

March 30, 2020

Wayne F. Pryor
President
Virginia Farm Bureau
12580 West Creek Parkway
Richmond, VA 23238

Libby Whitley
President
m&sLabor
400 Front Street
Lovingson, VA 22949

Dear Mr. Pryor and Ms. Whitley:

We write to request immediate protection for the agricultural workers and migrant workers during this dire health care crisis.

As you know, migrant workers are highly vulnerable to the COVID-19 illness. To frame the context, migrant workers on H-2 visas travel from rural pueblos in Mexico (and elsewhere) to major metropolitan areas in Mexico, across the border, and chart hundreds of miles from there to their eventual work destination in the Commonwealth of Virginia. Often, workers travel the entire journey in cramped transport. Upon arrival, workers live in tremendously close quarters. They have communal toilets, showers, and cooking facilities. They often go to work in crammed buses, minivans, and old school buses. Then, often, they are working side by side, for long days, doing backbreaking work.

In short, while the majority of society is socially distancing, isolating, and going into quarantine, migrant workers are doing the opposite. It is not an understatement that migrant workers are among the most susceptible to contract and carry COVID-19.

Living and working conditions for migrant workers need to be addressed in order for a tragedy to be avoided. To be sure, we are not blind to the reality that migrant workers are key to the agricultural economy. Indeed, without them, the food supply chain would be broken. As such, they deserve heightened protections.

In light of this background, we ask that employers, growers, and agricultural associations immediately implement measures to protect the public health of all Virginian employers and the farm workers they employ. Without immediate steps, our rural health care providers, already overtaxed, could soon be overrun and further undermine the Commonwealth of Virginia's emergency plans.

As such, the preventative measures below should be put in place as soon as possible to protect the workers already here and the ones scheduled to arrive soon:

1. **Provide COVID-19 Guidance to all Workers.** All persons who are recruiting H-2 workers for agricultural and non-agricultural migrant employment in Virginia in 2020 should 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 transportation vehicles and other communal areas. All prospective H-2 employees should also be informed that they will be taken to a medical facility if they develop COVID-19 symptoms and need to be tested, and that they will be quarantined if they develop symptoms or test positive.

2. Develop Plan with VDH to Ensure that Migrant Housing Complies with CDC Guidance. Employers should develop a plan with the Virginia Department of Health to address approval of migrant housing to comport with the CDC COVID-19 Preparedness List. Those requirements should include, but not be limited to:
 - Ensure workers' beds are at least 6 feet apart and located in a highly ventilated areas.
 - Provide separate living facilities for workers that are over 60 or have underlying health conditions and have these workers work at least 6 feet away from other workers.
 - Provide designated quarantine sleeping areas with separate cooking and bathing facilities for quarantined workers.
 - Provide sufficient sanitizing and handwashing supplies.
 - Provide sufficient masks for all quarantined workers who develop COVID-19 symptoms or test positive for COVID-19.
 - Designate a specific individual responsible for ensuring workers comply with health and sanitation requirements.
 - 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.
 - 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. Disallow Terminations. Under no circumstances should employers or their agents be allowed to terminate and send home H-2 workers who are sick with or have been exposed to COVID-19.
4. Disallow Evictions. No H-2 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 (all H-2).
5. Follow CDC Guidance for Symptomatic Workers. Employers should follow CDC guidance for workers who present symptoms, including but not limited to immediately taking to a health care provider in order to be tested and quarantining said individual.
6. Provide Designated Quarantine Facilities. All farmworker housing must have designated quarantine living facilities for workers who are showing symptoms or have tested positive for COVID-19.
7. Ensure appropriate social distancing at work and in communities. To the extent feasible, employers must plan work crew activity to ensure proper distancing to avoid unnecessary transmission of the disease at work. Transportation to workers should be provided in sufficient vehicles, or in several trips, so 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. When possible, advance arrangements must be made regarding transportation, 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.

Conclusion

Legal Aid Justice Center requests a telephone meeting to discuss employer implementation of the above recommendations to ensure the protection of all farmworkers and migrant workers, their families and communities, and the residents of the Commonwealth of Virginia. We all have a role to play in this crisis and can keep our communities safe.

Sincerely,

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