunately, confusion exists in the language of the general listing section of provisions applicable to agricultural employment, 29 C.F.R. § 1928.21. In listing the provisions which apply to agriculture, 29 C.F.R. § 1928.21 (a)(4) refers to "slow-moving vehicles—§ 1910.145." Of course, § 1910.145 is the entire set of rules on signs. Presumably, the intent was to apply only those provisions concerning the slow-moving vehicle emblem to agriculture. It is unusual, however, that this was not accomplished by referring directly to the specific subsection covering signs on slow-moving vehicles.

5. ROPS—Roll-Over Protective Structures for Tractors

One of the leading causes of injuries to employees on farms has been the rolling or tipping of tractors. To alleviate this problem OSHA promulgated regulations which require farm employers to equip most farm tractors of over 20-engine-horsepower manufactured after October 25, 1976, with roll-over protective structures (ROPS). The regulation also requires installation of seat belts.

When the new regulation was under consideration a number of objections were raised. It was suggested that ROPS would interfere with operations in orchards and in typical farm structures with low clearance openings; that they could present a hazard of drowning.

141. See 29 C.F.R. § 1928.51 (1975).
142. 29 C.F.R. § 1928.51(b)(2) (1975).
around irrigation ditches; and that some of the tractors included in the regulations rarely, if ever, turned over. After additional hearings, exemptions were placed in the regulations which allow the removal of ROPS from “low profile” tractors when clearance is a substantial problem, such as in orchards, vineyards, or hop yards or inside farm buildings or greenhouses. Also, there is an exemption when tractors must be operated with incompatible mounted equipment, such as cornpickers and vegetable pickers.

Unless specifically exempted, a farm employer may not remove the ROPS unless he is operating the tractor himself. The ROPS must be reinstalled if an employee is to operate the tractor for a non-exempt use. Similar provisions apply to the use of seat belts.

An employer who fails properly to install ROPS or seat belts may be deemed to have committed a “serious violation” of the regulation. This carries a civil penalty of up to $1,000. Wilful or repeated violations may result in a fine of up to $10,000; if these violations result in the death of an employee the employer may be subject to a criminal action.

The regulation also requires employees be given specific operating instructions when initially assigned to the tractor and at least annually thereafter. The regulation does not distinguish between the large employer and the farmer occasionally using an extra hand. Thus, the ROPS regulation eventually will affect virtually every farmer in Minnesota. Initially, enforcement may be a serious problem, but the investigation of accidents and the publication of violations will likely lead to substantial compliance. Manufacturers will be the obvious source for procuring ROPS. Most tractors manufactured in the future probably will be sold with the equipment attached.

6. Farm Machines

The National Safety Council has estimated that agriculture is the third most hazardous industry in the United States and that approximately 20 percent of all injuries to farm employees are the result of

145. 29 C.F.R. § 1928.51(b)(5)(i)-(ii) (1975).
146. 29 C.F.R. § 1928.51(b)(5)(iii) (1975).
151. 29 C.F.R. § 1928.51(d) (1975) (refers to Appendix A—Employee Operating Instructions of § 1928 for specific operating instructions).
accidents with farm machinery. Power take-off drives, conveying augers, straw spreaders and choppers, and rotary tillers are just a few of the machines involved. After two years of hearings, OSHA has adopted a regulation requiring various safety devices on all farm field, farmstead and cotton ginning equipment. The regulation provides different dates of compliance for new and used equipment as well as cotton ginning equipment.

A variety of guards, shields and access doors are required by the regulation to protect employees from the hazards associated with moving machinery parts. In addition, equipment covered by the proposed regulation will be required to have audible warning devices which will sound if the shield or access door is not properly placed while the machine is in operation.

The regulation carries civil and possible criminal penalties for an employer violating the standards, similar to the ROPS regulations. Again, the regulation applies to all farm employers; it does not distinguish between large employers and those who occasionally take on an extra hand.

B. The Work of the Standards Advisory Committee on Agriculture

The new OSHA rules do not cover farm hand tools, shop equip-

153. See id.
154. Farm field equipment is defined as tractors or implements, including self-propelled implements, used in agricultural operations. 41 Fed. Reg. 10195 (1976), to be codified as 29 C.F.R. § 1928.57(a)(5).
155. Farmstead equipment is agricultural equipment normally used in a stationary manner. 41 Fed. Reg. 10195 (1976), to be codified as 29 C.F.R. § 1928.57(a)(5).
162. Prior to the promulgation of 29 C.F.R. pt. 1928, subpt. D, a curious sidelight in regard to safety standards for machinery had arisen out of the repeal of several state statutes, including Minnesota Statutes §§ 182.05 and 182.21, during the adoption of the Minnesota Occupational Safety and Health Act of 1973. While it was unsettled whether Minnesota Statutes, § 182.05, which required guards on dangerous machinery, applied to agricultural operations, the Minnesota court in Curwen v. Appleton Mfg. Co., 133 Minn. 28, 157 N.W. 899 (1916) held that § 3884, G.S. 1913 (subsequently § 182.21) did apply to agricultural operations since it specifically related to corn shredders. Until the adoption of this regulation, there was nothing to replace the repealed § 182.21 other than the general OSHA requirement that employers provide a safe place of employment. See 29 U.S.C. § 654(a) (1970).
ment, and other portable equipment. 163 There are, however, indications that they will be regulated eventually. The Standards Advisory Committee on Agriculture, which was established under provisions of the Williams-Steiger Act, has been studying the feasibility of regulating field sanitation, electrical and airborne hazards, personal protective equipment, ladders, walking and working surfaces, hand and portable power tools, and noise levels. 164 Although the primary thrust of the regulations would be the improvement of the working conditions of seasonal and migrant farm workers employed by large operations, there is no reason to expect the exemption of farmers who occasionally hire an extra hand.

The fact this work is being done by the Committee is a reminder many standards for safety and health in agriculture must be developed from scratch. Unlike other segments of American industry, 165 agriculture is going through public regulation of most safety and health matters for the first time. This partially accounts for the dearth of existing regulatory material.

C. Current EPA Regulations

Efforts by OSHA and the Environmental Protection Agency (EPA) to protect field workers from chemicals used in treating crops produced one of the most dramatic battles in the area of farm safety law. Using the emergency rule-making power granted to it under the Williams-Steiger Act, 166 OSHA announced temporary standards relative to field worker exposure to organophosphorous products 167 on

163. The OSHA rules left regulation of farm hand tools, shop equipment and other portable equipment for future consideration. See 39 Fed. Reg. 4925 (1974). There are, however, existing regulations on hand tools and other portable equipment applicable to both farm and non-farm use such as circular saws, sanding machines, grinders, lawnmowers, and jacks. See 29 C.F.R. §§ 1910.241-.247 (1975).


165. The initial OSHA standards were derived from consensus standards developed by the National Fire Protection Association, the American National Standards Institute, existing federal standards included in the Longshoremen's and Harbor Worker's Compensation Act, the Service Contract, the Contract Work Hours and Safety Standards Act, and the Walsh-Healy Public Contracts Act. See 36 Fed. Reg. 10466 (1971).


167. Although the regulations do not define the term organophosphorous, The Condensed Chemical Dictionary defines organophosphorous compound as:

Any organic compound containing phosphorus as a constituent. These fall into several groups, chief of which are the following: (1) phospholipids, or phosphatides, which are widely distributed in nature in the form of lecithin, certain proteins, and nucleic acids; (2)
May 1, 1973.168 As a result of petitions by the Florida Peach Growers Association, among others, the regulations did not become effective as scheduled on June 18, 1973.169 Revised emergency standards, however, were then promulgated which eliminated nine of the twenty-one pesticides from control and reduced field reentry time on several others. These became effective July 13, 1973.170

A determined attack on the standards followed, culminating in the decision in Florida Peach Growers Association v. United States Department of Labor.171 The court in Peach Growers found that no "grave danger" had existed with regard to the pesticides and thus held that OSHA had exceeded its power in creating the regulations.172 Thereafter, OSHA amended its existing regulations and deleted the pesticide provisions.173 The appearance of new OSHA regulations appears remote.174

EPA continues to make efforts to protect field workers from pesti-

esters of phosphinic and phosphonic acids, used as plasticizers, insecticides, resin modifiers, and flame retardants; (3) pyrophosphates, for example, tetraethyl pyrophosphate, which are the basis for a broad group of cholinesterase inhibitors used as insecticides and nerve gases; (4) phosphoric esters of glycerol, glycol, sorbitol, etc., which are components of fertilizers. While many of these compounds play an important part in animal metabolism, some are highly toxic, especially those in group (3), and their continued use as agricultural chemicals is questionable, even though they are less persistent than DDT.


171. 489 F.2d 120 (5th Cir. 1974), discussed in Comment, Farmworkers in Jeopardy: OSHA, EPA, and the Pesticide Hazard, 5 ECOLOGY L.Q. 69, 80, 90-96 (1975).
172. 489 F.2d at 132.

Although the court based its decision as to the invalidity of the standards on the lack of an emergency, it delineated criteria to be met for the promulgation of permanent standards which were at variance with the Occupational Safety and Health Act. The Act requires that the standards assure the health and safety of the employee, while the court in formulating its own test set out a balancing test. The protection afforded to the employee was to be weighed against the effect upon economic and market conditions in the industry. Compare 29 U.S.C. § 655(b)(5) (1970) with 489 F.2d at 130.


The farmworkers have been informally excised from OSHA protection by the ceding of jurisdiction to formulate pesticide regulations to the Environmental Protection Agency (EPA). Yielding to the pressure of administrative agencies, the judiciary, and agriculturalists, OSHA has made it necessary for the farmworkers to turn to the EPA for the formulation and enforcement of pesticide health and safety standards, leaving OSHA to regulate the areas previously discussed. See Comment, Farmworkers in Jeopardy: OSHA, EPA, and the Pesticide Hazard, 5 ECOLOGY L.Q. 69, 81 (1975).
Under the authority of the Federal Insecticide, Fungicide and Rodenticide Act,\textsuperscript{175} EPA promulgated regulations which establish limited worker protection through labeling rules. As of June 10, 1974, labels on containers of ethyl parathion, methyl parathion, guthion, demeton, azodrin, phosalone, carbophenothion, metasystox-R, EPN, bidrin, endrin and ethion must state rules with respect to field reentry.\textsuperscript{176} In addition, the federal statute makes it unlawful to use any registered pesticide in a manner inconsistent with its labeling. Farmers who ignore label instructions restricting field reentry may be subject to civil and criminal penalties.\textsuperscript{177}

Although pesticide control is primarily a federal matter, the EPA has also encouraged states to establish more rigid restrictions if warranted by available data.\textsuperscript{178} There is presently no indication, however, that Minnesota desires to establish its own field reentry regulations. Thus, federal standards are the only controls in effect.\textsuperscript{179}

V. Farmers and “Labor Contractors”

Through the years the migrant community has been plagued by certain farm labor contractors who have abused the power which comes from being a crew leader dealing on behalf of workers with farmers in need of short term help. False promises of jobs in another part of the country have caused families to travel great distances only to find no work or less work than expected at a rate of pay below that represented. Since the standard practice for the payment of wages is

\begin{itemize}
  \item \textsuperscript{177} See 7 U.S.C. § 136j(a)(G), 136l (Supp. IV, 1974).
  \item Unfortunately, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) is concerned primarily with environmental safety and with a safe and healthy work environment of the farmworker only to the extent that it coincides with the environmental considerations. Control over use is achieved by regulations concerning labeling. Unlike the goal of the OSHA pesticide control to protect the class of individuals labeled farmworkers, the defeat of an amendment to FIFRA to include farmworkers in the term “man” along with express protection indicates the inherent inability of FIFRA to protect the farmworkers adequately. FIFRA also lacks record-keeping requirements and the right to initiate inspections anonymously. These requirements were not included because FIFRA was intended to supplement the farmworker health and safety provisions of OSHA. See Comment, Farmworkers in Jeopardy: OSHA, EPA, and the Pesticide Hazard, 5 Ecology L.Q. 69, 110-20 (1975); Note, Environmental Law: Agricultural Pesticides, 13 Washburn L.J. 53, 63-64 (1974).
  \item \textsuperscript{178} See 39 Fed. Reg. 16888, 16890 (1974). However, even if the states enact more rigid requirements, the civil and criminal penalties imposed by FIFRA can be enforced only by the EPA. See 7 U.S.C. § 136l (Supp. IV, 1974).

With the amendment of OSHA regulations to eliminate the pesticides and field reentry provisions, MOSHC I would presumably no longer contain these regulations. See MOSHC I.
for the farmer to pay the contractor who in turn pays the workers, the contractor was in a position to assess a variety of fees and deductions. Workers often received no meaningful accounting, even when charges were legitimate. Oftentimes agricultural workers were fortunate to arrive at the end of the season having covered the basic travel, food and lodging expenses. Moreover, it was not unknown for contractors to transport workers in unsafe and uninsured vehicles or to house them in camps which were woefully inadequate, even by primitive standards.\textsuperscript{180}

The Farm Labor Contractor Registration Act of 1963\textsuperscript{181} and the extensive 1974 amendments were designed to afford some protection to workers caught up in the migrant way of life. Under the provisions of this Act, contractors are required to register with the United States Department of Labor.\textsuperscript{182} They are also required to supply sufficient evidence that housing which they provide meets minimum Manpower Administration standards and that vehicles in which workers are transported are covered in compliance with minimum insurance standards.\textsuperscript{183} Moreover, the Act requires that workers be given written notice of employment conditions before they travel\textsuperscript{184} and that they receive accountings of their earnings.\textsuperscript{185} Violations of the Act may give rise to both criminal and civil penalties,\textsuperscript{186} as well as loss of license.\textsuperscript{187} The effectiveness of the Act, however, has been hampered by inadequate enforcement.

It is possible that a farm operator who does not operate as a crew leader in the usual sense may be subject to the registration requirements of the Act even though he deals exclusively with “local” employees who would not qualify as migrant workers as that term is popularly understood. This is the result of an exceedingly general statutory definition of “migrant worker.” The Act defines “migrant worker” as an individual whose primary employment is in agriculture, including dairying and the production of agricultural commodities and

\begin{footnotesize}
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  \item 183. See 7 U.S.C. § 2044(a) (Supp. IV, 1974).
  \item 184. 7 U.S.C. § 2045(b) (Supp. IV, 1974).
  \item 185. 7 U.S.C. § 2045(e) (Supp. IV, 1974).
  \item 186. 7 U.S.C. § 2048 (Supp. IV, 1974).
\end{itemize}
\end{footnotesize}
the raising of livestock, bees, fur-bearing animals or poultry, or who performs services in connection with such employment, on a seasonal or other temporary basis.\footnote{188} In addition, the interpretive regulations issued by the Department of Labor state that an individual qualifies as a "migrant worker" if he performs agricultural labor on a seasonal or other temporary basis, even though it is not his primary employment.\footnote{189} Thus, a farmer who utilizes any seasonal workers who fit into the broad definitions of agricultural labor set forth in the Fair Labor Standards Act\footnote{190} or the Social Security Act,\footnote{191} is using "migrant workers" within the meaning of the Farm Labor Contract Registration Act even though all of the employees are "locals."\footnote{192}

Unless exempted, a farmer who personally "recruits, solicits, hires, furnishes or transports" for a fee\footnote{193} one or more "migrant workers"\footnote{194} must register.\footnote{195} This does not apply to farm employers' activities which are solely for their own operation.\footnote{196} However, if the same farmer provides any of these services for a neighbor for a fee,\footnote{197} he would be subject to registration unless he confined his activities to within a twenty-five mile intrastate radius of his permanent residence and limited his services to a period of not more than thirteen weeks per year.\footnote{198} Thus, the farmer who assembles his own crew for his own

\footnotesize{
\begin{itemize}
  \item 188. "The term 'migrant worker' means an individual whose primary employment is in agriculture, as defined in section 203(f) of Title 29, or who performs agricultural labor, as defined in section 3121(g) of Title 26, on a seasonal or other temporary basis." 7 U.S.C. § 2042(g) (1970).
  \item 189. See 29 C.F.R. § 41.12(a) (1975).
  \item 191. The types of services which are included in the term "agricultural labor" are (1) services performed on a farm in connection with cultivating the soil, and the raising or harvesting of agricultural or horticultural commodities; (2) services performed in the operation or maintenance of farm equipment; (3) services performed in connection with the operation or maintenance of ditches or waterways used exclusively for the owner's farming purposes; (4) services performed as an employee of farm operators in the processing or delivery of agricultural commodities in their unmanufactured state to market or storage; and (5) services performed on a farm operated for profit if the services are for domestic purposes in the private home of the employer or if the services are not in the course of the employer's trade or business. Int. Rev. Code of 1954, § 3121(g).
  \item 192. See 7 U.S.C. § 2042(b) (Supp. IV, 1974).
  \item 193. "Fee" is defined as including any money or other valuable consideration paid or promised to be paid to a person for services as farm labor contractor. Excluded from the definition, however, is money or other valuable consideration received by a person sharing expenses in a common venture from another participant in that common venture. 29 C.F.R. § 41.5 (1975).
  \item 194. The Farm Labor Contractor Registration Act, as amended, speaks in terms of migrant workers in the plural, although the "ten or more" migrant workers qualification was deleted by the 1974 amendments. Compare 7 U.S.C. § 2042(b) (Supp. IV, 1974) with Act of Sept. 7, 1964, Pub. L. No. 88-582, § 3, 78 Stat. 920.
  \item 196. See 7 U.S.C. § 2042(b)(2) (Supp. IV, 1974).
  \item 197. See note 193 supra.
  \item 198. See 7 U.S.C. § 2042(b)(4) (Supp. IV, 1974).
\end{itemize}
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use and then for a fee transports them to a neighbor's farm may come under the registration requirements. Farmers who relied in the past on the now-repealed exclusion for activities involving less than ten migrant workers, must now observe the twenty-five mile intrastate radius rule and the thirteen weeks rule if they are to avoid the necessity of registering.199

The fact that a farm employer's own activities do not involve the recruitment or transportation of migrant workers, however, does not free him from all provisions of the Act. If the farm employer uses migrant workers who are covered by the Act, he must comply with several requirements. First, he must determine that the farm labor contractor from whom he retains workers has a valid certificate of registration.200 A farm employer who knowingly uses the services of an unregistered contractor may be denied the services of the Manpower Administration for a period of three years.201 In addition, such a farmer would also seem to be subject to the statutory civil action available to persons aggrieved by intentional violation of the Act.202 Second, employers should also be aware of the provisions regarding discharge of employees. A farm employer or farm labor contractor who discharges a "migrant worker" in retaliation of asserting his rights under the Act, must reinstate the worker with back pay or damages.203 While the burden of proof on retaliatory motive would appear to be on the worker, it is to be noted that he potentially may be able to avail him-

199. Other exemptions exist in favor of nonprofit operations, employees of exempt operators, persons engaging in certain activities covered by agreements with foreign governments, certain employees of registered contractors, and certain common carriers. 7 U.S.C. § 2042(b) (Supp. IV, 1974).
201. See 7 U.S.C. § 2043(d) (Supp. IV, 1974). The provisions regarding penalties for violating the Act were expanded greatly by the 1974 amendments. Although criminal penalties are imposed only upon contractors or their employees, it is clear that a farmer employer who violates the Act is subject to a civil fine of up to $1,000 for each violation. See 7 U.S.C. § 2048(b) (Supp. IV, 1974).
202. A statutory private right of action is available for any person aggrieved by a violation of the Act or regulations promulgated thereunder. Federal jurisdictional amounts and diversity of citizenship are not required nor is there any necessity for exhausting administrative remedies. 7 U.S.C. § 2050a(a) (Supp. IV, 1974). There seems to be no reason why a farmer who violates 7 U.S.C. § 2043(c) (Supp. IV, 1974) would not also be exposed to this private liability. The Tenth Circuit had refused to recognize such a cause of action under the 1963 version of the statute. See Chavez v. Freshpict Foods, Inc., 456 F.2d 890 (10th Cir.), cert. denied, 409 U.S. 1042 (1972). But see Salinas v. Amalgamated Sugar Co., 341 F. Supp. 311, 313 (D. Idaho 1972). The statute does not, however, resolve the question whether a negligent violation of the Act will give rise to a private civil remedy. See 7 U.S.C. § 2050a(b) (Supp. IV, 1974), which speaks in terms of intentional violation of the Act.
self of the resources of the Department of Labor in asserting his claim.\textsuperscript{204}

The 1974 amendment to the Act, consistent with regulations issued under the Fair Labor Standards Act, requires farm employers to keep “all payroll records required to be kept by such person under Federal law.”\textsuperscript{205} This duty may not be delegated to the farm labor contractor, even if the contractor is handling the payroll. The farm employer is required to obtain and maintain copies of all records and information which the contractor must accumulate as well as all information the contractor must give to “migrant workers.”\textsuperscript{206}

The Act does not impose an affirmative duty on the farm employer to report suspected violations. In the past, the Department of Labor has necessarily relied on the migrant workers themselves as the primary source of information on violations of the Act. It has been suggested that this has been one factor leading to the poor record of enforcement under the Act.\textsuperscript{207} While the Act does require an employer to determine whether a contractor with whom he deals has a current certificate before contracting business with him, there is nothing in the Act which requires him to report the activities of unregistered contractors. Perhaps the current sanctions on farmers who deal with nonregistered contractors will diminish the business of such contractors and force a higher percentage of registration than in the past. The fact remains, however, that the Department of Labor must substantially rely on the migrant workers themselves to report abuses by both registered and unregistered contractors and must continue to rely on such workers unless it is able to increase substantially the staff of inspectors.\textsuperscript{208}

VI. Workers' Compensation for Minnesota Farm Employees

Until recently, compulsory workers' compensation systematically excluded farm workers.\textsuperscript{209} Two reasons characterize the historic

\textsuperscript{204} 7 U.S.C. § 2050b(b) (Supp. IV, 1974).
\textsuperscript{205} 7 U.S.C. § 2050c (Supp. IV, 1974).
\textsuperscript{206} 7 U.S.C. § 2050c (Supp. IV, 1974).

http://open.mitchellhamline.edu/wmlr/vol2/iss1/2
rationale. Second, a

laborer's treatment under state workers' compensation laws). See generally E. BLAIR, REFERENCE GUIDE TO WORKMEN'S COMPENSATION § 4.04 (1974, Supp. 1975); S. HOROVITZ, INJURY AND DEATH UNDER WORKMEN'S COMPENSATION LAWS 214-27 (1944); A. LARSON, supra, §§ 53-53.40; W. SCHNEIDER, supra §§ 626, 628-78; Davis, WORKMEN'S COMPENSATION—EXCLUDED EMPLOYMENT, 16 DRAKE L. REV. 68, 81-82 (1966); Davis, supra note 5 (excellent recent discussion). Farmworkers, however, were not excluded from the initial compensation laws in Great Britain, Germany, or Italy. S. HOROVITZ, supra § 628, at 615. This lends additional support to the theory that exclusion of farm workers was a political compromise necessary to get needed political support for the passage of the compensation law from the rural areas since the United States copied the acts of Great Britain and Germany in other respects.

The constitutionality of the workers' compensation laws was established in this country in New York Cent. R.R. v. White, 243 U.S. 188 (1916), which upheld the New York statute against numerous constitutional challenges. The White court specifically noted that the exclusion of farm laborers was not an "arbitrary classification" and denied a challenge based on the equal protection clause. Id. at 208.

The exclusion of farm workers from the Minnesota workers' compensation laws originated with the original workers' compensation statute, Act of Apr. 24, 1913, ch. 467, § 8, [1913] Minn. Sess. Laws 677, repealed and reenacted by Act of Mar. 15, 1921, ch. 82, § 8, [1921] Minn. Sess. Laws 92, codified as amended at MINN. STAT. § 176.041 (Supp. 1975). The constitutionality of the Minnesota act was upheld by the Minnesota Supreme Court in Mathison v. Minneapolis Street Ry., 126 Minn. 286, 148 N.W. 71 (1914). The court expressly stated that the exclusion of farm laborers, inter alia, was "within the proper discretion of the legislature." Id. at 293, 148 N.W. at 74.

210. Early cases suggested that farm laborers do not need the protection afforded by the workers' compensation acts. See New York Cent. R.R. v. White, 243 U.S. 188, 208 (1916) ("the risks inherent in these occupations are exceptionally patent, simple and familiar"); Dowery v. State, 84 Ind. App. 37, 40, 149 N.E. 922, 923 (1925); A. LARSON, supra note 209, § 53.20. More recent statistics indicate that the dangers in farm labor are indeed high. See W. DODD, ADMINISTRATION OF WORKMEN'S COMPENSATION 753 (1936); A. LARSON, supra note 209, § 53.20; W. SCHNEIDER, supra note 209, § 628, at 615; Davis, supra note 5, 1 & nn.1 & 2 (only mining and construction more hazardous).


The settling of the law under the equal protection clause of the federal Constitution in Romero would not prevent a state from establishing a higher standard of equal protection when interpreting its own constitution. Cf. The Supreme Court, 1972 Term, 87 HARV. L. REV. 1, 111 n.44 (1973).

211. See A. LARSON, supra note 209, § 53.20. Administrative problems are generally greater.
policy persisted that the cost of coverage could not, and perhaps should not, be passed on to the consuming public.\textsuperscript{212} In Minnesota\textsuperscript{213} and elsewhere\textsuperscript{214} the first breakthrough came in the form of legislation allowing the employer the option of bringing farm laborers within the compensation scheme.\textsuperscript{215} Until January 1, 1974,\textsuperscript{216} voluntary coverage was the only way Minnesota farm production workers could be covered by the compensation act. The Act otherwise expressly excluded "farm laborers."\textsuperscript{217}

In 1973, the legislature extended compulsory coverage to limited numbers of farm workers by narrowing the scope of the exclusion. The all-inclusive "farm laborers" was narrowed to those employed by "family farms."\textsuperscript{218} "Family farm" was defined as an operation which paid less than \$2,000 in cash wages to farm laborers during the preceding calendar year.\textsuperscript{219} The amendment thus extended compulsory

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\textsuperscript{212} See id., W. SCHNEIDER, supra note 209, § 628, at 615. But see S. HOROVITZ, supra note 209, at 215.


\textsuperscript{214} Most states which do not provide compulsory coverage now allow coverage at the election of the employer. See, e.g., FLA. STAT. ANN. § 440.04 (Supp. 1976); IDAHO CODE § 72-213 (1973); ME. REV. STAT. ANN. tit. 39, § 24 (Supp. 1975); MO. REV. STAT. § 287.090 (Vernon Supp. 1976).

\textsuperscript{215} Act of Mar. 15, 1921, ch. 82, § 9, [1921] Minn. Sess. Laws 92-93 provided:

If both employer and employe, shall, by agreement expressed or implied, or otherwise, as herein provided, become subject to part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in every case of personal injury or death of his employe, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self-inflicted or when the intoxication of such employe is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. It is hereby made the duty of all such employers to commence payment of compensation at the time and in the manner prescribed by part 2 of this act without the necessity of any agreement or order of the Commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by an employe or dependent to take as compensation an amount less than that prescribed by law shall be valid.


\textsuperscript{219} MINN. STAT. § 176.011, subd. 11a (1974):

"Family farm" means any farm operation which pays or is obligated to pay less than \$2,000 in cash wages, exclusive of machine hire, to farm laborers for
coverage to employees of a farmer who had expended $2,000 or more in cash\textsuperscript{220} wages during the preceding year. A farmer expending less than $2,000 in wages in the preceding year is exempt. A “see-saw” effect is thus possible when a farmer exceeds and then drops below the statutory figure from year to year.

The new legislation, however, did present some difficult problems of interpretation for small operators and family farm corporations.\textsuperscript{221} Most revolved around the all-important definition of “family farm.” In determining whether one was dealing with a “family farm” it was necessary to calculate whether $2,000 had been paid in cash wages to “farm laborers” in the preceding calendar year. The statutory definition provided that an employer’s “immediate family” would not be included in the category of “farm laborers” even if they were wage earners. The statute failed to define “immediate family” and thus the application of one of the threshold provisions of the act was unclear. Moreover, once the $2,000 test was applied it was unclear whether a farmer who met the test had to extend coverage to his “immediate family.” “Family farm corporations” faced an additional problem, since it was also unclear whether wages paid to the “immediate family” of stockholders or officers were to be included in the $2,000 test.

The legislature responded during the 1974\textsuperscript{222} and 1975\textsuperscript{223} legislative sessions. Rather than amending the definition of “family farm,” or explaining the term “immediate family,” it amended the basic exclusionary provision of the workers’ compensation act so that it currently exempts:\textsuperscript{224}

\begin{itemize}
\item services rendered during the preceding calendar year. For purposes of this subdivision, farm laborer does not include members of the employer’s immediate family or other farmers in the same community or members of their families exchanging work with the employer.
\end{itemize}

\textsuperscript{220} The statute only speaks of “cash” payments. Thus it would appear that payments in kind, such as food or lodging, would be excluded.

\textsuperscript{221} “Family farm corporation” is a term defined by statute. See note 224 infra.


\textsuperscript{224} MINN. STAT. § 500.24, subd. 1, clause (c) (Supp. 1975), referred to herein, defines “family farm corporation” as:

\begin{itemize}
\item [A] corporation founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are members of a family related to each other within the third degree of kindred according to the rules of civil law, and at least one of whose stockholders is a person residing on or actively operating the farm, and none of whose stockholders are corporations; provided that a family farm corporation shall not cease to qualify as such hereunder by reason of any devise or bequest of shares of voting stock.
\end{itemize}
Persons employed by family farms, spouses, parents and children, regardless of their age, of a farmer employer working for him or on a family farm corporation...

These amendments fully clarified one thing: an unincorporated farmer who has met the $2,000 test in the preceding year need not extend coverage to his employee-spouse, parent or child. This, however, is the extent of the clarification.

Considering only unincorporated farms, a question remains as to whose wages shall be excluded when applying the $2,000 test to determine if the farm is a "family farm." The statutory definition of "family farm" excludes members of the employer's "immediate family" from the definition of farm laborers, but continues to leave the phrase "immediate family" undefined. Thus, it is still unclear whether the term "immediate family" is meant to be coterminous with the "spouse, parents and children" exception in the general coverage exclusion section of the workers' compensation act or whether it was meant to be given a more expansive meaning. On the whole, policy considerations support the position that the phrase "immediate family" in the definition of "family farm" be given the same meaning as the "spouse, parent and child" exclusion in the general exception section. This would mean that wages paid to relatives such as uncles, cousins and grandchildren would be included in the $2,000 test. Since such persons are not excluded from coverage by the general exclusionary provisions once the $2,000 test is met, it is logical to include their wages when determining whether that very test has been satisfied. An interpretation which includes wages paid to such relatives in the $2,000 test increases the chances of compulsory coverage.

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225. MINN. STAT. § 176.011, subd. 1a (1974).
226. See MINN. STAT. § 176.011, subd. 1a (1974).
228. See MINN. STAT. § 645.08 (1974).
229. See MINN. STAT. § 645.08 (1974).
230. This assumes, of course, that the relatives have met the threshold requirement of being an "employee," i.e., one working under a contract for hire. See MINN. STAT. § 176.011, subd. 9 (1974), as amended, Act of Apr. 20, 1976, ch. 331, § 36, [1976] Minn. Legis. Serv. 980-81 (West) ("Employee means any person who performs services for another for hire"). Services rendered without expectation of payment, or gifts would not be covered. In addition, the Minnesota Act, as is typical, excluded employment which "is casual, and not in the usual course of the trade, business, profession, or occupation of his employer." MINN. STAT. § 176.041, subd. 1 (Supp. 1975). The Minnesota court has interpreted this to require a showing that both the requirements be met, i.e., that the employment be casual and not in the usual course of the employer's business. See, e.g., Ostlie v. H.F. Dirks & Son, 189 Minn. 34, 248 N.W. 283 (1933). Thus, a farm laborer such as a close relative whose employment is only "casual" would not be covered even though the employment was in the usual course of his employer's business. The requirement of "cash" as
Turning to the "family farm corporation," confusion remains not only with respect to the applicability of the $2,000 test, but also the scope of compulsory coverage. Does the $2,000 test have any relevance at all? The threshold question is whether the "family farm corporation" can be a "family farm" under Section 176.011, subd. 11a. If so, and this seems likely, compulsory coverage provisions do not apply unless the $2,000 test is met.

A logical development of the problems of the "family farm corporation" first requires a discussion of the scope of compulsory coverage assuming the $2,000 test to be applicable and to be met. Who must be covered? The general exclusionary provision of the workers' compensation act excluded "spouses, parents and children, regardless of their age, of a farmer employer working for him or on a family farm corporation." Since the phrases "working for him" or "on a family farm corporation" refer to "farmer employer" this language limits the exclusion to the spouse, parents and children of the "farmer employer." Who is the "farmer employer" in a family farm corporation? Does the term encompass the corporation or just officers and stockholders who actually work and live on the farm? If the compensation statute is to be construed liberally in order to extend compulsory coverage whenever possible, the meaning of "farmer employer" in this context should be limited to officers and stockholders who actually reside on or operate the farm. This would avoid the exclusionary language of Section 176.041 which might otherwise pertain to employee-spouses, parents and children of "other" stockholders. Therefore, if compulsory coverage is required because the $2,000 test is met, the scope of that coverage should encompass employed spouses, parents and children of stockholders who live off the farm and are not involved in its operation. These employees should not be considered spouses, parents or children of a "farmer employer."

As indicated, the family farm corporation also presents problems opposed to wages in kind may also be of more significance where family relatives are involved. See note 220 supra.

231. MINN. STAT. § 176.011, subd. 11a (1974).
232. MINN. STAT. § 176.041, subd. 1 (Supp. 1975).
233. The Minnesota court has frequently stated that as a piece of remedial legislation with broad social goals, the workers' compensation act demands liberal construction. See, e.g., Berard v. LaCoe, 286 Minn. 375, 377-78, 176 N.W.2d 74, 76 (1970); Chillstrom v. Trojan Seed Co., 242 Minn. 471, 480-81, 65 N.W.2d 888, 894-95 (1954); State ex rel. Duluth Brewing & Malting Co. v. District Court, 129 Minn. 176, 178, 151 N.W. 912, 913 (1915); State ex rel. Virginia & Rainy Lake Co. v. District Court, 128 Minn. 43, 47, 150 N.W.211, 213 (1914).
when initially applying the $2,000 test under Section 176.011.235
Where the aggregate of wages paid out during the previous calendar
year is less than $2,000, the family farm corporation should fall under
the exclusionary provisions of both Section 176.011, subd. 11a238 and
Section 176.041, subd. 1.237 But whose wages are to be included when
running the $2,000 test: would any member of the stockholder’s “im-
mediate family” who happens to work on the farm be a member of
the employer’s “immediate family?” Since it is difficult to argue that
a corporation has an “immediate family” it would be easy to assert
all wages count toward the $2,000 requirement regardless of the em-
ployee’s identity. However, since the family farm corporation is not
required to extend coverage to spouses, parents or children of operat-
ing or resident stockholders or officers, given the conclusions reached
above, it seems illogical to include wages paid to such persons in the
$2,000 test. Therefore, consistency supports the construction that the
legislature intended to exclude from the $2,000 computation the wages
of persons excluded from compulsory coverage under Section 176.041,
subd. 1.238 Under this construction, wages paid to the spouse, parent
or child of an operating or on-farm resident stockholder or officer
would not be included in the $2,000 test, whereas wages paid to the
“immediate family” of stockholders living off the farm and not in-
volved in its operation would be included.

Another consideration in construing the Minnesota compensation
act is the status of the voluntary coverage provisions. The act clearly
permits an unincorporated farmer employer operating a “family
farm” voluntarily to cover his employees, including family members.239
However, this provision does not contemplate coverage of the farmer
himself. Arguably, such a farmer is a self-employed person and there-
fore eligible for coverage under a different section of the act, specifi-
cally Section 176.012.240 Such a farmer is certainly the “owner of a
business.”241 However, since the question of voluntary coverage within
the “family farm” context is specifically dealt with by Section 176.051242
and since that section precludes the farmer himself from being covered,
there remains the slightly worrisome question as to whether the legis-

235. MINN. STAT. § 176.011, subd. 11a (1974).
236. MINN. STAT. § 176.011, subd. 11a (1974).
237. MINN. STAT. § 176.041, subd. 1 (Supp. 1975).
238. MINN. STAT. § 176.041, subd. 1 (Supp. 1975).
239. See MINN. STAT. § 176.051 (Supp. 1975).
lature had farmers in mind at all when it enacted Section 176.012.243

Beyond this is the question whether a family farm corporation can voluntarily cover its excluded employees. Section 176.051244 speaks in terms of an employer of workers on a family farm being able to make the election. Presumably the definition of "family farm" which speaks of "any farm corporation" is sufficiently broad to include the "family farm corporation" and therefore to allow the corporate farm employer to make the statutory election for all employees, including stockholder employees.

It is possible that the preceding discussion of workers' compensation may not apply to a particular farm situation. Particular forms of employment on a farm may not constitute "farm labor" thereby obviating any need to deal with the exclusion. The question could have considerable importance for a new agricultural operation. Such an operation would not have paid cash wages in the preceding calendar year and if the employment offered is "farm labor," coverage will not be required immediately regardless of the amount of the current payroll. However, if the employment offered is not "farm labor" but is, instead, employment in "processing" or "manufacturing," compulsory coverage would be required at once.

Since the line between "farm labor" and employment in "processing" or "manufacturing" is not drawn by statute, it is necessary to examine the case law. Litigation on the issue of what constitutes "farm labor" has been abundant.245 In Nelson v. Harder Royal Breeders,246 the Minnesota court recently provided a helpful summary of the principles involved in making the distinction between farm labor and non-farm labor. In Nelson the employer, a corporation, operated a 400-acre farm and engaged in the raising of turkeys and the production of eggs. The employee in question was furnished living quarters in addition to salary and spent about 90 percent of his time working directly with turkeys and the other 10 percent in the fall plowing, driving tractor and hauling corn. The employee was injured while moving a turkey nest. The sole issue was whether the employee was engaged in covered industrial or commercial labor or in farm labor and thus outside the coverage of the compensation scheme.247 The court said:248

244. MINN. STAT. § 176.051 (Supp. 1975).
245. See A. LARSON, supra note 209, §§ 53.30-.34, .40; W. SCHNEIDER, supra note 209.
246. 290 Minn. 302, 187 N.W.2d 634 (1971).
247. Id., at 304, 187 N.W.2d at 636.
248. Id. at 304, 187 N.W.2d at 636, citing Partridge v. Blackbird, 213 Minn. 228, 6 N.W.2d
The many Minnesota cases dealing with the exemption of the farm laborers indicated broad guidelines for determining whether an employee is a farm laborer, but each case depends on its own facts. Whether an employee comes within the exception to the application of the compensation act is determined by the whole character of the employment. The test is the nature of the employment taken as a whole, rather than the particular item of work that the employee was doing when injured or the place where the work was performed.

The Minnesota court did think it important that the employer did not process turkeys or eggs and distinguished an Iowa decision where about one-half of the total poultry crop was slaughtered and dressed in a building on a farm. There the employee was injured in the processing building and was held to be a "commercial employee" and not a farm laborer. In the Nelson case the court held that there was only one operation—farming—and that the employee was indeed involved as a "farm laborer." Thus, the ruling of the Industrial Commission applying the exclusion was sustained.

VII. UNEMPLOYMENT INSURANCE

Prior to January 1, 1974, both the Federal Unemployment Tax Act and the Minnesota Employment Services Law contained sweeping exclusions of on-farm employees. Three primary reasons

250 (1942); Steinmetz v. Klabunde, 261 Minn. 487, 113 N.W.2d 444 (1962); Peterson v. Farmers State Bank, 180 Minn. 40, 230 N.W. 124 (1930).

249. Crouse v. Lloyd's Turkey Ranch, 251 Iowa 156, 100 N.W.2d 115 (1959).

250. The Iowa employer slaughtered and processed approximately one-half of its production in a building on the "farm," and it was in this building that the employee was injured. The injured employee worked only in this building. The Iowa court relied on these facts in finding the employee not to be a "person engaged in agriculture." See id. at 163, 100 N.W.2d at 119.


252. See id. at 307, 187 N.W.2d at 638 (1971).


provided the historic justification. First, it was believed that agriculture would turn out to be another deficit industry. It was felt more money would be paid out each year in benefits than would be collected in taxes. Second, the seasonal and transient nature of much of the employment was thought to pose insurmountable administrative obstacles. Finally, as with many other social programs, it was argued that it was best to subsidize agriculture, this time by keeping it unburdened by the unemployment tax.

The federal act continues to exclude the bulk of on-farm production workers. Prior to 1970 the exclusion was so extensive that it left unprotected certain off-farm agricultural workers and substantial numbers of processing workers. In 1970 this was changed. The phrase “agricultural labor” which is critical to the operation of the exclusion was redefined to have the same meaning as the phrase “agricultural labor” in the Social Security Act, with one important modification. The result was the extension of coverage to employees performing off-farm services in the production or harvesting of maple syrup, maple sugar, mushrooms, and the hatching of poultry. The extension also included employees of “processor” farmers who produce not more than one-half of the subject commodities on the farm where the workers are employed. For example, on-farm workers


256. See, e.g., Wilcox, The Coverage of Unemployment Compensation Laws, 8 VAND. L. REV. 245, 279-80 (1955) (original justification for excluding agricultural labor grounded primarily on administrative consideration; exclusion is presently justified on grounds other than the difficulty of collecting taxes from agricultural employers).

257. Constitutional challenges to the exclusion on equal protection and due process theories have been unsuccessful, the courts holding the classification does not constitute “invidious discrimination” and is justified for the policy reasons indicated in the text. See, e.g., Doe v. Hodgson, 478 F.2d 537, 538 (2d Cir.), cert. denied, 414 U.S. 1096 (1973); Romero v. Hodgson, 319 F. Supp. 1201, 1203 (N.D. Cal. 1970), aff’d mem., 403 U.S. 901 (1971). See also Eldred v. Division of Employment & Security, 209 Minn. 58, 295 N.W. 412 (1940) (provision exempting employers of less than eight persons in municipalities of less than 10,000 population from the Minnesota unemployment compensation act held to be constitutionally acceptable classification).


261. See INT. REV. CODE of 1954, § 3306(k). This section incorporates the definition at 26 U.S.C. § 3121(g) (1970) with the exception that § 3121(g)(4)(B) is restated for purposes of the unemployment tax act.


employed to can corn would be covered if their farm-employer had not produced more than one-half of the corn to be processed. Except for these few changes and the recent extension of emergency unemployment compensation benefits to certain qualifying farm workers, the federal statutes continue to exclude the bulk of on-farm production workers. 264

Minnesota first adopted unemployment insurance legislation in the late 1930’s and as in the federal act, farm workers were excluded. The current Minnesota statute mimics the federal definition of “agricultural labor” and thus preserves an exclusion coextensive with the federal with one recent modification. 265 That modification has been the source of some confusion. The Minnesota act now covers workers employed on a farm which employs four or more persons for some portion of a day in each of twenty different weeks in either the current or preceding calendar year. 266 The provision brings coverage to some farm workers but the exact number is unclear. The issue is whether a farmer who employs four different individuals during a week with no more than three of them ever being on the job on the same day has accumulated one of the twenty weeks critical to the operation of the statute. It is clear that if the same farmer hires the same four persons for one day a week each, and has all of them work on Monday, even though their work hours might not overlap, he would clearly be accumulating weeks toward the twenty week test. A liberal reading designed to produce coverage where possible would not distinguish between the two patterns of employment and would require in each example that the week be counted toward the required twenty. 267 Yet, under the present wording of the statutes, such a construction is not certain.

264. Federal legislation in the unemployment tax area was designed to encourage the individual states to provide for the security of workers during periods of unemployment. This purpose was accomplished by providing credits against the federal tax equal to contributions to state unemployment funds. See 26 U.S.C. § 3302 (1970), as amended, 26 U.S.C.A. § 3302 (Supp. 1976).


266. [S]ervices performed after January 1, 1974, for an employing unit which has four or more persons, excluding the officers of the corporation if the employing unit is a family farm corporation, performing services in agricultural labor for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time, shall not be excluded from the term “employment.”


267. See Rochester Dairy Co. v. Christgau, 217 Minn. 460, 14 N.W.2d 780 (1944).
Once the employer has qualified under the act, so must the employee. Not all agricultural laborers working for an insured employer will be covered. To qualify, the worker must accumulate eighteen or more “credit weeks” and at least $540 in “wage credits” within the “base period” of employment in insured work. The effect is that most migrant workers, local harvest workers, and students working during summer vacation will not become eligible for benefits since most of these employees will not accumulate the necessary “credit weeks.”

One final matter deserves comment. The statute exempts “services performed by an individual in the employ of his son, daughter, or spouse, and services performed by a child under the age of 18 in the employ of his father or mother” If the employing unit is a family farm corporation does this exemption have any impact? It is not difficult to imagine a corporation where the four employees who have worked for some portion of a day in each of twenty different weeks...
and who have clearly accumulated eighteen "credit weeks" and $540 or more in "wage credits" are father, mother and two minor children. It would not be expected that the legislature had in mind compulsory unemployment tax contributions in such an instance, yet the statute seems to command the result. The employee, after all, is a corporation, not a father, mother, son or daughter.

A 1976 amendment alleviates the problem somewhat. Now, officers of a family farm corporation are excluded from the "four or more persons employed during any portion of a day in each of twenty different weeks" test. By definition, a family farm corporation must have at least one officer residing on or actively operating the farm.

Thus, in the mother-father-and-two-children hypothetical above, if only one of the parents were an officer of the corporation, the new statutory language would prevent the work of the others from being deemed "employment." If both parents were officers, as would be more typical, the possibility of the statute applying becomes more remote. Obviously, the way to avoid the question of possible compulsory coverage where the corporation has been formed by a large family is to have a sufficient number of vice presidencies so that all family members may be officers.

As discussed in other areas, the advent of the family farm corporation has "taken many laws concerning agriculture by surprise." Frequently it appears that the legislature intended to treat the incorporated family farm on the same basis as the unincorporated family farm. However, the failure to coordinate and clarify language in a number of statutes has resulted in considerable confusion.

VIII. Farm Workers Labor Relations Law

The Minnesota and federal labor relations acts both exclude farm workers. The exclusion in the federal act was a result of political compromise. Similarly, the history of the Minnesota act reveals

273. See note 266 supra and accompanying text.
274. See Minn. Stat. § 500.24, subd. 1(c) (1974), as amended, (Supp. 1975). Minn. Stat. § 268.04, subd. 31, added by Act of Mar. 11, 1976, ch. 43, § 2, [1976] Minn. Legis. Serv. 95 (West), which provides that, for purposes of the employment services act, "family farm corporation" shall have the meaning assigned to it in § 500.24.
278. The original bill for the Act did not exclude agricultural labor. See S. 2926, 73d Cong., 2d Sess. § 3(3) (1934). One of the possible reasons agricultural labor was excluded from the
an active "farm block" that opposed legislation which would allow strikers to interfere with the movement of farm products within the state. As a result, the extension of benefits to farm workers was not a serious issue and the Minnesota legislature followed precedent set by the federal act.

The exclusion in both acts centers in their definitions of the term "employee." The Minnesota act excludes "any individual employed in agricultural labor," while the federal act excludes "any individual employed as an agricultural laborer." Unfortunately, neither statute defines these terms. As a result, much litigation has arisen, especially under the federal act, to determine the status of persons engaged in "gray areas" of farm employment, such as driving vehicles for a farmer, assisting in on-farm processing of agricultural products, and maintaining farm equipment.

original act was the concern that agricultural labor might not be commerce. See CONG. REC. 9721 (1935).

There have been recent attempts to include agricultural labor in the Act. See, e.g., S. 8, 91st Cong., 1st Sess. (1969); H.R. 16014, 90th Cong., 2d Sess. (1968); H.R. 4769, 90th Cong., 1st Sess. (1967). Advocates for the extension have argued "logic compels that the same considerations that led Congress in 1935 to declare a national policy . . . are applicable today as compelling reason to include agriculture within the scope of the National Labor Relations Act." S. REP. No. 83, 91st Cong., 1st Sess. 19 (1969). On the other hand, opponents of the extension have argued that unlike strikes affecting nonperishable commodities capable of production during any season of the year, strikes affecting agricultural products may destroy prior efforts of production as well as hault efforts during the period of the strike. See Hearings on S. 1866 Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Pub. Welfare, 89th Cong., 1st Sess., 95-96 (1965).


280. See id.

281. MINN. STAT. § 179.01, subd. 4 (1974).


285. See, e.g., McElrath Poultry Co. v. NLRB, 494 F.2d 518 (5th Cir. 1974) (per curiam) (drivers of trucks used as farm implements are agricultural laborers); NLRB v. Kent Bros. Transp. Co., 458 F.2d 480 (9th Cir. 1972) (per curiam) (drivers for contract carrier hauling agricultural products from farm to market are not agricultural laborers); NLRB v. Gass, 377 F.2d 438, 443-44 (1st Cir. 1967) (employees' delivery of poultry feed to employer's farm is incidental to work of the feed mill rather than the farm).

286. In Sweetland Land & Oil Co. v. NLRB, 334 F.2d 220 (5th Cir. 1964), cert. denied, 380 U.S. 911 (1965), ten corporate farm employees dried rice grown by the corporate farm together with rice grown by tenant farmers. The corporation refused to bargain with a union and challenged the validity of a union election, alleging the employees were agricultural laborers and excluded from the Act. The court held the employees were not agricultural laborers. It reasoned the Act's exclusion required the processing be incidental to the corporation's farming operations.
Exclusion from the labor relations acts does not prevent farm workers from forming a union, bargaining, or striking. Without such acts, however, they are unable to compel their employers to bargain, to bring charges of unfair labor practices, or to take advantage of other protective provisions. Therefore, farm workers have turned to consumer boycotts of products produced by uncooperative growers as one means of exerting economic pressure. In the late 1960's the success of these boycotts brought numerous growers to the bargaining table.

The response of some farmers, growers and retail merchants has been to seek to enjoin the boycott activity of farm workers unions. To a large extent their efforts have been successful. Since the National Labor Relations Act exempts farm workers, preemption does not apply. Therefore, growers and secondary employers have been able to avoid the administrative procedures of bringing a complaint before the National Labor Relations Board. They also have been able to achieve more favorable forums in state courts.

One dispute which has been given substantial media coverage is that between the United Farm Workers National Union, AFL-CIO (UFW), the E & J Gallo Winery and the Teamsters over the UFW's contention that it, rather than the Teamsters, was the proper representative of Gallo farm workers. The dispute led to a nationwide UFW-sponsored consumer boycott of Gallo products. The boycott, in turn, has precipitated suits by liquor store owners and liquor distributors to enjoin the activities of the UFW.

In a recent case, the Minnesota Supreme Court upheld an injunction restricting the UFW in its conduct of a boycott of Gallo products. In Johnson Brothers Wholesale Liquor Co. v. United Farm Workers National Union, the defendants picketed and distributed handbills at retail liquor stores and approached the stores' managers asking them to remove Gallo products from their shelves. The purpose of

The processing was sufficiently removed from the corporation's farming operations to make it incidental to the operations of the tenant farmers. See also Idaho Potato Growers, Inc. v. NLRB, 144 F.2d 295, 301 (9th Cir.), cert. denied, 323 U.S. 769 (1944) (employees specializing in preparation of farm products for market after harvesting are not agricultural laborers).


288. ___ Minn. ___, 241 N.W.2d 292 (1976).

289. The United States Supreme Court has held that approaching managers of the secondary employer to request that they not stock the "struck" product is not "coercion" under the federal labor statutes. See NLRB v. Servette, Inc., 377 U.S. 46 (1964).
this activity was to persuade the plaintiff, Gallo’s principal distributor in Minnesota, to cease doing business with Gallo.

The case stands for two important propositions concerning consumer boycotts by farmer workers. First, the court held that jurisdiction existed under the Minnesota Secondary Boycott Act. This declares a secondary boycott to be an “illegal combination in restraint of trade and in violation of the public policy of this state” and “an unfair labor practice and an unlawful act.” The court rejected the UFW’s contention that the secondary boycott act, like the state labor relations act, did not apply to agricultural workers. It reasoned, inter alia, that the rationale for excluding agricultural workers from the labor relations act does not apply to the secondary boycott act. The court noted farm workers are excluded from the labor act because employer-employee relations in agriculture are assumed to be significantly different from those in other industries. The secondary boycott act, on the other hand, does not regulate employer-employee relationships but protects neutral employers and employees from the actions of third parties. The Johnson Brothers court found this purpose covered secondary boycotts by agricultural workers as well as other groups. "The court determined the activities of the defendants came within the literal language of the statute and therefore constituted an illegal secondary boycott."

A second important aspect of the case was its use of injunctive relief against peaceful picketing. The court agreed with the defendant that jurisdiction under the secondary boycott act was subject to regulation

291. MINN. STAT. § 179.43 (1974).
293. MINN. STAT. § 179.01-.17 (1974).
294. ___ Minn. at ___, n. ___, 241 N.W.2d at 296 n.2.
295. Id.
296. Id.
297. Id.
298. Id.
299. See MINN. STAT. § 179.41 (1974) defining a secondary boycott to include:
any combination, agreement, or concerted action;

(c) to cease performing or to cause any employer to cease performing any service for another employer, or to cause any loss or injury to such employer, or to his employees, for the purpose of inducing or compelling such other employer to refrain from doing business with, or handling the products of, any other employer because of an agreement, dispute, or failure of agreement between the latter and his employees or a labor organization.
under the Minnesota Anti-Injunction Act\textsuperscript{300} which explicitly prohibits injunctions when the activity is the "[g]iving [of] publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method \textit{not involving fraud or violence.}"\textsuperscript{301} The court noted the record was devoid of any evidence of violence or threatened violence\textsuperscript{302} and the signs of the picketers merely were found to be "deceptive."\textsuperscript{303} However, the court determined an overly-formalistic construction of the anti-injunction act would defeat the state policies underlying both statutes.\textsuperscript{304} It held that the anti-injunction act does not prohibit injunctive relief against peaceful picketing that is in violation of an express state statute,\textsuperscript{305} in this case the secondary boycott act.

It should be emphasized that the court did not prohibit the boycott in its entirety but merely delimited defendant's conduct.\textsuperscript{306} Nothing in the opinion prohibits picketing a secondary employer merely to follow "struck" goods.\textsuperscript{307} Other state courts have also enjoined picketing by farm workers.\textsuperscript{308}

\begin{itemize}
  \item \textsuperscript{300} MINN. STAT. § 185.07-.19 (1974) ("Little Norris-LaGuardia Act").
  \item \textsuperscript{301} MINN. STAT. § 185.10(5) (1974) (emphasis added).
  \item \textsuperscript{302} \textit{Id.} at \textit{---}, 241 N.W.2d at 294.
  \item \textsuperscript{303} \textit{Id.} at \textit{---}, 241 N.W.2d at 295.
  \item \textsuperscript{304} \textit{Id.} at \textit{---}, 241 N.W.2d at 298.
  \item \textsuperscript{305} \textit{Id.} at \textit{---}, 241 N.W.2d at 298.
  \item \textsuperscript{306} In particular, the court upheld the lower court order that the defendant (1) cease blocking access to the parking areas of retail liquor stores; (2) cease interfering with free ingress and egress to and from the stores; (3) cease urging consumers not to patronize the stores; (4) limit the number of picketers to three persons at any one entrance; (5) communicate with store managers only as consumer pickets; (6) notify managers of the boycott before commencing to picket; and (7) direct banners and signs to the consumer only. As to the last three restrictions, the court remanded the order for modification. Since the order specifically delineated the form and the content of the defendants' communications, the court determined such restrictions were inconsistent with the first amendment prohibition against prior restraint. \textit{Id.} at \textit{---}, 241 N.W.2d at 300. \textit{See also Near v. Minnesota, 283 U.S. 697 (1931).}
  \item \textsuperscript{307} In addition, "pure" consumer boycotts are not prohibited by the federal labor relations acts. NLRB v. Fruit & Vegetable Packers, Local 760, 377 U.S. 58 (1964) ("Tree Fruits" case).
  \item \textsuperscript{308} An Ohio court permanently enjoined \textit{all} UFW picketing of a liquor store after picketers had violated a previous order delimiting permissible conduct. Metro Enterprises, Inc. v. United Farm Workers Union, 41 Ohio Misc. 171, 324 N.E.2d 805 (C.P. 1974). But see Comella, Inc. v. United Farm Workers Org. Comm., 33 Ohio App. 2d 61, 292 N.E.2d 647 (1972) (peaceful boycott of lettuce not unlawful). In \textit{Metro Enterprises} the court determined picketing must be peaceful and may not cause a general loss of patronage to the merchant of the "struck" good. The United States Supreme Court has rejected this "economic impact on the secondary employer" test under the federal labor legislation. \textit{See NLRB v. Fruit & Vegetable Packers, Local 760, 377 U.S. 58 (1964) ("Tree Fruits" case).}
  \item A New York court permitted a farm workers union to continue picketing the product of the primary employer at a secondary situs, but placed very precise limitations on those activities. \textit{See M & H Fruit and Vegetable Corp. v. Doe, 80 Misc. 2d 1012, 364 N.Y.S.2d 413 (Sup. Ct. 1975) which provided as follows:}
\end{itemize}
Another device used to limit farm workers boycott activities has been jurisdictional strike statutes. These have been invoked as a means of limiting farm worker union picketing when the subject matter of the dispute concerns which of two rival unions should properly represent the employees in the bargaining unit.\(^{309}\)

Yet a third vehicle used by growers and retailers against farm labor boycotts has been the anti-trust statutes. Bodine Produce, Inc. v. United Farm Workers Organizing Committee\(^{310}\) suggests that farm labor boycotts will be subject to federal anti-trust laws\(^{311}\) when farm workers act in concert with non-labor entities. Action was commenced by growers and shippers of table grapes, alleging the UFW had entered into combination with non-labor business entities in imposing a grape boycott. The district court found such allegations satisfied the “Allen Bradley Doctrine.”\(^{312}\) The Court of Appeals for the Ninth Circuit agreed, holding the exemption of agricultural labor from federal labor legislation did not manifest a congressional intent to treat farm worker unions differently from other unions for purposes of

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\(^{309}\) United Farm Workers Org. Comm. v. Superior Court, 4 Cal. 3d 556, 483 P.2d 1215, 94 Cal. Rptr. 263 (1971) (preemptory writ of prohibition issued on first amendment ground upon finding the injunction overly broad).

\(^{310}\) 494 F.2d 541 (9th Cir. 1974).


\(^{312}\) See Allen Bradley Co. v. Local 3, Electrical Workers, 325 U.S. 797 (1945).
applying the protective provisions of the anti-trust laws.313

As this brief survey of litigation indicates, a legislative solution is desirable. A few states have enacted special labor relations legislation for farm workers. For example, California recently enacted a statute314 which specifically defines "agricultural employee" to include those agricultural laborers excluded from the National Labor Relations Act and the Fair Labor Standards Act. The California statute does not create a right to organize and bargain, but merely seeks to ensure that union elections, bargaining, and other labor activities are peacefully carried out. It provides a procedure for determining a bargaining unit and selection of a bargaining representative,315 and defines certain practices of employers and labor organizations as unfair labor practices. The statute also limits the use of secondary boycotts and picketing, but makes special effort to avoid possible infringement of First Amendment freedoms in the areas of distribution of literature and picketing.316 It also creates an agricultural labor relations board.317

If Minnesota decides to bring farm workers within the scope of state labor relations legislation, it must consider two basic alternatives. First, it may simply eliminate the present farm worker exclusion in the existing state statute. Or it may follow the example of California, Arizona, and several other states,318 and enact a special agricultural labor relations act.319 The organization and unionization of agricultural workers gives rise to unique problems in determining the appropriate bargaining unit, and the presence of large numbers of seasonal workers creates special difficulties with regard to voting in the selection of a bargaining representative. This, together with the

problem of defining unfair labor practices, suggests a special farm labor relations statute may be preferable.

In examining the statutes of other states, it should be recognized that several, such as that enacted in Arizona, were sponsored by the American Farm Bureau Federation and tend to favor the interests of farm employers. In the broad social context, such statutes may not be as desirable as the California legislation which was developed only after significant input by both employers and farm workers.

IX. CONCLUSION

In the opening section four objectives were stated. The primary concern was to provide an elementary survey for the Minnesota lawyer who currently must counsel farm employers and employees. Much detail has been omitted, but if there is an increased awareness of the many statutes, regulations, and cases which may apply, much has been accomplished. The law is changing rapidly and it can be startling to realize that most of what has been discussed may apply at some point in almost every farm employment situation.

The second objective was to point out some of the confusing and complex provisions which confront farmers and their employees. Once it was argued social and labor legislation should not be extended to cover on-farm production workers because of administrative burdens. With the many partial exclusions, various thresholds of inclusion, and in some instances, conflicting regulations, the legal controls on employment within the farming industry are now more difficult to administer than in most other American industries. The large farm operator with many employees will likely be aware of what is required for compliance. The average farmer who employs only a few

322. Critics have assailed the Arizona statute on several grounds. First, it frustrates the rights of farm workers; it restricts their ability to organize and engage in collective bargaining. Second, it favors the employer, unlike the more equitable National Labor Relations Act. See Cohen & Rose, State Regulation of Agricultural Labor Relations—The Arizona Farm Labor Law—An Interpretive and Comparative Analysis, 1973 LAW & SOC. ORDER 313; Comment, A Preliminary Survey of the Arizona Farm Labor Act, 14 ARIZ. L. REV. 786 (1972). Also there is a question on its constitutionality, particularly in the area of picketing regulation. See Rose, State Regulation of Agricultural Labor Relations—The Arizona Farm Labor Law—A Constitutional Analysis, 1973 LAW & SOC. ORDER 373.
seasonal workers, however, is faced with a major task if he is to comply with federal and state legislation. In addition, employees who seek redress face complicated questions on the application of certain laws. This all relates to the third objective which was to stress the applicability of most laws to small family farms as well as large corporate operations.

Perhaps the awkwardness will pass. We may be in a transitional phase which will lead to the elimination of farm worker exclusions and threshold inclusions to social legislation. Perhaps on-farm production workers will be treated the same as employees in any other industry. In the interim, wide-spread compliance is unlikely because of the laws themselves. Few employers are aware of current requirements. Employees are not knowledgable of their rights. Moreover, agency enforcement is sparse unless substantial numbers of workers are involved. The final objective of this study was to contribute to compliance by bringing together some scattered material which might then be filtered through counsel to concerned clients. Surely the present "maze" which the law presents to farm employers and employees is in itself a strong argument for the hastening of the total elimination of the "special" treatment now accorded farm labor.