

Federal Court Taps Brakes on New York's Sweeping New Farmworker Labor Law

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New York's Farm Laborers Fair Labor Practices Act went into effect on January 1, 2020. Two days earlier, two agricultural business associations filed a challenge to the law in federal court requesting a temporary restraining order (TRO). The court granted a narrow TRO (applicable "to the extent and only to the extent" that the employee definition included disputed classes), but it did not enjoin any of the law's broad protections. The judge ordered a hearing be held on January 24, 2020.

Protections for farm laborers have lagged far behind those in other industries. Many state and federal statutes exclude them from workplace laws. With this new legislation, New York leapfrogs into the forefront of farmworker protection. The statute is a sea change for the agricultural employment relationship in New York. Among other protections, the new law provides a guaranteed day of rest, access to unemployment insurance and workers' compensation benefits, and premium pay for overtime work. For now, time-and-a-half premium pay is restricted to hours in excess of 60 in a week, but a newly authorized Farm Laborers Wage Board is encouraged to review and reduce that threshold upon issuance of a report to the governor by the end of 2020.

Most remarkable is the law's comprehensive grant of collective bargaining rights to farmworkers. The federal National Labor Relations Act (NLRA) excludes farmworkers from coverage. Only 10 states (Arizona, California, Hawaii, Kansas, Louisiana, Massachusetts, Nebraska, New Jersey, Oregon, and Wisconsin) recognize farmworker rights to organize. With the new law, New York provides not only organizing protection, but also a virtual guarantee of union bargaining success.

Modeled in some ways after the failed federal Employee Free Choice Act (EFCA), New York's statute directs that a union be certified as the unit bargaining representative upon receipt of dues authorizations from a majority of employees — as opposed to winning a secret ballot election. This method (called "card check") is favored by unions but has long been criticized as a poor gauge of employee sentiment compared to a fair election.

Once a union is certified, the law provides 40 days for the parties to reach a collective bargaining agreement. If that fails, a mediator may be assigned to facilitate voluntary agreement. If an agreement is not reached after 30 days, a formal arbitration process may be invoked, and an arbitrator then will impose binding contract terms on the parties. This is extraordinary; federal labor law has no such mechanism, and it is rare for employers to voluntarily submit to arbitration of contract terms. The brief 70-day bargaining timetable all but assures contract arbitration will be common.

The law prohibits employees from striking, but, given that a collective bargaining agreement is assured by the arbitration process, the right to strike is largely irrelevant.

Farm employers in New York should obtain guidance on compliance with the new law.

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