

columbialegal.org

March 19, 2020

Delivered by electronic mail

The Honorable Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Dear Governor Inslee:

We write to request immediate protection for Washington State's farmworkers during this dire health care crisis. In the near future, we face the real possibility that hospitals will be unable to provide sufficient beds and ventilators for those who need acute, emergency treatment due to novel coronavirus (COVID-19). We also currently lack sufficient health care personnel and testing to ensure all receive the care they need. Many Washingtonians who work in agriculture are highly vulnerable to COVID-19 illness because they lack legal status, access to medical care, and sufficient finances, thus, they are much more likely to forego COVID-19 testing and suffer in silence or go to work even though they are symptomatic.¹

Meanwhile, there is a major hole in the Governor's pandemic containment plan. Washington's agricultural industry is in the process of bringing in thousands of workers from Mexico under the H-2A temporary agricultural visa program in the coming months. Some 7,500 of these 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 dormitory-style 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 the public health of all Washingtonians, the farmworker community, as well as the 30,000 largely Mexican H-2A workers. Without immediate steps, our rural health care providers, already likely overtaxed, could soon be overrun and further undermine the State's emergency plans.

We recognize and commend the Governor's office for all the proactive steps it has taken to date to protect public health. With that in mind, we provide a reminder that the above concerns are not merely hypothetical as a quarantine of 100 H-2A workers took place in Grant County just last spring. In April of 2019, one hundred H-2A workers from Mexico and Central America needed to be placed in a "limited quarantine" in their Mattawa, Washington labor camp because several contracted mumps.² They lived in 16, on-farm row houses. Below is a picture of the locked entrance and guard house.

¹ March 18, 2020, New York Times, "'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>)

² May 17, 2019, KUOW, "They Came To Washington To Work, Then They Got The Mumps," (<https://www.kuow.org/stories/they-came-to-washington-to-work-then-they-got-the-mumps>)



Mumps is remarkably similar to COVID-19, in that it is a viral disease spread by water droplets from coughing or sneezing, and symptoms can take two to three weeks to appear after infection.³ This outbreak occurred despite the fact that Mexico, according to World Health Organization data, has a higher measles-mumps-rubella vaccination rate than the United States.⁴ To contain the spread of mumps, Grant County health officials coordinated a mass vaccination and imposed the quarantine.⁵ Not only are vaccinations not available for COVID-19, but rural counties are unlikely to have adequate resources to devote to outbreaks such as these, with the magnitude of the current crisis.

In the context of the current pandemic, we need to ensure that no one is put at risk. The preventative measures below must be put in place as a condition before any additional H-2A workers are brought into the state of Washington, and these same measures need to be implemented to protect the workers already here.

- 1. Enact Emergency Orders to Ensure All Medical Treatment and Costs for All COVID-19 Related Treatment and Medical Expenses Will Be Covered and No Worker Will Be Sent Home with Any COVID-19 Symptoms.**

In order to help stop the spread of COVID-19, all H-2A 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 Washington State. 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 capable of receiving information or messages 24 hours a day should be established within the Department of Health to allow H-2A workers to report potential symptoms and request medical assistance, and the Department should have ready access to COVID-19 testing. Workers' compensation coverage needs to cover H-2A 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 Washington to work in agriculture.

Finally, recognizing that most H-2A workers come from impoverished rural communities and in order to protect the families, communities, and citizens of sending countries, Washington should pledge to fully treat all H-2A workers in Washington State until all COVID-19 symptoms have been fully resolved. Under

³ April 26, 2019, Good Fruit Grower, "Mumps Hits Farmworkers," (<https://www.goodfruit.com/mumps-hits-farmworkers/>).

⁴ *Id.*

⁵ *Id.*



no circumstances should growers or their agents be allowed to terminate and send home H-2A workers who are sick with or have been exposed to COVID-19.

2. Require Transparent Recruitment Information and Housing Protections Related to COVID-19.

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 employment in Washington 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 shall 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 buses and other communal areas. All prospective H-2A employees shall also be informed that they will receive health care at no cost should they develop COVID-19 symptoms and need to be tested, how they will be quarantined if they develop symptoms or test positive, and that they will not be sent home until all COVID-19 symptoms have been fully resolved.

H-2A employers control workers' housing, and have, in the past, revoked workers' access to that housing on short notice. In Sumas, Washington in 2017, 65 H-2A workers were evicted from their housing with one hour's notice and spent weeks living in the yard of a local resident.⁶ In our current situation, such eviction from housing could cause a public health crisis. No H-2A farmworkers should be evicted or in any way removed from their housing without prior review and approval of the Department of Health and written notification provided to the Mexican Consulate.

3. All Farmworker Housing Must Have Designated Quarantine Living Facilities and COVID-19 Plans Approved by Department of Health Prior to Issuing Any Housing License.

The Washington State Department of Health (DOH) must review and license farmworker housing. In addition to its current checklist, DOH shall add additional COVID-19 plans prior to the issuance of any license. See the CDC COVID-19 Preparedness Checklist for Nursing Homes and other Long-Term Care Settings for guidance on steps to sanitize living facilities.

Those requirements shall include, but not be limited to:

- 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.
- Designated quarantine sleeping areas with separate cooking and bathing facilities for quarantined workers.
- Proof of sufficient sanitizing and handwashing supplies.
- Proof of 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.

⁶ January 25, 2018, KUOW, "They Were Ordered to Work 'Unless on Their Death Bed,'" (<https://www.kuow.org/stories/they-were-ordered-to-work-unless-on-their-deathbed-blueberry-pickers-claim>)

- Provide unemployment insurance for H2A workers who are going to be quarantined.

4. Ensure Appropriate Social Distancing at Work and in Communities.

To the extent feasible, growers 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-2A 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.

Conclusion

The undersigned organizations and persons request a meeting to discuss prompt implementation of the above to ensure the protection of all H-2A workers, their families and communities, and the residents of Washington State. 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 State's COVID-19 emergency planning.

Sincerely,

COLUMBIA LEGAL SERVICES

s/ Andrea Schmitt

Andrea Schmitt, Attorney
711 Capitol Way South, Suite 706
Olympia, WA 98501
(360) 943-6260

NORTHWEST JUSTICE PROJECT

s/ Michele Besso

Michele Besso, Senior Attorney
311 North Fourth Street, Suite 201
Yakima, WA 98901
(509) 574-4234

COMMUNITY TO COMMUNITY

s/ Rosalinda Guillen

Rosalinda Guillen, Executive Director
203 West Holly Street, Suite 311
Bellingham, WA 98225
(360) 738-0893

FAMILIAS UNIDAS POR LA JUSTICIA

s/ Ramon Torres

Ramon Torres, President
P.O. Box 1206
Burlington, WA 98233
fuj@qwestoffice.net

UNITED FARM WORKERS

s/ Erik Nicholson

Erik Nicholson, National Vice President
29700 Woodford-Tehachapi Road
P.O. Box 62
Keene, CA 93531
(661) 823-6105

cc: The Honorable Karen Keiser, Chair, Senate Labor and Commerce
The Honorable Curtis King, Ranking Member, Senate Labor and Commerce
The Honorable John McCoy, Senate Majority Caucus Chair
The Honorable Mike Sells, Chair, House Labor and Workforce Standards
The Honorable Gina Mosbrucker, Ranking Member, House Labor and Workforce Standards
The Honorable Héctor Iván Godoy Priske, Consul, Mexican Consulate, Seattle
Farid Soberanis Garcia, Consul for Legal Protection, Mexican Consulate, Seattle
Caitlyn Jekel, Senior Policy Advisor for Labor, Office of the Governor