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Farm Labor in California: Then and Now

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1. Labor Supply: Seasonality, Employment, Immigration.

Average monthly employment on California farms was 418,000 in 1999, including an average 235,000 workers hired directly by crop and livestock farmers (56 percent) and 183,000 hired by agricultural service firms such as labor contractors and farm management companies (44 percent). Direct hires are falling, down 5 percent from 1983, and indirect hires through agricultural service firms are rising, up 90 percent since 1983. Agricultural service firms-- of FLCs, custom harvesters, and other third party employers who bring workers to farms--supply 50 to 75 percent of the workers for many seasonal tasks, including weeding and harvesting.

Employment on California farms peaked in 1999 in August at 522,000, and reached a low of 307,000 in January, for a peak-trough ratio of 1.7, i.e., 170 workers are hired directly by farmers in August for each 100 workers hired in January. The peak-trough ratio was higher for agricultural service firms, 1.9, than for direct hires, 1.6.

There are far more than 500,000 individuals employed on California farms each year. Farmers and agricultural service firms report 800,000 to 900,000 individuals (SSNs) to EDD each year for UI tax reporting; farmers and unpaid family workers are not included in these data.

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Workers without other US job options have typically borne the cost of seasonality by being willing to wait for seasonal jobs to begin; workers most willing to accommodate to seasonality have been newcomers to the state who could not get nonfarm jobs because of lack of English, contacts or skills. In 2000, about 95 percent of seasonal workers employed on crop farms are foreign born, and new entrants to the seasonal farm work force are almost 100 percent immigrants.

The major farm labor issue in 2001 is the terms on which US farmers should get access to immigrant farm workers. About 50 percent of seasonal farm workers across the US are believed to be unauthorized, with the highest unauthorized percentages among seasonal workers brought to farms by FLCs. There is a guest worker program—the H-2A program—that has three requirements relatively few growers can meet:

- Certification: In order to have visas issued to H-2A foreign workers, the US Department of Labor must “certify” a farmer’s need for them. Generally, DOL does not certify need unless a farmer attempts to recruit workers via the Employment Services’ Interstate Clearance System, which requires that farm employers offer free approved housing to ALL out-of-area workers—if US workers cannot be found, the housing is occupied by H-2A workers. Farmers without approved housing do not apply; 99 percent of employer requests for certification are approved by DOL.
- Wages: Farmers must offer to pay the higher of three wages: the federal or state minimum, the prevailing wage, or the Adverse Effect Wage Rate (AEWR). The AEWR is generally the highest of the three wages. Its purpose is to avoid having the presence of foreign workers depress the wages of US farm workers. Since 1987, the AEWR has been the average hourly earnings of field and livestock workers in a state or region, as reported to USDA by farm employers for the year before, e.g. in 2000,

the AEWR was \$7.27 an hour in California, \$6.74 in Arizona, \$7.25 an hour in Florida, \$7.64 an hour in Washington, and \$6.98 an hour in North Carolina. For many farmers, the AEWR exceeds current wages.

- Litigation/Bureaucracy: Growers who apply for H-2A workers are required to hire qualified US workers until 50 percent of the work for which they requested H-2As is completed. If a farmer requests certification for 100 workers, and 50 US workers agree to report, the farmer is certified for 50 H-2A. If the 50 US workers do not report, or they report and are found by the farmer to be not qualified, the farmer can request emergency certification for additional H-2A workers. At this point, legal services, lawyers, and the ES may question the employer's judgement about the qualifications of the US workers.

Farmers are pressing for a new guest worker program that would eliminate: (1) the US Department of Labor's role in certifying the need for foreign workers to fill vacant US farm jobs; (2) the Adverse Effect Wage Rate; and (3) the need to provide free housing to out of area workers (farmers could provide a housing allowance instead of housing). One way to eliminate DOL's role in certifying a farmer's need for guest workers is a registry, a computer system to be operated by the Employment Service in each state. ES offices would verify the right of workers willing to be dispatched to fill farm jobs by seeking to be registered. Employers would submit job offers to the ES registry in their state. If an employer requested 100 workers from the registry, and ES had only 40 registered workers willing to report to that employer, the ES would issue a "shortage report" that would affirm that DOL agrees the farmer needs 60 foreign farm workers.

Some versions of a new guest worker program for agriculture include a conditional amnesty for unauthorized workers. Under one proposal, unauthorized foreigners who can prove that they did at least 150 days of US farm work within the past 12 months could become temporary legal US residents and workers. If they do an additional 180 days of farm work a year in five of the next seven years, they could apply for legal immigrant status.

2. Wages and Fringes

The federal minimum wage is \$5.15 an hour. The California minimum wage is \$6.25, and will rise to \$6.75 in January 2002. Many farmers pay entry-level workers and thinning and weeding crews the minimum wage. Harvest workers are often offered a higher than minimum wage or paid piece rates, that is, guaranteed the minimum wage, but paid according to how much work they accomplish—some employers have switched from piece rates to hourly wages as the minimum wage has risen to minimize record-keeping. The hourly earnings of piece rate workers in cases where the crew divides piece rate earnings can be very high, since the crew screens out slower workers, e.g. workers may aim to average \$10 or \$15 an hour or \$100 a day. The average hourly earnings of farm workers as reported by USDA, \$7.27 an hour in California in 1999, reflects wages paid under the diverse pay systems used in agriculture.

In addition to hourly earnings, US employers pay social security and other taxes on their workers' earnings, and many provide other fringe benefits. During the 1990s, payroll taxes and fringe benefits averaged 27 percent of total compensation in the US private sector. The total cost of employing workers in the private sector was \$19 an hour in March 1999, including \$13.87 an hour in wages and salaries (73 percent) and \$5.13 an hour in benefits (27 percent). This \$5.13 included \$1.65 an hour (9 percent of total

pay) for legally required payments for social security, unemployment insurance and workers' compensation, followed by 18 percent for voluntary fringe benefits: \$1.20 for paid leave, including vacation and holiday pay, \$1.13 for health and other insurance, and \$1.12 an hour for retirement benefits supplemental pay.

Most farm employers do not provide many non-mandatory fringe benefits. When fringe benefits are provided, they tend to be a big fraction of total compensation. In compliance cases, the ALRB has been assuming that unionized farm employers provide non-mandatory benefits that add 15.7 percent to wages (excluding social security, UI, and workers compensation). The UFW has about 30 contracts covering 7000+ jobs, and the largest UFW contract covers a peak 1400 workers at Bear Creek (Jackson and Perkins roses), where fringe benefits are more than 16 percent, i.e., the \$1.20 per hour for RFK in 1999 adds 16 percent to the cost of a \$7.50 per hour worker.

3. Unions, Immigration and Labor Law Enforcement

Unions. The AFL-CIO has made organizing immigrant workers one of its top priorities. The UFW changed its strategy in the mid-1900s, and has moved aggressively to organize farm workers, beginning with the 1996-2000 strawberry workers' campaign that resulted in a contract with Coastal Berry covering 700 workers in Oxnard; a local union represents 800 Coastal Berry workers in Salinas.

The UFW, which reported 26,000 members and \$1.7 million in member dues in 1999, in 2000 dropped the provision in its constitution that restricts it to organizing farm workers, and won an NLRB election to represent workers employed in a furniture making plant in Bakersfield. The UFW may organize nonfarm workers in citrus packing and meat packing.

The Teamsters and UFCW represent farm and nonfarm workers, and the movement of jobs from packing houses to the fields is likely to complicate labor relations in agriculture. California's ALRA is a residual law, covering workers not covered by the federal NLRA. The NLRB decided in several 1990s cases that:

- Packing activities in the field can be done by "nonfarm workers," so that the same lettuce crew could have cutters who are farm workers and packers who are nonfarm workers. Indeed, workers could be both farm and nonfarm workers in the course of a day if they switched between cutting and packing
- Farmers who pack only the produce they grow can make some of their packing workers nonfarm employees by regularly buying a small amount of outside produce, as was the case of a mushroom farm that regularly bought exotic mushrooms to offer a more complete selection.

The changing line between farm and nonfarm work may encourage "nonfarm unions" to organize nonfarm workers in the fields. The Teamsters represent about 7,000 farm workers in California, and the UFCW won an election to represent farm workers in Arizona in 2000.

Immigration. Half of the farm work force is unauthorized. Since IRCA in 1986, immigration enforcement in agriculture has changed from a people chase to paper chase. INS enforcement today usually sees the INS subpoena I-9 forms, compare the employee SSNs and A-Numbers on the I-9 forms to SSA and INS data bases, and then the INS tells the employer to ask the employees with discrepancies to clear them up before the INS arrives to interview workers. Most employees quit before INS arrives for work place interviews.

The INS has mounted several farm-related enforcement operations:

- Stockton area FLCs: INS audited 71 FLCs in the spring and summer of 2000, reviewed 10,628 I-9 forms, and found that 7,509 or 71 percent of the employees appeared to be unauthorized. There were 15,000 workers reported to EDD by all agricultural service firms in June 2000 in San Joaquin county.
- Yakima-area apple packing plants: 10 to 70 percent of workers appeared to be unauthorized in winter 1999; 1,700 employees with discrepancies were identified, and most quit when informed that INS was coming to interview them.
- Vanguard in Nebraska--4,500 or 17 percent of 26,000 meat packing employees were suspect. Most quit--23 were arrested at INS interviews in May-June 1999.

The apparently unauthorized workers who quit before the INS arrives to do work place interviews are not removed from the US; many buy or borrow work authorization documents and get rehired by another employer. The GAO examined INS enforcement practices and priorities and concluded that "a sudden, widespread farm labor shortage requiring the entry of large numbers of foreign workers continues to be unlikely now or in the near future, although localized shortages could emerge for specific crops or geographic areas."

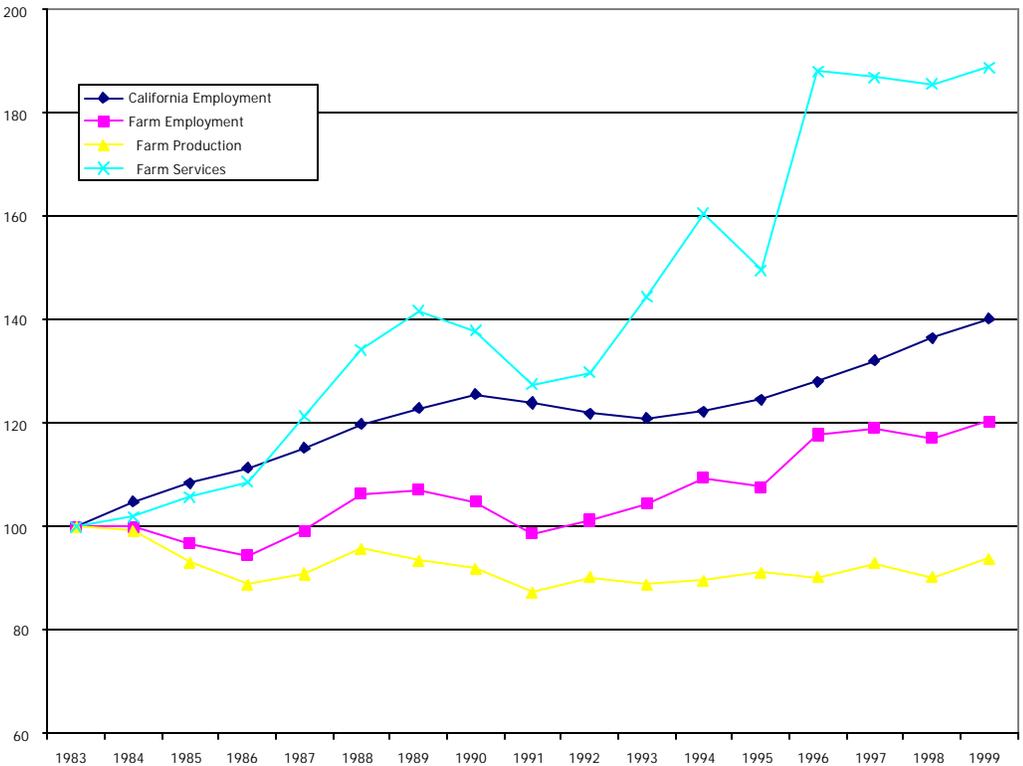
Labor Law. Most farmers who hire workers directly pay them at least the minimum wage, but many FLCs allegedly do not. In January-February 1998, there were federal-state inspections of pruning workers in 66 vineyards: 20 percent of the growers and 52 percent of the FLCs were not paying workers the minimum wage of \$5.75 an hour, so that 369 of 1,000 workers involved in the inspections were owed

"make-up" money so that they received at least the minimum wage. Four growers paid \$7,024 in back wages to 13 workers and 12 growers paid fines or civil money penalties; 11 FLCs paid \$9,242 in back wages to 228 workers and \$46,080 in civil money penalties.

In 1999-2000, 45 of the vineyards in the Coachella, San Joaquin and Napa Valleys that had violations in 1997-98 were re-inspected during winter pruning season; most were in compliance. However, FLC Filadelfo L. Martinez of Fresno was found not to be paying the minimum wage for the fifth time since 1995.

There is an ongoing effort in the California Legislature to tighten the regulation of FLCs and to make the farms to which FLCs bring workers jointly liable for labor law violations. After 13 tomato sorters were killed in August 1999 when the van they were riding in struck a tomato truck making a U-turn, the Legislature enacted a law that requires vans used to transport farm workers to have forward-facing conventional seats by 2002, and added funds for the CHP to inspect such vans. However, a bill that would have made growers jointly liable for labor law violations with the FLCs who bring workers to their farms for all labor law violations committed by the FLC on their farm, whether the FLC was registered or not, was defeated.

California Total and Farm Employment: 1983-99 (1983 = 100)



In 1983, CA employment was 10.3 million and total farm employment was 347,000, including 250,000 in farm production and 97,000 in farm services. In 1999, these numbers were 14.4 million, 418,000, 235,000, and 183,000