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U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210



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This is in response to your letter of August 18, 1977 regarding the Department of Labor's policy on the registration of farmers as farm labor contractors under the Farm Labor Contractor Registration Act, as amended. Your particular concern is with the Department's interpretation of the exemption from registration for farmers under Section 3(b)(2) and for the farmers' full-time or regular employees under Section 3(b)(3).

By adding the word "personally" in Section 3(b)(2) in 1974, Congress apparently narrowed the applicability of this exemption to an individual. Thus, this section would apply to a sole proprietorship whose owner performs any of the named farm labor contracting activities in person and "solely for his own operation." With regard to a partnership, since each partner is both a principal and an agent, each partner who performs any of the covered farm labor contracting activities solely for his own operation would be acting "personally". The applicability of the term "personally" is thus clear with respect to a sole proprietorship or a partner of a partnership.

Although the term "person" as defined in the Act includes partnerships, associations, joint stock companies, trusts or corporations, as well as individuals, it is apparent that each such entity must be viewed in a different light insofar as the application of Section 3(b)(2) is concerned. These entities are not entitled to the exemption under Section 3(b)(2) in their own right because they cannot act personally but only through an agent or representative. However, if a farmer is a corporation, the term "personally" may apply if the corporation is under the effective control of an individual whose authority is equivalent to that of a sole proprietor, and if that individual acts in person with respect to the farm labor contracting activities for the corporation. In such case, the exemption could apply.

Under the principles stated above, the application of Section 3(b)(2) to a farmer personally engaged in farm labor contracting activities solely for his own operation appears clear with respect to sole proprietorships, partnerships and corporations which are under the effective control of an individual. Any changes in the application of the Act to include corporations which cannot act personally would require, in my opinion, legislative action on the part of the Congress. The above principles were adopted only after careful consideration and are believed to follow Congress' intent in adopting the language of the statute.

An employee of an exempt person, within the meaning of Sections 3(b)(1) or 3(b)(2) of the Act is not automatically entitled to claim the exemption provided in Section 3(b)(3) unless the employee also meets the requirements of Section 3(b)(3) of the Act.

To be entitled to the exemption provided by Section 3(b)(3), a person must (1) be an employee of a farmer or other person referred to in Sections 3(b)(1) or 3(b)(2); (2) be a full-time or regular employee of such person; (3) engage in any of the covered farm labor contracting activities referred to in Section 3(b) solely for that employer and (4) participate in such activities "on no more than an incidental basis."

The phrase "on no more than an incidental basis" is not defined by the Act. The legislative history makes it clear that it was the intent of Congress that only those full-time or regular employees who utilize only a limited portion of their time for farm labor contracting activities could qualify for the exemption under Section 3(b)(3). As stated on pages 7 and 8 of the Senate Report No. 93-1295: ". . . While employment relationships vary, it is the Committee's intent that foreman and similar bona fide employees will not have to register as Farm Labor Contractors if it can be shown for example, that they are full-time and permanent employees of an employer who utilizes a limited portion of their time for activities as defined in Section 3(b) of the Act."

There are many kinds of participation in covered farm labor contractor activities referred to in Section 3(b) by full-time or regular employees of farmers or other persons referred to in Section 3(b)(1) or 3(b)(2). Engagement in such farm labor contractor activities may be a principal or a peripheral function as related to the employee's overall duties. There also may be seasonal fluctuations. Yet such activities may be part of the employee's regular or assigned duties which are performed on a regular and recurring basis.

The Department in considering the application of the Section 3(b)(3) exemption, takes into account all of the above factors. No single element would control and all the various related factors would be considered including the relationship of the amount of time spent performing farm labor contracting activities as compared to the total work time.

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In addition, the importance of the farm labor contractor activities must ultimately be determined in relation to the totality of the employee's duties based on the time, frequency, nature and indispensability of the employees in performing such duties. Thus, to be more than incidental the farm labor contracting activities need not be the only duties of the employee. It is sufficient to be more than "on an incidental basis", in our opinion, if the farm labor contracting activities are one of the major or principal functions of the individual's job.

While the Farm Labor Contractor Registration Act provides sanctions for the farm labor contractor who utilizes undocumented workers, we take exception to your statement to the effect that is the chief purpose of the Act. The Act guarantees to all covered workers, the protection and terms and conditions of employment stipulated by the statute. Section 6(f) of the Act is vigorously enforced by the Division, but not without equal attention to all other facets of the law.

It is anticipated that the new draft Interpretations, Part 41 will be published in the Federal Register within the next several months. Anyone desiring to comment on the proposed Part 41 may do so at that time.

Sincerely,

Xavier M. Vela
Administrator