

Myths and Facts: Farmworker Fair Labor Practices Act



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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Myth: Farmworkers are already protected by federal and state labor laws.

Fact: Farmworkers are excluded from key labor protections under both federal and state law. For example, the Fair Labor Standards Act and the National Labor Relations Act protect workers' right to overtime pay and to collective bargaining, but both laws have specific exemptions for farmworkers.² The New York State Constitution unequivocally states that all employees shall have the right to organize and bargain.³ However, like the federal laws, the New York State Labor Relations Act excludes farmworkers from this protection and other fundamental labor protections.⁴ Because of these exclusions, farmworkers do not have the right to a day of rest, to overtime pay, to organize and bargain collectively, and other labor rights that other workers consider fundamental.

The New York Farmworker Fair Labor Practices Act will ensure that farmworkers have the same rights as other workers in New York State. Its provisions will close an inexcusable gap in fundamental labor protections necessary for a strong workforce in the farm industry.

Myth: This bill competes with the interests of small farm owners.

Fact: This bill will simply codify existing practices and will actually help small farms by establishing basic safety and welfare protections enjoyed by other New York workers. More than two thirds of New York farms do not hire workers--only 30 percent of farms in New York hire or contract for farm labor.⁵ Small farms by definition hire fewer workers, meaning that the cost of recognizing farmworkers' labor rights will mostly affect larger farms with larger payrolls.

Myth: The economically fragile agriculture sector will suffer from wage increases and equal protection provisions for farmworkers.

Fact: With record farm income and skyrocketing demand for New York dairy, now is the time to guarantee agricultural stability by strengthening the workforce. A strong workforce is tantamount to a strong agricultural industry, and the New York Farmworker Fair Labor Practices Act is essential in ensuring that this happens.

¹ S1862-2011: Enacts the Farmworkers Fair Labor Practices Act, granting collective bargaining rights, workers' compensation and unemployment benefits to farmworkers, Senator Espaillat, Sponsor, NEW YORK STATE SENATE OPEN LEGISLATION, <http://open.nysenate.gov/legislation/bill/S1862-2011> (last visited May 3, 2012).

² Labor Law for Farmworkers, *Farmworker Justice*, <http://www.fwjustice.org/labor-law> (last visited May 3, 2012).

³ New York State Constitution, Article I, §17 ("Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.").

⁴ NY LAB. § 701 (3)(a) ("shall not include . . . any individuals employed as farm laborers").

⁵ 2007 New York Census of Agriculture Ch. 1, Table 4 at 10.

United States farms earned a record net income of nearly \$98 billion in 2011.⁶ This means farm income has jumped close to 30 percent in each of the past two years. Not only are prices high in this banner year for farm income, so is production. Further, the Food and Agricultural Policy Research Institute has projected that the United States farm income will remain close to, if not at or above, the historic highs.⁷

Additionally, in January, *The New York Times* reported that dairy production in New York rose nearly 60 percent in the last five years due to a surge in the popularity of Greek yogurt.⁸ Julie C. Suarez, the director of public policy for the New York Farm Bureau, told *The New York Times* that “[t]he growth in dairy manufacturing, particularly in the Greek yogurt category, has really been a fantastic boon for New York dairy farmers.” In other areas, local farmers are capitalizing on the growing consumer trend to eat produce grown within a day’s drive of the dinner table. Securing farmworkers their equal rights in a time when farmers are experiencing a boon will strengthen the work force and secure the future of New York’s agricultural industry.

Myth: Because seasons dictate farm hours, farm owners have very limited control over the maximum number of hours farmworkers work during farming season.

Fact: Common sense dictates that anybody performing hard physical labor will only be capable of a finite number of hours of work per day. However, under the New York Farmworker Fair Labor Practices Act, farmworkers who have the physical capacity to work extended hours will simply earn overtime wages during harvest periods that require more than eight hours of work per day. In New York, this will be of limited applicability, as research shows that farm work is between 40 and 60 hours per week.⁹ Furthermore, dairy farming forms the largest individual subdivision of

⁶ Frank Morris, National Public Radio, RECORD-HIGH FOOD PRICES BOOST FARMERS’ BOTTOM LINES (Mar. 13, 2012), available at <http://www.npr.org/2012/03/13/148161727/record-high-food-prices-boost-farmers-bottom-lines>.

⁷ FOOD AND AGRICULTURAL POLICY RESEARCH INSTITUTE, U.S. BASELINE BRIEFING BOOK: PROJECTIONS FOR AGRICULTURAL AND BIOFUEL MARKETS, FAPRI-MU Report #01-12 (Mar. 2012), available at http://www.fapri.missouri.edu/outreach/publications/2012/FAPRI_MU_Report_01_12.pdf.

⁸ See NATIONAL AGRICULTURAL STATISTICS SERVICE, FARM LABOR 6 (2011), available at <http://usda01.library.cornell.edu/usda/current/FarmLabo/FarmLabo-11-17-2011.pdf> (citing 41 hours per week as the Northeast I regional average hours worked). See also NATIONAL MILK PRODUCERS FEDERATION, THE ECONOMIC IMPACTS OF IMMIGRATION ON US DAIRY FARMS 6, available at <http://www.nmpf.org/files/file/NMPF%20Immigration%20Survey%20Web.pdf> (2009) (“Employees on dairy farms average 54 hours of work per week compared to only 30 to 39 for other occupations.”).

⁹ See NATIONAL AGRICULTURAL STATISTICS SERVICE, FARM LABOR 6 (2011), available at <http://usda01.library.cornell.edu/usda/current/FarmLabo/FarmLabo-11-17-2011.pdf> (citing 41 hours per week as the Northeast I regional average hours worked). See also NATIONAL MILK PRODUCERS FEDERATION, THE ECONOMIC IMPACTS OF IMMIGRATION ON US DAIRY FARMS 6, available at <http://www.nmpf.org/files/file/NMPF%20Immigration%20Survey%20Web.pdf> (2009) (“Employees on dairy farms average 54 hours of work per week compared to only 30 to 39 for other occupations.”).

New York agriculture, and this industry follows a fairly regular daily schedule that dairy owners can account for.¹⁰

Myth: This bill would expose farms to the risks of labor strikes that could prove devastating at peak harvest times.

Fact: Agricultural collective bargaining is based on the common sense of the farmers and the farmworkers. Collective bargaining is not just about joining a union or going on strike. It is about being able to simply *talk* about the possibility of organizing for better pay and working conditions without fear of retaliation from employers. Collective bargaining will give farmworkers the ability to communicate with their employers about their needs without fearing negative consequences.

For example, after California passed their Agricultural Labor Relations Act in 1975 labor relations actually improved.¹¹ Prior to the enactment, there was a wave of increasingly embittered labor actions in California. Following the enactment, the number of labor actions immediately declined.¹²

Myth: There is no need for workers compensation or temporary disability insurance, since farmworkers have access to quality health care clinics.

Fact: Farm and agricultural work is often a dangerous occupation. Workers compensation deals with compensation for work-related injuries, not general health care. As is common practice in any industry, the low-cost provision of workers compensation insurance works to ensure that proper safety policies are in place at the worksite. Most farms in New York already carry worker compensation policies.¹³ Rural clinics that provide services to farmworkers, on the other hand, focus on preventive primary care and dental care, and do not generally provide emergency room services for injured workers.¹⁴

¹⁰ Where Food Comes From, Dairy Cows & Milk 101, <http://www.wherefoodcomesfrom.com/Article.aspx?ArticleID=2950> (“Cows are milked by machine, usually twice a day, every 12 hours.”)

¹¹ Mariam J. Wells & Don Villarejo, *State Structures and Social Movement Strategies: The Shaping of Farm Labor Protections in California*, 32 POL. & SOCIETY 291 (2004). See also Philip L. Martin & J.R. Abele, *Unions: Their Effect on California Farm Wages*, 44 CALIFORNIA AGRICULTURE 28 (1990).

¹² Mariam J. Wells & Don Villarejo, *supra* note 11.

¹³ See NY Workers’ Comp §3, Group 14-a. The current statute reads “[e]mployment as a farm laborer as provided herein. A farmer shall provide coverage under this chapter for all farm laborers employed during any part of the twelve consecutive months beginning April first of any calendar year preceded by a calendar year in which the cash remuneration paid to all farm laborers aggregated twelve hundred dollars or more.” S1862 would remove the threshold amount for coverage.

¹⁴ See, e.g. Hudson River HealthCare, Migrant Voucher, <http://www.hrhc.org/voucher/> (last accessed April 27, 2012)

New York is unique in its exclusion of farmworkers from temporary disability insurance coverage. Not all states provide disability insurance, but those that do—California,¹⁵ New Jersey¹⁶, Hawaii¹⁷, Puerto Rico¹⁸, Rhode Island¹⁹—cover farmworkers.

¹⁵ CA Employment Development Department, Disability Insurance Eligibility, http://edd.ca.gov/Disability/DI_Eligibility.htm (last accessed April 27, 2012).

¹⁶ N.J. Temporary Disability Benefits Law § 43:21-27, http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/Law.pdf

¹⁷ Hawaii Administrative Rules §12-11-1, *available at* <http://hawaii.gov/labor/dcd/rule/12-11.pdf>

¹⁸ R.I. Labor and Labor Relations § 28-39-2, *available at* <http://www.rilin.state.ri.us/Statutes/TITLE28/28-39/28-39-2.HTM>.

¹⁹ *See, e.g.* Employment and Training Administration, Temporary Disability Insurance, <http://www.ows.doleta.gov/unemploy/pdf/uilawcompar/2010/disability.pdf>.