

Exploring Low Wage Work in the Farming Industry Stuart P. Frame

Can you describe the nature of the work?

Farm work encompasses a variety of different jobs. When I worked for a farmer and farm market owner in Rochester, my tasks ranged from picking corn and berries to sell in the market, hoeing weeds in the pumpkin patch, and irrigating and helping plow the fields and maintaining the orchards.

What do you like about farm work?

I very much enjoyed, as did my interview contact, certain aspects of farm work. It is very fulfilling to spend the day working outside with one's hands.ⁱ The variety of tasks that a farmer engages in from day to day also helps to keep the job fresh and engaging.



Are there any hazards involved in farm work?

Farming involves intensely physical labor. Irrigating fields, for example, involves breaking down, moving, and reconnecting several miles of aluminum pipelines several times every day, and then monitoring the pipe for leaks and sudden bursts in the line. The pipe sections are heavy, and dealing with a burst is potentially dangerous.

My interview contact also mentioned that certain farm equipment that he has dealt with, like a wheat thresher or a wood chipper, can be very dangerous. These are machines that have the potential to amputate limbs if one is not careful. Farming is not a business that forgives mistakes or carelessness.

Another hazardous condition is the constant exposure to pesticides. These industrial strength pesticides can poison to people and insects alike.ⁱⁱ Farm workers have complained of symptoms like headaches, nausea, nosebleeds, even more serious symptoms like seizures and death. Indeed, the Bureau of Labor Statistics estimates that pesticide exposure harms more than 300,000 farm workers every year.ⁱⁱⁱ

My interviewee also explained that the lack of autonomy was sometimes frustrating. As a hired laborer, he works as part of a team that is heavily supervised by a “foreman” and the farm owners above him.^{iv} I, too, remember that every task was broken down so that it could be easily quantified. I was expected to be able to weed two rows of pumpkin patch every hour, and I had to account to the boss if I did not meet that quota.^v

What are the Wages for Farm Work?

Nationally, farm owners are largely exempt from the wage and overtime provisions mandated by federal law. However, in New York the Worker Equity and Wage Reform Act of 1999 ensures that the roughly 20,000 hired farm laborers in the state receive at least the federal minimum wage, currently \$7.25 per hour.^{vi} Prior to this legislation, farm workers could be paid roughly one dollar per hour less than minimum wage.

What are the National Wage Laws?

Farm workers are compensated very differently from most other low-wage workers in other industries. Congress enacted the Fair Labor Standards Act (FLSA), in 1938 to set a floor on acceptable wage rates. Workers subject to the FLSA must be compensated at the minimum wage rate set by the statute. Even more significantly, the FLSA mandates that any covered employee who works more than forty hours in a given work week must be paid at a rate of one and a half times their regular hourly rate.^{vii}

But certain industries are exempt from coverage under the FLSA, the most notable example being agriculture.^{viii} At first glance, this strikes one as a fairly glaring failure of coverage. As Roosevelt noted in a message to Congress: “The overwhelming majority of our population earns its daily bread in agriculture or in industry. One third of our population, the overwhelming majority of which is in agriculture or industry, is ill-nourished, ill-clad, and ill-housed.”^{ix} The policy rationale of the FLSA states that the act is designed to stop the trading in commerce of the fruits of the labor of this very class of worker.^x

Congress justified this exemption, along with other exemptions contained in § 213 of the FLSA, as beyond the scope of the Commerce Clause of the Constitution.^{xi}

Congress also likely justified the decision based upon the faulty belief that most farms were owned and operated by families, and that compensation of family members was best left to the families themselves. But even in the 1930’s, there were large agricultural combines throughout the United States that shipped their products in interstate commerce, and today, of course, they dominate farming.^{xii}



Moreover, in the famous decision of *Wickard v. Filburn*^{xiii}, the court upheld Congress' ability to regulate the production of wheat by a small scale local farmer under the Commerce Clause, reasoning that his wheat production, even though only used for private consumption, indirectly affected interstate commerce, and thus could be regulated by federal statute.^{xiv}

Though subsequent amendments have removed the blanket exemption on agricultural workers, the vast majority of workers in the agricultural sector still find themselves without minimum wage coverage, and even those who are covered under the act are subject to a reduced minimum wage.^{xv} The agricultural worker is just one example of the FLSA's failure to provide the income security and hour-reduction incentives to the segment of society that it is intended to help.

When I worked for a farm owner, both on the farm and in the market, I had to maintain two separate time cards. Legally, the employer was allowed to pay me significantly less for the work I did on the farm than for the time I spent in the market. As I was a high school student, the low wages did not place that much of a burden on me, but for workers whose only income is the hourly rate they receive working on the farm, the implications are staggering.

What is the Composition of the Farm Labor force?

Another significant development in the farming industry is that the lower wage jobs are being filled with a significant percentage of immigrants, both documented and undocumented. My interviewee worked for a small, privately owned farm in the Buffalo area and said that to his knowledge,



those employed at his farm were all local residents and citizens of the US.^{xvi}

However, this employer seems to be in the minority.

According to a brief on Immigrant Families and Workers,^{xvii}, immigrant workers compose 37 percent of the total workforce in farming, fishing and forestry,

and immigrants make up 44 percent of the workers in this industry that are considered "low wage" employees.

Indeed, many of the low-wage workers are undocumented immigrants. These workers are welcome and routinely employed in the farming industry because the nature of the work is extremely labor intensive and

one of the largest costs to the employers is labor. Employers are only too happy to offer jobs to undocumented immigrants, who are generally willing to work long hours and for significantly less wages. Indeed, governmental attempts to force undocumented immigrants out of the labor force have been met with resistance from the farming industry.^{xviii} Farm workers contend that roughly 70 percent of the low wage labor force in their industry (nationally) are undocumented immigrants and that imposing significant penalties on employers who take these workers on will grind the farming industry to a halt.^{xix} The government will have to conduct a careful balancing of the competing interests in the farming industry before making any quick decisions as to the implementation of stricter penalties for hiring undocumented immigrant laborers.

Potential Solutions

One potential solution would be an overhaul of the agricultural exemption to the FLSA that I discussed earlier. Unfortunately, though, the nature of farm work demands that the most labor intensive tasks take place in just a few months of the year, or the “harvest months”.^{xx} During these months, farm laborers tend to work significant amounts of overtime. Forcing farm employers to pay for these overtime hours at the time and a half rate would likely place too much of a burden on the employers for the situation to be financially feasible.



However, modifying the exemption so as to force the employers to at least pay their workers the minimum wage rate for every hour worked, regardless of their citizenship or independent contractor status, would remove the employer incentive to hire undocumented immigrants into farming positions, and significantly benefit this underclass of the farming workforce. Essentially, I am advocating that Congress implement a law similar to the one in New York State. The amount of hours involved in farm work have the effect of forcing these workers to commit to this single occupation. The government should take the necessary steps to ensure that these jobs pay well enough for workers to be able to support themselves and their families on the wages that they take in.

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- ⁱ Personal Communication, 3/23/10; Personal Experience. Worked as a farmer from 1997-1999 in Rochester, NY
- ⁱⁱ Rebecca Clarren, *Widespread Pesticide Use Causing Illness Among Immigrant Workers*, The New Standard, available at http://newstandardnews.net/content/?action=show_item&itemid=1480 (last visited 3/31/10).
- ⁱⁱⁱ *Id.*
- ^{iv} Personal Communication, 3/23/10.
- ^v Personal Experience.
- ^{vi} New York State Department of Agriculture and Markets News, *Governor Pataki Signs Farm Worker Equity and Wage Reform Act*, available at <http://www.agmkt.state.ny.us/AD/release.asp?ReleaseID=1164> (last visited 3/31/10).
- ^{vii} Fair Labor Standards Act, 29 U.S.C. § 206-07 (2007).
- ^{viii} Patrick M. Anderson, *The Agricultural Employee Exemption from the Fair Labor Standards Act of 1938*, 12 Ham. L. Rev. 649, 653 (1989).
- ^{ix} *Id.* at 650-51.
- ^x *See*, 29 U.S.C. §202.
- ^{xi} Anderson, *supra* note 8, at 652-53 (“I believe it was the prevailing sentiment of the committee, that businesses of a purely local type which serve a particular local community, and which do not send their products into the streams of interstate commerce, can be better regulated by the laws of the communities and of the States in which the business units operate.”).
- ^{xii} *Id.* at 653.
- ^{xiii} 317 U.S. 111 (1942).
- ^{xiv} *Id.* at 127-28.
- ^{xv} 29 U.S.C.A. § 213(6); 29 U.S.C.A. § 206(a)(4).
- ^{xvi} Personal Communication, 3/23/10.
- ^{xvii} *Immigrant Families and Workers: A Profile of the Low Wage Immigrant Workforce*, available at www.urban.org/UploadedPDF/310880_lowwage_immig_wkfc.pdf (last visited 3/25/2010).
- ^{xviii} Julia Preston *Farmers Call Crackdown on Illegal Workers Unfair*, New York Times, Aug. 11, 2007.
- ^{xix} *Id.*
- ^{xx} Personal Communication, 3/23/10