



## Clearinghouse Rule 07-018

### State of Wisconsin Department of Workforce Development Division of Workforce Solutions

### Migrant Labor DWD 301

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 301.07(9)(b), 301.07(15)(b), 301.07(15)(c)2. and 301.11; to amend ss. DWD 301.03, 301.05(1), 301.05(8)(a), 301.06(3), 301.06(13), 301.07(7)(c)(note), 301.07(13)(a), 301.08(5), and 301.09(2)(c); to repeal and recreate ss. DWD 301.07(16)(c) and 301.07(16)(k); and to create ss. DWD 301.06(2m), 301.07(6)(a)(note), 301.07(11)(cm), 301.21(em)1., 301.14, and 301.14(note), relating to migrant labor and affecting small businesses.

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#### **Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 103.905 (1) and 227.11 (2), Stats.

**Statutes interpreted:** Sections 103.90 to 103.97, Stats.

**Related statutes:** NA

**Explanation of agency authority.** Pursuant to ss. 103.90 to 103.97, Stats., the Department of Workforce Development inspects and certifies all migrant camps in the state, ensures that migrant workers are provided with a work agreement that explains the required terms and conditions of employment, monitors and registers crew leaders who recruit migrant workers, ensures required field sanitation facilities are provided, and investigates complaints of apparent violations of migrant law. Section 103.905 (1), Stats., provides that the Department shall promulgate rules for the enforcement and implementation of 103.90 to 103.97, Stats.

**Summary of the proposed rule.** The proposed rule incorporates various explanatory guidelines that have been issued as labor alerts, updates obsolete references, and repeals provisions with obsolete compliance dates and provisions that conflict with the state building code. The substantive provisions include the following:

- Under s. 103.915 (1)(a), Stats., a person subject to the section must provide a migrant worker with a written recruiting statement at the time of the worker's

- recruitment. The proposed rule clarifies that “recruitment” means a migrant worker is offered employment whether by personal contact, telephone, correspondence, or a recall notice due to a union contract. If recruitment is by telephone, the written worker agreement shall be furnished as soon as reasonably possible.
- Under s. 103.915 (4)(a), Stats., migrant work agreements are required to include the approximate ending date of employment. The intent of the approximate ending date is to give migrant workers a reasonable idea of how long they will be employed so they can plan accordingly. In Wisconsin, many employers provide a bonus as an incentive to encourage migrant workers to work until the end of the season. The proposed rule provides that a work agreement may not state “until the end of the harvest” as a condition to receive a bonus because that defeats the intent of the approximate ending date of the required work agreement. A bonus may be conditioned on a worker continuing to work up to 7 days beyond the approximate ending date in the work agreement.
  - The proposed rule provides that only a single family may live in a one-family housing unit, except as approved by the department. A single family may include parents and their unmarried children, grandparents, unaccompanied married children, and dependent minor relatives. The department may allow other individuals to share a one-family housing unit with a family, taking into consideration respect for the integrity of the migrant family; privacy of the occupants; preference of family members; relationship of the occupants; size of the unit; health and safety concerns; the employer’s justification; and compliance with other migrant camp rule provisions, fair housing law, and any other applicable law.
  - The current rule provides that all living quarters and service buildings shall be provided with permanently installed, operable heating equipment capable of maintaining a temperature of at least 70° F. The proposed rule lowers the required temperature to 68° F.
  - This proposed rule provides requirements on the placement of portable smoke detectors for migrant housing units that do not have permanently wired smoke detectors installed by a professional electrician at the time of construction. The portable smoke detectors shall be installed in each sleeping area of each housing unit or elsewhere in the unit within 6 feet of the doorway of each sleeping area and not in a kitchen; in the basement of each housing unit; and at the head of any stairway on each floor level of each housing unit. Each portable smoke detector shall be installed no closer than 3 to 12 inches from the ceiling, except a camp operator may follow a manufacturer’s recommendation on the installation of a particular smoke detector in a different location if the camp operator provides the department’s migrant labor inspector with proof of the manufacturer’s installation recommendation at the time of the camp inspection.
  - Section 103.93 (2), Stats., provides that every employer shall furnish to each migrant worker at the time of payment of wages a written statement showing the amount of gross and net wages paid and each amount deducted or withheld for whatever purpose. The proposed rule clarifies that the wage statement may not combine information on wages earned by multiple members of a family.

- The proposed rule requires that a summary of the migrant code shall be posted in a conspicuous place in all migrant labor camps or where the occupants report for work in a place easily seen by the camp occupants. The posting shall be on a form prescribed by the department and shall be in English and in the language of the camp occupants if other than English.
- The current migrant rule contains provision that conflict with the state building code on the minimum ratio of persons per water closet, the number of urinals that may be substituted for toilet seats, the ratio persons per showerhead, and the ratio of persons per lavatory for new construction. Builders must comply with the stricter requirement of the state building code. The conflicting migrant provisions are repealed and references to the state building code are added.

**Summary of related federal regulations.** Federal regulations on migrant recruitment, migrant work agreements, payroll records, and provision of other information to migrant workers are found at 29 CFR Part 500. These regulations require each agricultural employer that employs migrant workers to post in a conspicuous place at the place of employment a poster provided by the Department of Labor that sets out the rights and protections for workers under the Migrant and Seasonal Agricultural Worker Protection Act, 29 USC 1801 et seq. A separate provision requires each employer that provides housing to migrant workers to post terms and conditions of the housing in a conspicuous place at the site of the housing. These regulations also require an itemized wage statement for each worker.

Owners of migrant worker housing constructed before April 3, 1980, may elect to comply with OSHA regulations at 29 CFR 1910.142 or Employment Training Administration (ETA) regulations at 20 CFR 654.404 et. seq. Migrant worker housing constructed on or after April 3, 1980, must comply with OSHA regulations. OSHA regulations require that a camp have adequate heating equipment during cold weather and require equipment capable of maintaining a temperature of at least 70° F in service buildings. ETA regulations require all living quarters and service rooms to have heating equipment capable of maintaining a temperature of at least 68° F.

**Comparison with rules in adjacent states.** Michigan's rules on migrant worker housing require a smoke detector within each shelter at a point centrally located in each corridor or area that provides access to rooms used for sleeping and at the top of a stairway where the second floor of a structure is intended to be occupied. Michigan also requires that a shelter and a common-use room that is used before May 31 or after September 1 be provided with heating equipment that is capable of maintaining a temperature of not less than 65° F.

Illinois requires a smoke detector within 15 feet of every room used for sleeping purposes. The detector must be installed on the ceiling and at least 6 inches from any wall or on a wall between 4 and 6 inches from the ceiling. Every single-family residence shall have at least one smoke detector on every story, including basements but including unoccupied attics.

Iowa and Minnesota do not appear to have rules on the specific issues in the Department's proposed rules.

**Summary of factual data and analytical methodologies.** The proposed rules were recommended by the Council on Migrant Labor pursuant to s. 103.967, Stats.

**Effect on small business.** The proposed rule may affect small businesses as defined in s. 227.114 (1), Stats.

**Agency contact and place where comments are to be submitted.** Written comments on the proposed rules received at the following address or email no later than March 20, 2007, will be given the same consideration as testimony presented at the hearing.

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**SECTION 1. DWD 301.03, 301.05 (1), and DWD 301.05 (8) (a) are amended to read:**

**DWD 301.03 Forms.** All forms issued by the department may be obtained from DWD, P. O. Box ~~7902~~ 7972, Madison, Wisconsin ~~53707-7972~~.

**DWD 301.05 (1)** A migrant labor contractor shall apply to the department for a certificate of registration on a form ~~DWD-JSD-5234~~ prescribed by the department or on the form required under USC 2045 used to comply with 29 USC 1811(a).

**DWD 301.05 (8) (a)** Submit a separate Form ~~WH-512 (Application for Farm Labor Contractor Employee Identification Card)~~ application for a farm labor contractor employee identification card on the form used to comply with 29 USC 1811(b) for each officer, director, partner, or agent of the contractor at the time of application or within 10 days after hiring such person.

**SECTION 2. DWD 301.06 (2m) is created to read:**

**DWD 301.06 (2m)** The term “recruitment” means a migrant worker is offered employment whether by personal contact, telephone, correspondence, or a recall notice due to a union contract. If recruitment is by telephone, the written worker agreement shall be furnished as soon as reasonably possible.

**SECTION 3. DWD 301.06 (3) and DWD 301.06 (13) are amended to read:**

**DWD 301.06 (3)** If an employer does not use Form ~~DWD-JSD-5233 (Migrant Labor Work Agreement)~~ the department’s prescribed migrant labor work agreement form, ~~he/she~~ the employer shall use a form approved by the department. An employer may not use a form unless it has been approved by the department prior to its use.

**DWD 301.06 (13)** If the applicable wage rate to be paid include a bonus provision, the work agreement shall clearly state the conditions under which the bonus shall be paid or forfeited. A work agreement may not state that a migrant worker must continue to work “until the end of the harvest” as a condition to receive a bonus. A bonus may be conditioned on a worker continuing to work up to 7 days beyond the approximate ending date in the work agreement.

**SECTION 4. DWD 301.07 (6) (a) (note) is created to read:**

**DWD 301.07 (6) (a) (note)** Note: Plans and specifications for all new construction, including additions to existing buildings, may also require the approval of the Department of Commerce under the Wisconsin Commercial Building Code. Contact the Department of Commerce, Division of Safety and Buildings, 201 W. Washington Avenue, Madison, WI 53703 for further information.

**SECTION 5. DWD 301.07 (7) (c) (note) is amended to read:**

**DWD 301.07 (7) (c) (note)** The application form for a variance may be obtained by request from the Bureau of Migrant, Refugee, and Labor Services, P.O. Box ~~7903~~ 7972, Madison WI 53707-7972.

**SECTION 6. DWD 301.07 (9)(b) is repealed.**

**SECTION 7. DWD 301.07 (11) (cm) is created to read:**

**DWD 301.07 (11) (cm)** Only a single family may live in a one-family housing unit, except as approved by the department. A single family may include parents and their unmarried children, grandparents, unaccompanied married children, and dependent minor relatives. The department may allow other individuals to share a one-family housing unit with a family, taking into consideration the following factors:

1. Respect for the integrity of the migrant family.
2. Privacy of the occupants.
3. Preference of family members.
4. Relationship of the occupants.
5. Size of the unit.
6. Health and safety concerns.
7. The employer's justification.
8. Compliance with this chapter, s. 106.50, Stats., and other applicable law.

**SECTION 8. DWD 301.07 (13) (a) is amended to read:**

**DWD 301.07 (13) (a)** All living quarters and service buildings shall be provided with permanently installed, operable heating equipment capable of maintaining a temperature of at least ~~70° F~~ 68° F.

**SECTION 9. DWD 301.07 (15) (b) and 301.01 (15) (c) 2. are repealed.**

**SECTION 10. DWD 301.07 (16) (c) and (k) are repealed and recreated to read:**

**DWD 301.07 (16) (c)** There shall be a minimum ratio of showerheads as set forth in chs. Comm 61 and 62.

**DWD 301.07 (16) (k)** Lavatories or equivalent units shall be provided in a ratio as set forth in chs. Comm 61 and 62.

**SECTION 11. DWD 301.07 (21) (em) 1. is created to read:**

**DWD 301.07 (21) (em) 1.** Except as provided in subd. 3., portable smoke detectors shall be installed in all of the following locations:

a. In each sleeping area of each housing unit or elsewhere in the unit within 6 feet of the doorway of each sleeping area and not in a kitchen.

b. In the basement of each housing unit.

c. At the head of any stairway on each floor level of each housing unit.

2. Each portable smoke detector shall be installed no closer than 3 to 12 inches from the ceiling, except a camp operator may follow a manufacturer's recommendation on the installation of a particular smoke detector in a different location if the camp operator provides the department's migrant labor inspector with proof of the manufacturer's installation recommendation at the time of the camp inspection.

3. This paragraph does not apply to buildings with permanently wired smoke detectors installed by a professional electrician at the time of construction.

**SECTION 12. DWD 301.08 (5) and DWD 301.09 (2) (c) are amended to read:**

**DWD 301.08 (5)** Every employer shall furnish to each migrant worker an individual wage statement. A wage statement may not combine information on wages earned by multiple members of a family. Wage statements shall show the amount of gross and net wages paid by the employer to the worker, the number of hours worked, and the amount of and reason for each deduction from the wages of the worker. A reasonable coding system may be used by an employer.

**DWD 301.09 (2) (c)** Written application for a variance under par. (b) shall be filed with the department on ~~the DWD-JSD-5942~~ a form prescribed by the department. A variance shall not be effective until granted in writing by the department.

**SECTION 13. DWD 301.11 is repealed.**

**SECTION 14. DWD 301.14 and DWD 301.14 (note) are created to read:**

**DWD 301.14 Posting of migrant worker rights.** A summary of the provisions of this chapter shall be posted in a conspicuous place in all migrant labor camps or where the occupants report for work in a place easily seen by the camp occupants. The posting shall be on a form prescribed by the department and shall be in English and in the language of the camp occupants if other than English.

Note: The required posting may be obtained from the Bureau of Migrant, Refugee, and Labor Services, P.O. Box 7972, Madison WI 53707-7972.

**SECTION 15. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro), Stats.