

Should Growers Insist on Written Contracts with Their Farm Labor Contractors?

San Benito County Farm Bureau

By James W. Sullivan

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In my 25 years representing growers, shippers and farm labor contractors, I've seen that most contractors are hired without written contracts. Now, a number of growers have asked if it's time to insist on written contracts. As I describe below, contracts are useful for some purposes, but they're certainly not "silver bullets".

Contracts Can Serve As Reminders To the Parties Of Their Separate Duties

Both at the federal and state level we see a trend of holding growers responsible as "joint employers" for the unlawful practices of contractors. With or without a written contract, we recommend that growers take following steps to avoid being seen as "joint employers":

(1) First and foremost, use only reputable contractors. Check the DLSE farm labor contractor data base at <http://www.dir.ca.gov/databases/dlselr/farmlic.html> to make sure s/he has a current California FLC license. Demand to see current Federal farm labor contractor licenses for the contractors. If you hear of irregular practices, like paying employees in cash, look for another contractor;

(2) Demand to see a copy of a current certificate of workers' compensation insurance;

(3) Review the contractor's payrolls to make sure that he is paying overtime after 10 hours in the work day as required by Order 14-2001 of the California Industrial Welfare Commission. Check the foremen's daily reports to see that meal times are shown; and

(4) Avoid directing or supervising the contractor's employees. If the work is not being done right, go to the contractor or his supervisor and complain about the work. Do not direct or reprimand the contractor's employee or demand action against a particular worker.

While a written contract can remind parties of these requirements, the "facts on the ground" not the words on the page will determine whether the grower is seen as a joint employer.

Advantages Unique to Written Contracts

There is one advantage that growers can gain only from written contracts – express contractual indemnity for liability arising from the contractor's labor practices. This can provide a right to both defense and reimbursement for any payment the grower makes for the contractor's practices. Absent the written contract, the grower can resort to implied equitable indemnity, with no right to defense and no award of attorneys fees for suing for indemnity. Keep in mind that a right to indemnity is only as

valuable as the contractor's ability to respond in damages. That takes us back to the first point – choose only reputable contractors.

Likewise, the contractor should be interested in a provision awarding costs of collection and attorneys fees to the prevailing party if the grower fails to pay. Absent a contractual provision for attorneys fees, each side must bear its own attorneys fees in contractual disputes.

Of course, written contracts can also address a variety of other issues, including payment terms, rates for different work, payment for packaging and transportation to the cooler, where suit can be brought, and any other issue of particular concern to the parties.

Note: this discussion does not address the special legal issues raised if either party's employees are represented by a labor union.

James W. Sullivan is head of the labor department of Lombardo & Gilles, representing employers only in a wide variety of labor and employment matters. Previously, he served as staff counsel to the Agricultural Labor Relations Board, and vice president and general counsel to Bud Antle and its affiliates. For an appointment, call the Salinas office at (831) 754-2444.