

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2278

S. P. 733

In Senate, February 27, 1976

Reported by Senator Reeves of Kennebec from the Joint Select Committee on Jobs pursuant to Joint Orders S. P. 391 and S. P. 555 and printed under Joint Rules No. 3.

HARRY N. STARBRANCH, Secretary

(Filed under Joint Rule 3, pursuant to S.P. 391 and S.P. 555)

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

AN ACT Relating to Employment of Temporary Foreign Labor in  
Agriculture and Logging.

Be it enacted by the People of the State of Maine, as follows:

26 MRSA c. 21 is enacted to read:

CHAPTER 21

TEMPORARY FOREIGN LABOR

§ 1501. Definitions

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

1. Employer association. "Employer association" means a group of employers joined together for a common purpose.

2. Nonimmigrant worker. "Nonimmigrant worker" means an alien admitted to this country for temporary employment under the provisions of Federal PL 414 as amended, and possessing an H-2 visa.

3. United States worker. "United States worker" means an individual who is a citizen of the United States or a person who has been admitted to this country under immigrant status and possesses a permanent visa.

§ 1502. Use of temporary foreign labor for agriculture and logging employment

Section 214.2 (h) (2) (ii) of the U.S. Immigration and Naturalization Service Regulations (8 CFR 214.2 (h) (2) (ii) requires, in support of a petition for

the admission of an alien to perform certain temporary service or labor, that either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of the workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every nonimmigrant visa petition to accord an alien a classification under section 101 (a) (15) (H) (ii) of the Act.

1. State requirements. The criteria and procedures set forth herein prescribe the conditions under which U.S. workers must be recruited for agricultural or logging employment in Maine before a determination of their non-availability can be made by the state employment service and the terms of employment for both United States and foreign workers which will not adversely affect the wages and working conditions of American workers similarly employed.

2. Request requirements. Agricultural or logging employers, including association employers, anticipating a labor shortage may request a certification for temporary foreign labor, provided that the employer or the association and those of its members for whom the service of foreign workers are requested, prior to making such a request, have filed at the local office of the State Employment Service an offer of employment for United States workers to fill such employment needs in accordance with sections 1503 and 1504. Such offers of employment, as well as any request for certification for temporary foreign workers, should be filed at the local office in sufficient time to allow the state employment service 21 days to determine the availability of domestic workers, in addition to the time necessary for the employer to secure foreign workers by the date of need if the certification is recommended for approval.

3. Request information. Request for certification shall be in writing and describe all efforts made by the employer to obtain United States workers to fill the employer's needs. This shall include advertising in newspapers, the content of which shall be prescribed by the state employment service. All other information describing what actions will be taken by the employer to reduce or terminate the use of foreign workers shall also be submitted with this request.

4. State action. The state employment service, after reviewing the request for certification, shall follow the certification process of the United States Department of Labor, Employment and Training Administration and submit such requests to the Assistant Regional Director for Employment and Training, with a recommendation for approval or disapproval based on the criteria set forth herein.

5. Approval. The state employment service may recommend approval of the certification if it finds:

A. That the employment of such workers will not adversely affect the wages and working conditions of domestic workers similarly employed;

B. That reasonable efforts have been and will continue to be made, by the state employment service and the employers to obtain domestic workers at wage rates and conditions of employment no less favorable than those set forth in this chapter and 20 CFR 602.10 to perform the work for which the services of temporary foreign workers are requested and for which domestic workers are not available. Reasonable efforts shall include, where deemed appropriate by the state employment service, full use of workers who commute on a daily basis between their residences and place of employment, the use of the interstate clearance system.

6. Disapproval. Requests for certification shall be recommended for disapproval in whole or in part if the findings set forth in paragraph E cannot be made, or ;

A. Where the employer has been found to have failed without good cause to comply with employment contracts with United States or foreign agricultural or logging workers ;

B. Where the admission of the foreign workers would result in violation of policies of the United States Department of Labor governing the referral of workers to jobs involved in strikes or other labor disputes ;

C. Where the employer has failed to comply with any applicable requirements of the foreign government whose nationals are involved ; or has failed to abide by any applicable federal, state, or local labor, health or housing law ;

D. Where, within the period commencing with the filing of the job offer in relation to this or any prior certification and extending so long as foreign workers are employed, the wages and working conditions provided to any foreign or United States workers similarly employed have been less favorable than those requested to be offered to United States workers in accordance with sections 1503 and 1504 ; and

E. Where the Immigration and Naturalization Service has notified the Secretary of Labor that the employer has had in his employ a foreign worker who was not lawfully in the United States, unless the employer demonstrates that he did not know, had no reasonable grounds to suspect, or could not by reasonable inquiry have ascertained that the alien worker was not lawfully in the United States.

7. Requests for suspension. The employment service director will recommend to the United States Immigration and Naturalization Service that a petition be suspended when violations of this section are found to exist after an employer, including an association, receives a petition from the United States Secretary of Labor and subsequently approved by the United States Immigration and Naturalization Service.

Requests for suspension shall be issued :

A. When the employer has failed without good cause to hire United States workers ;

B. Where wages provided to any foreign or United States workers similarly employed have been less favorable than those required to be offered to United States workers in accordance with sections 1503 and 1504;

C. When sufficient number of United States workers become available for employment; and

D. Where the employer fails to comply with any applicable federal, state, or local health or housing requirements.

§ 1503. Job offers and contracts

The offers to United States workers made in accordance with this section and section 1504 shall:

1. **Contracts.** Be in writing and when accepted shall take the form of a written contract. In lieu of providing individual contracts to workers housed in a labor camp, a master contract shall be posted in a conspicuous place readily accessible to the worker, and each worker shall be given a statement of the terms of employment and the period for which the  $\frac{3}{4}$  guarantee specified in subsection 8 is applicable.

2. **Housing.** Providing for housing for the employees without charge in accordance with the standards issued by the Secretary of Labor as set forth in 20 CFR 602.9. If the prevailing practice in the area of employment is to provide family housing, such housing must be provided.

3. **Workmens compensation or insurance.** Provide, at no cost to workers, workmen's compensation as prescribed under Maine law, or in the case of agricultural employment not covered by Maine law, the employer shall provide at no cost to workers, insurance covering injury and disease arising out of and in the course of employment. Such an insurance shall provide for the payment of benefits not less than those specified in 20 CFR 602.10.

4. **Tools, supplies and equipment.** Provide for the furnishing of all tools, supplies or equipment required to perform the duties assigned without cost to the worker. In the case of logging employment, equipment shall include but not be limited to mechanical skidders, or other types of machinery used for skidding lumber, chain saws and all safety equipment with the exception of boots.

5. **Deductions from wages.** Permit only the following deduction from wages:

A. Those required by law;

B. Those for advances against wages;

C. Payment for articles of consumption produced by the employer which the worker has purchased;

D. Value of meals supplied by the employer but not to exceed amount specified in the clearance job offer;

E. Overpayment of wages;

F. Any loss to the employer due to a worker's refusal or negligent failure to return any property furnished to him by the employer, or due to such worker's willful destruction of such property; and

G. Deductions for transportation and subsistence costs paid for by the employer as provided in subsection 7.

The deductions under paragraphs C, E or F in each pay period shall not exceed 10% of the total wages earned in that pay period. The sum of deductions under paragraphs B and G in each pay period shall not exceed 50% of the total wages earned in that pay period. At the termination of the work contract, however, or if the worker abandons his work contract, the employer may deduct from such worker's final wage payment any outstanding balance due the employer for deductions permitted by that provision.

6. Other charges. Permit no charge by the employer in excess of the amount specified in the job offer for furnishing 3 meals per day and meets those requirements within 20 CFR 602.10 a (f).

7. Transportation and subsistence payments. Require the employer to provide or pay for transportation and subsistence en route from the place of recruitment to the place of employment in those cases where the worker completes at least 50% of the contract. The amount paid per day for subsistence en route from the place of recruitment must be at least as much as the amount authorized to be charged each day for meals at the place of employment. An employer who has advanced payment to a worker for the cost of transportation and subsistence en route may deduct such costs from earnings of the worker until the worker has completed 50% of the contract period. However, upon completion of 50% of the contract period, the worker shall be entitled to reimbursement of the amounts so deducted. If the worker completes his contract, the employer will provide or pay the cost of return transportation and subsistence en route from the place of employment to the place of recruitment, except when the worker is not returning to the place of recruitment and has subsequent employment with an employer who will bear transportation expenses. All transportation provided by the employer will be by common carrier or other transportation facilities which conform to applicable regulations of the Interstate Commerce Commission. Transportation from the worker's on-the-job site living quarters to the place where the work is to be performed will be provided by the employer without cost to the worker. Hourly paid workers shall be paid no less than the adverse effect rate, as provided in section 1504, for all time between arrival at the first work location of the day and departure from the last work location for that day.

8. Work guarantee. Guarantee each worker the opportunity for employment for at least  $\frac{3}{4}$  of the workdays of the total period during which the work contract and all extensions thereof are in effect, beginning with the first workday after the worker's arrival at the place of employment and ending on the termination date specified in the work contract, or its extensions, if any. For purposes of the work contract, a workday consists of 8 hours of any day except Sunday, New Year's Day, July 4th, Labor Day, Thanksgiving or Christmas. If the worker, during such period, is afforded less employment than required under this provision, the worker shall be paid the amount which

he would have earned had he, in fact, worked for the guaranteed number of days. Where wages are paid on a piece rate basis, the worker's average hourly earnings shall be used for the purpose of computing amounts due under this guarantee. In determining whether the guarantee of employment has been met, any hours which the worker fails to work during a workday when he is afforded the opportunity to do so by the employer, and all hours of work performed, shall be counted in calculating the days of employment required to meet this guarantee. If, before the expiration date specified in the work contract the services of the worker are no longer required for reasons beyond the control of the employer (due to an act of God, such as frost, flood, drought, earthquake, hail, forest fire, or other natural calamity of such character as to make the fulfillment of the contract impossible), and this fact is determined by the Assistant Regional Director for the Employment and Training Administration, the work contract may be terminated and efforts will be made to transfer the worker to other comparable employment. If such transfer is not effected, the worker shall be returned to the place of recruitment at the employer's expense. In either event deductions for transportation and subsistence en route from the place of recruitment to the place of employment made pursuant to subsection 7 shall be refunded. Whenever the contract is terminated under this provision, the employer shall be responsible for the  $\frac{3}{4}$  guarantee for the period beginning with the first workday after the worker's arrival at the place of employment and ending with the date the work contract is terminated, and the employer shall pay the worker all other amounts due under the contract.

9. Records of employment. Require the employer to keep accurate and adequate records in regard to all earnings and hours of employment. Such records shall include information showing the nature of the work performed, the number of work offered each day by the employer and worked each day by each worker, the rate of pay and deductions made from each worker's wages. If the number of hours worked by a worker is less than the number offered, the records shall state the reason therefor. Such records shall be made available at any reasonable time for inspection by representatives of the state employment service and by workers or their representatives. Such records shall be retained for a period of not less than 3 years following the completion of the contract. With respect to each pay period, each worker shall be furnished at or before the time he is paid for such pay period in one or more written statements, the following information: His total earnings for the pay period; his hourly rate or piece rate of pay; the hours offered him; the hours worked by him; an itemization of all deductions made from his wages; if piece rates are used, the units produced; and if his earnings were increased pursuant to section 1504, the amount of such increase and the average hourly earnings.

10. Wage rates. Provide for the payment of not less than the wage rates prescribed in section 1504.

11. Suspension. The employment service director will recommend to the United States Immigration and Naturalization Service that a petition be suspended when violations of this section are found to exist after an employer, including an association, receives a certification from the United States Secre-

tar of Labor and subsequently approved by the United States Immigration and Naturalization Service.

Requests for suspensions shall be issued :

- A. When an employer fails without good cause to provide a United States worker with a written contract or fails to post a master contract as specified in this section ;
- B. When an employer fails to provide all of the tools, supplies or equipment required under this section ;
- C. When the employer failed to provide or pay for transportation and subsistence as outlined in this section ;
- D. When the employer fails to comply with the section guaranteeing each worker the opportunity for employment for at least  $\frac{3}{4}$  of the workdays of the total period covered under the work contract and any extensions thereof ; and
- E. When the employer fails to keep accurate and adequate records in regard to earnings and hours of employment as outlined in this section.

#### § 1504. Wage rates

##### 1. Minimum hourly wage rates.

- A. Except as otherwise provided in this section, the following hourly wage rates (which have been found to be the rates necessary to prevent adverse effect upon United States workers) shall be offered to agricultural workers in accordance with 20 CFR 602.10 b. (\$6.60 per hour).
- B. Piece rates shall be designed to produce hourly earnings at least equivalent to the hourly rate specified in paragraph A for the state in which the work is to be performed and no workers shall be paid less than the specified hourly rate in 20 CFR 602.10 b (a) (1).
- C. Where the prevailing rate for a crop activity in an area of employment is higher than the wage rate otherwise applicable under paragraph A, such higher prevailing rate shall be offered and paid.
- D. The minimum wage rates to be offered workers in the logging industry shall be the rates prevailing for logging activities or the rates determined by the United States Secretary of Labor to be necessary to prevent adverse effect upon United States logging workers, whichever is higher.
- E. Payment of wages shall be made in accordance with the prevailing practice in the area of employment, but in no event shall the worker be paid less frequently than biweekly.
- F. Where both United States and foreign workers are engaged in the same tasks, wage rates that favor one such group and thereby discriminate against the other, may not be paid.

2. Suspension. The employment service director will recommend to the United States Immigration and Naturalization Service that a petition be sus-



pending when violations of this section are found to exist after an employer, including an association, receives a certification from the United States Secretary of Labor and subsequently approved by the United States Immigration and Naturalization Service.

Requests for suspensions shall be issued:

- A. When the employer has failed to meet the requirements of subsection 1, paragraphs A, B and C; and
- B. When employers in the logging industry fail to meet the requirements of subsection 1, paragraphs D, E and F.

§ 1505. Wage violations

1. Notice of violation. The employment service director will notify employers within 30 days in writing of violations of wages listing each violation by name of worker, by week and the amount due the affected worker.
2. Restitution. The employment service director will request that the employer make proper restitution to each affected worker and provide the employment service with photostatic copies of cancelled checks.
3. Civil actions. The District Court and the Superior Court will have the original jurisdiction of actions brought for the recovery of wages and penalties imposed by this section and prosecution for violation of the provisions thereof.

### STATEMENT OF FACT

Hundreds of foreign workers are employed in this State each year in the agricultural and logging industries with little or no state responsibility for enforcement.

This Act will provide the state employment with some responsibility for enforcement at the state level, thus eliminating undue delays that may originate at the federal level within the United States Department of Labor.