

March 30, 2020

The Honorable Ralph S. Northam  
Governor of Virginia  
Patrick Henry Building  
1111 East Broad Street  
Richmond, VA 23219

M. Norman Oliver, MD, MA  
State Health Commissioner  
Va. Department of Health  
109 Governor Street  
Richmond, VA 23219

Ellen Marie Hess  
Commissioner  
Va. Employment Commission  
6606 West Broad St.  
Richmond, VA 23230

Re: Protecting Farmworkers and Migrant Workers During the COVID-19 Pandemic

Dear Governor Northam, Commissioner Oliver, and Commissioner Hess:

We write to request immediate protection for the Commonwealth of Virginia's farmworker and migrant worker community during this dire health care crisis.

Migrant workers are considered essential workers. Many migrant workers in Virginia are highly vulnerable to COVID-19 illness because they are low income individuals, lack access to medical care, have no transportation of their own, and are usually not fluent in English (which limits their ability to relay health concerns to employers). As a result, they are much more likely to not have access to COVID-19 testing, and will rather suffer in silence, or go to work even though they are symptomatic.

Virginia's agricultural and non-agricultural industries that rely on a migrant workforce are in the process of bringing in thousands of workers from Mexico (and lesser amounts of workers from other countries) under the H-2 temporary visa program in the coming months. Some of these thousands of expected workers are already here. None of these workers will be tested for COVID-19 prior to entry, and the vast majority will live on isolated, rural farms in packed housing. Few, if any, of these workers will arrive with, or be provided, health insurance. Besides living, cooking, and bathing in common facilities, they will also be bussed to and from work daily in old school buses or vans, and will regularly be transported into rural towns to buy groceries, cash checks, and send money to their families.

In light of this background, specific steps must be immediately implemented to protect not only the farmworker and migrant community, but also ensure Virginia's public health and the stability of our food supply. Without immediate steps, our rural health care providers, already likely overtaxed, could soon be overrun and further undermine the Commonwealth's emergency plans.

We recognize and commend the Governor's Office and government agencies for all the proactive steps they has taken to date to protect public health.

With that in mind, we stress that the above concerns are not merely hypothetical. It is not uncommon that communicable diseases spread fast in migrant labor camps.

By way of example, in April of 2019, one hundred H-2A workers from Mexico and Central America needed to be placed in a “limited quarantine” in a labor camp in Washington State because several contracted mumps. Mumps is remarkably similar to COVID-19, in that it is a viral disease spread by water droplets from coughing or sneezing. The Eastern Shore of Virginia has migrant labor camps where hundreds of individuals reside during the season, sharing living quarters, laundry, bathing, lockers, refrigerators and cooking facilities.

On March 18, 2020, the New York Times, published the following article: “‘We’re Petrified’: Immigrants Afraid to Seek Medical Care for Coronavirus,” (<https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html?action=click&module=Top%20Stories&pgtype=Homepage>).

In the context of the current pandemic, we need to ensure that no one is put at risk. The following preventative measures below must be put in place as a condition before any additional H-2A and H-2B workers are brought into the Commonwealth:

1. Adopt an Emergency Order to Ensure Medical Coverage and Resources for Migrant Workers. We ask that an emergency order is adopted to ensure all medical treatment and costs for all COVID-19 related treatment and medical expenses be covered by the Commonwealth of Virginia and no worker be sent home with any COVID-19 symptoms. In order to help stop the spread of COVID-19, all H-2A and H-2B workers need to know their medical treatment and expenses related to COVID-19 will be fully covered during the time they are working and residing in Virginia. This should include assurances that any worker who is tested for COVID-19 will have those costs covered even if the result is negative for COVID-19. A designated hotline in Spanish capable of receiving information or messages 24 hours a day should be established within the Department of Health and/or the Virginia Employment Commission to allow H-2A and H-2B workers to report potential symptoms and request medical assistance, and the Departments should have ready access to COVID-19 testing. Workers’ compensation coverage needs to cover H-2A and H-2B workers who contract COVID-19 or must be quarantined due to the virus. These workers would not be exposed to the virus if they had not come to Virginia to perform migrant work.
2. Require Additional COVID-19 Plans Prior to Issuance of License for Migrant Housing. VDH must review and license farmworker housing. In addition to its current checklist, VDH should add additional COVID-19 plans prior to the issuance of any license.
  - a. Those requirements should include, but not be limited to:
    - i. Ensure that employer provided migrant housing sleeping arrangements comply with recommended 6 feet apart social distancing and are highly ventilated.
    - ii. Provide separate living facilities for workers that are over 60 or have underlying health conditions and have these workers work within 6 feet of other workers.
    - iii. Designated quarantine sleeping areas with separate cooking and bathing facilities for quarantined workers.
    - iv. Proof of sufficient sanitizing and handwashing supplies.
    - v. Proof of sufficient masks for all quarantined workers who develop COVID-19 symptoms or test positive for COVID-19.
    - vi. Designate a specific individual responsible for ensuring workers comply with health and sanitation requirements.

- vii. Designate a specific individual to receive reports from workers who may have COVID-19 symptoms and be able to coordinate and transport such workers to obtain medical services.
  - viii. Designate a specific individual whose sole responsibility is to care for quarantined workers and ensure they have sufficient food, that the quarantine is enforced, and that transportation to medical care is provided.
3. Require Employers to Inform Workers about COVID-19 Concerns. In addition to informing workers about the terms and conditions of employment when workers are still in their hometowns, all persons who are recruiting workers for agricultural and migrant employment in Virginia in 2020 must provide detailed information about the risks of COVID-19. That information should include how employers will protect their safety while transporting, housing, and employing them in the United States. Prospective workers should also be advised that they will not be required to pay for any cleaning and sanitizing products and the agricultural employer will have an approved health plan for all workers that includes regular sanitizing of the housing and vehicles and other communal areas. All prospective H-2A and H-2B employees should also be informed that they will receive health care at no cost should they develop COVID-19 symptoms and need to be tested, and how they will be quarantined if they develop symptoms or test positive.
  4. Require Employers to Implement COVID-19 Workplace Protections. To the extent feasible, employers must plan work crew activity to ensure proper distancing to avoid unnecessary transmission of the disease at work. Additionally, most H-2A worker housing is located in rural areas, and employers normally bus workers into small towns to purchase groceries and obtain banking and financial services. Sufficient vehicles must be available such that workers are not sitting directly next to other workers and sufficient ventilation exists.

Given the recent hoarding of essential supplies and food, it is possible that small grocery stores could run out of such items and leave workers or members of the community vulnerable. Moreover, a busload of 50 to 100 or so H-2 workers all entering stores at busy times for local shoppers could drastically increase the likelihood of spreading COVID-19. Therefore, advance arrangements must be made with these services to avoid creating a scarcity of essential food and supplies at grocery stores and to protect against the spread of the virus in these small communities already stressed by the impacts of this global pandemic.

5. Disallow Terminations based on COVID-19. Under no circumstances should growers or their agents be allowed to terminate and send home H-2A and H-2B workers who are sick with or have been exposed to COVID-19.
6. Disallow Evictions: H-2A employers (and many H-2B employers) control workers' housing, and have, in the past, revoked workers' access to that housing on short notice. No H-2A or H-2B workers should be evicted or in any way removed from their housing without prior review and approval of the Department of Health (H-2A) and written notification provided to the Mexican Consulate.
7. Provide Unemployment Insurance for Migrant Workers. Provide unemployment insurance for H2A and H-2B workers who are going to be quarantined.

## **Conclusion**

**As Virginia addresses these concerns, Legal Aid Justice Center strives to ensure that the administration has the information and community trust to help implement the above requests. As such, we request a telephonic or videoconference meeting on or before Friday, April 3, 2020 to address the above concerns to ensure protection of all migrant workers, including but not limited to H-2A and H-2B workers, their families and communities, and the residents of the Commonwealth of Virginia. Finally, we acknowledge that you are exceedingly busy during this extraordinarily tasking time. As such, to the extent you would not be able to participate in such a call, we request the telephone or videoconference meeting be with the policy directors at your respective offices that are charged with oversight of the requested protections.**

Again, we appreciate all your administration has done to date and look to your prompt response to continue to refine and improve all aspects of the Commonwealth's COVID-19 emergency planning.

Sincerely,

Jason Yarashes  
Lead Attorney and Program Coordinator  
Virginia Justice Project for Farm and Immigrant Workers  
Legal Aid Justice Center