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February 12, 2021

Ms. Kathryn Mueller
Program and Planning Section Chief
Migrant and Seasonal Farmworker Programs and Job Service Call Center
Wisconsin Department of Workforce Development
201 E Washington Ave
Madison, WI 53702

Submitted via email: Kathryn.Mueller@dwd.wi.gov

Dear Ms. Mueller:

Thank you for the request to provide information regarding the ways in which a new emergency rule relating to COVID-19 protections for migrant farmworkers would impact Legal Action of Wisconsin's farmworker clients. The disproportionate impact of COVID-19 on Hispanic or Latinx workers, including farmworkers, has been felt in our client community in many ways. As Wisconsin Department of Health Services data demonstrates, since the start of the pandemic, Black and Hispanic populations are over-represented among COVID-19 cases, hospitalizations, and deaths.ⁱ

Legal Action has spoken with farmworkers who are mourning the loss of a loved one who left their families to work in Wisconsin in 2020 and never returned home. We have spoken with clients suffering from the symptoms of COVID-19 many months after their infections. We have spoken with clients who made difficult decisions to leave employment and lose essential income because they feared that continuing to live and work in Wisconsin would jeopardize their health and safety, and the health and safety of their families and communities.

Legal Action's farmworker clients benefited from the baseline protections created by EmR2014 and the end of that emergency rule, without the promulgation of a new emergency rule, would significantly increase the already high risk of COVID-19 transmission among Wisconsin's migrant and seasonal farmworkers. Although farmworker lives will certainly be saved with the decision to include agricultural workers in Wisconsin's Vaccine Priority Group 1B, the risk of COVID transmission in farmworker housing and transportation will continue throughout the vaccine distribution period and will likely persist until herd immunity is established in Wisconsin.ⁱⁱ

Despite its important protections, EmR2014 was limited in scope. A new emergency rule could better protect farmworker health and safety.

Since EmR2014 was originally written, understanding of COVID-19 has increased. As we begin the second year of the pandemic, the Department of Workforce Development could review updated CDC guidanceⁱⁱⁱ, consult with medical experts, public health officials, and occupational health and safety experts to ensure that a new emergency rule contains current best practices.^{iv}

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A. A new emergency rule could reduce risk of COVID 19 transmission in farmworker housing.

Over the 2020 agricultural season, Wisconsin saw numerous COVID-19 outbreaks across agricultural worker communities with devastating impacts on the lives of workers.^v Congregate migrant housing leads to dangerous conditions and the significant transmission of COVID-19. Many Wisconsin farmworkers, including Legal Action of Wisconsin's clients, will return to congregate housing in 2021. In approving housing for the 2021 season, migrant camp operators and the Department of Workforce Development have more time to prepare and more knowledge of the risks of COVID-19 transmission in dormitory or barrack style housing. A new emergency rule could mandate lifesaving provisions such as social distancing in shared sleeping spaces and daily health checks.

1) The new emergency rule could reduce risk of COVID 19 transmission in farmworker housing by ensuring that workers in dormitory or barrack style housing can maintain social distancing while sleeping.

A new emergency rule could mandate that all beds in dormitory or barrack style housing be placed at least six feet apart, eliminating the use of bunk beds when both bunks are occupied at the same time. The usage of bunk beds increases the risk of contagion in farmworker sleeping quarters because more workers are packed together in tight quarters.^{vi} The updated CDC Guidance recommends "minimizing or reducing" the use of bunk beds and acknowledges that the use of bunk beds makes distancing "more difficult." In the experience of Legal Action of Wisconsin's farmworker clients, the use of bunk beds, when both bunks are occupied at the same time, guarantees that two unmasked workers will be closer than six feet together for the duration of the night.

2) The new emergency rule could reduce the risk of COVID19 transmission in farmworker housing by mandating daily health checks.

Current CDC Guidance recommends daily temperature and symptom screening for residents of shared agricultural worker housing.^{vii} In implementing safety checks, the CDC recommends multiple screening locations or staggered screening times to avoid congregations of large groups. The Guidance also provides that health checks should be conducted in a manner that protects worker confidentiality.

B. A new emergency rule could protect workers who report unsafe conditions in housing, workplaces, and transportation.

Although Wis. Stat. §103.96 already prohibits retaliation, many of Legal Action's farmworker clients nonetheless fear for their jobs if they report an unsafe condition. The impact of health and safety measures are reduced when workers face illegal retaliatory firings if they report health and safety violations. A new emergency rule could contain retaliation protections, enhanced inspection requirements, and significantly stronger enforcement mechanisms.

C. A new emergency rule could specify that workers who need to quarantine due to COVID-19 are provided with full pay, including any lost overtime and bonus wages, during periods of quarantine.

Many migrant and seasonal farmworkers arrive to Wisconsin with little to no money, and most workers also send wages home to support family members. Because of their economic instability, farmworkers may be incentivized to conceal COVID-19 symptoms so that they can continue to work and earn wages. As a result, our clients lack the incentives to disclose symptoms, as they feel they are forced between prioritizing their physical health or the financial health of the family their wages are supporting.

D. A new emergency rule could require employers to provide access to medical treatment to workers with symptoms of COVID-19 or a confirmed positive COVID-19 test.

Most migrant and seasonal farmworkers do not have personal transportation and many workers travel to Wisconsin alone and may not have someone, other than the employer, who can help them obtain medicine or access medical care while they are sick.

Migrant and seasonal farmworkers are an essential part of the Wisconsin economy, food and agriculture systems, and communities. Agricultural workers have been on the front lines throughout the pandemic, risking their health and lives while providing essential services to our state. Promulgating a new emergency rule, in addition to a proactive and robust vaccination campaign, will increase workers' health and safety. Thank you for the invitation to comment on how a new emergency rule relating to COVID-19 protections for migrant and seasonal farmworkers affects Legal Action of Wisconsin's farmworker clients. Please do not hesitate to contact me if you have questions or require additional information.

Very best regards,



Farmworker Project Legal Director
Legal Action of Wisconsin

ⁱ COVID-19: Racial and Ethnic Disparities; WI DHS; <https://www.dhs.wisconsin.gov/covid-19/disparities.htm>.

ⁱⁱ Center for Disease Control and Prevention. *Do I need to wear a mask and avoid close contact with others if I have gotten 2 doses of the vaccine?* Available at: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>

ⁱⁱⁱ Center for Disease Control and Prevention. Agriculture Workers and Employers Interim Guidance from CDC and the U.S. Department of Labor. (February 2, 2021) available at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

^{iv} Center for Disease Control and Prevention. Agriculture Workers and Employers Interim Guidance from CDC and the U.S. Department of Labor. (February 2, 2021) available at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html>

^v *44 Percent Of Seneca Foods Employees In Barron County Test Positive For COVID-19*, Wisconsin Public Radio, <https://www.wpr.org/44-percent-seneca-foods-employees-barron-county-test-positive-covid-19>.

^{vi} In recognition of the increased risk that bunk beds pose to workers, Oregon OSHA adopted a rule during the 2020 season that prohibits the usage of bunk beds by unrelated individuals in MSFW housing. Available at: <https://osha.oregon.gov/OSHARules/div1/437-001-0749.pdf>. See also CDC interim guidance, which recommends minimizing or avoiding the use of bunk beds

^{vii} Center for Disease Control and Prevention. Agricultural Employer Checklist at pg 15. <https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/Agricultural-Employer-checklist.pdf>