

## Forest Workers Networking/Partnership Meeting

Purpose: Agency and network collaboration to protect the forestry worker group  
Date: 12/12/2013  
Time: 10:00 pm to 12:00 pm  
Location: Gus Solomon Building, 620 SW Main, Room 413 and via teleconference  
Note Taker: Karen Clark, Portland US DOL Wage and Hour

Attendees: Gary Beck (Oregon OSHA), Pedro Serrano (WA Labor and Industries), Tom Silva (US DOL Wage Hour), Abby Burnett (US DOL OSHA), Charles Hill (USFS), Elida Monroe (USFS), Karen Clark (US DOL Wage and Hour), Carl Wilmsen (Northwest Forest Worker Center); via phone: Laurie Hoefler (Legal Aid Svcs OR), Gail Mance (BLM), Nargess Shadbeh (Oregon Law Center), Brad Reed (USFS), Devin Proctor (WA L & I), Michael Dale (Northwest Workers Justice Project), Patricia Navarra (WA L & I), Eric Villegas (Oregon Employment Department).

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### AGENDA NOTES

Welcome and Introductions: Karen Clark (US DOL Wage and Hour Community Outreach Specialist). Participant introductions.

#### **PRESENTATIONS:**

Update on Action Items from last meeting:

- USFS Elida Monroe previously provided website link to group history and provide to group: [http://www.fs.usda.gov/r6/workingtogether/contracting/H2B meetings](http://www.fs.usda.gov/r6/workingtogether/contracting/H2B%20meetings). In addition, links to current labor-intensive contracts, posted as soon as awarded or shortly thereafter: <http://www.fs.usda.gov/main/r6/workingtogether/contracting>
- Abby Burnett (DOL OSHA) previously e-mailed jurisdiction guide to participants. In addition, Gary Beck (OR OSHA) added that this guide is also listed on OR OSHA website under "jurisdiction" heading.

WA Labor and Industries Logger Safety Program: Devin Proctor (L & I Logger Safety Initiative Manager): Intro and overview of L & I's Logger Safety Program. This new program encourages logging companies to voluntarily sign up with the program and agree to a number of requirements. Once completed, the companies would enjoy reductions in workers comp premiums in Washington. L & I initiated this program as the Department found that there were serious problems in the industry, including severe catastrophic injuries, underground economies and other safety problems. Many employers do not report unless there is an injury. As a result, other employers who do report end up paying for the inflated workers comp rates caused by these problems. Devin provided materials outlining the program, overviewed here. The first level of commitment required of employers, is outlined in Tier 1 (Sign-up & Reporting). This level requires employers to sign commitment letters, report to DOSH when starting work at new logging/cutting sites, submit monthly reports outlining worker hours and duties, and submit to third party audits, etc. At this level, the employers will receive a 5% reduction on their workers comp premiums if they satisfy the criteria. At the next level, Tier 2 (Premium & Safety

Consultation), the employers must satisfy several prongs such as passing L & I Premium Technical Audits, DOSH consults and other criteria. At this point the employer would receive an additional 5% discount on premiums. At the third level, Tier 3 (Third-Party Safety Audit), employers must pass an independent third-party audit and sign an LSI Memorandum of Participation. Completion of this level will provide the employer with an additional 10% off the workers comp premium. A final level, Tier 4 (Change in Performance) is still in the planning stage. At present, if employers satisfy Tier 4 requirements, they will save 20% on workers comp premiums per worker, which can equate to \$4000 per month per cutter. At present there are some 50-100 employers coming in for the program. Landowners are also at the table, and there is some interest that they could require employers to go through this program in order to cut on their lands. The program strictly covers manual logging, does not cover mechanical logging, owner operators and classes such as pre-commercial thinning, which are classified as reforestation.

WA Labor and Industries Hispanic Outreach Program: Pedro Serrano (L & I Hispanic Outreach Program Manager): Intro and overview of L & I's Hispanic Outreach Program. L & I, after looking at members and data, found many problems with employer compliance involving Hispanic workers. L & I decided to then form Hispanic Outreach Program involving safety and health. Pedro educates workers on safety. L & I has alliances with consulates, attends safety and health fairs, conducts presentations and safety trainings, and principally conducts lots of radio interviews. Of particular note, Hispanics tend to be afraid to complain if there are issues, for a myriad of reasons. Therefore outreach important.

USDA Forest Service field survey: Charles Hill (USDA Forest Service Director of Acquisition Management & Partnerships): The USFS looks to see how we can be of service to the public and with those we are in partnership with. From a regional standpoint, lots of priority work in valuing people and places, especially people. When we provide for safe and healthy work environment, we are showing that we care for people. We've done a lot of work over last two years on this safety journey, moving the program to being very open in dialog. We stress diversity & inclusivity. Spent lots of work with DOL, identifying projects with Wage and Hour, Federal and State OSHAS. We've worked with Worksource and Senator Merkley on local projects. Continued training for contract officers and Contracting Officers Representatives (COR) look at how we pay attention to those contracts, the workers, housing, transportation, etc. Provided continued awareness for our people on the ground so they are consistently informed. We are ensuring that we have a system in place to reflect that we value people. We have prepped an internal survey to probe the people who are on the ground and engaged in project oversight. The results will show us what they are seeing, experiencing, what do we need to pay attention to, to see what we need to work on. The survey will go out in January. Support from Natural Resources racking up data. Question from Nargess Shadbeh – could you consider additional question such as checking whether drivers are registered, due to safety problems. Charles – right now, making survey doable, need to limit number of questions. Hope we learn from it and will get those results tabulated and out to everyone. Karen Clark provided answers on general investigation process and laws enforced. Charles asked that the Wage and Hour expectations (of the USFS) be written, so that contract officers/COR be fully aware of expectations and provide expeditiously. Karen Clark/Tom Silva – will check on this.

DOL Wage and Hour regulatory items and investigative actions: Tom Silva (US DOL Wage and Hour Assistant District Director): Overview of some wage and hour requirements under several Acts as they relate to common issues found in reforestation and agricultural investigations. Office routinely finds that firms require workers to purchase protective gear such as specialized boots, and not reimburse the workers for these required purchases. These expenses cannot be borne by an employee if the item is a requirement for performing the job. The same applies to tools of the trade required to complete the job. Any such expenses are not creditable towards minimum wage. In addition, when Service Contract

Act in is play, the expense cannot cut into the prevailing wage requirement. Further, when workers come in on H-2b contracts, the expense cannot affect the adverse wage rates. Other examples include headlamps required by an agricultural grower for the harvest of produce during midnight hours. The employer did not provide the headlamps, and was therefore found in violation and had to reimburse the workers. The Portland office also finds issues with employers not compensating for certain travel time hours. In addition to back wages calculated for workers, the office may also assess civil money penalties, revoke farm labor contractor licenses, or pursue debarment on government contractors.

Seattle District WH Office debarment action: Karen Clark (US DOL Community Outreach Specialist): Overview of administrative law judge decision and order in assessing back wage Service Contract Act fringe benefits and debarment of 5 Star Forestry. Seattle Wage and Hour District Office found nearly \$49,000 in unpaid health and welfare benefits due to 62 workers performing reforestation work on contracts with the USFS. The Administrative Law Judge agreed and ordered payment of the findings. In addition, the ALJ found that the respondent failed to make case for “unusual circumstances” and therefore found that the debarment penalty appropriate. Charles Hill (USFS): How do we take good work and communicate it back to the USFS so that we can learn from these contractors failures? Has this been done? Karen Clark believed so, but would convey that question to management in Seattle, who was unable to attend today. Full decision and order located here: [http://www.oalj.dol.gov/Decisions/ALJ/SCA/2013/WAGE\\_AND\\_HOUR\\_DIVISI\\_v\\_5\\_STAR\\_FORESTRY\\_LLC\\_2013SCA00004\\_\(NOV\\_14\\_2013\)\\_120442\\_CADEC\\_SD.PDF](http://www.oalj.dol.gov/Decisions/ALJ/SCA/2013/WAGE_AND_HOUR_DIVISI_v_5_STAR_FORESTRY_LLC_2013SCA00004_(NOV_14_2013)_120442_CADEC_SD.PDF)

Update from field on forestry worker conditions: Carl Wilmsen (Executive Director NW Forest Workers Center): Update on case discussed at July meeting. Issue resolved, ultimately one person compensated, and that was the one person who lodged the complaint. Carl also provided handouts (also e-mailed to group). Data gleaned from BLS website showing foreign labor cert, showing numbers of workers certified to work in OR/WA/CA. Incorporates number of employers seeking H-2b certs. Also docs reflect slight uptick in trend of hiring reforestation workers. Data shows injuries/fatalities in forestry and logging. This data acquired from workers comps system in Oregon. Over the years shows that injuries/fatalities have gone down. However, data may not be completely accurate until injury/death claim is closed. Reality is that injuries are probably under-reported since employers/employees sometimes fail to report.

Questions on salal permits: Nargess Shadbeh (Oregon Law Center): Salal (a wild shrub) gathering is increasingly becoming a problem as fly by night recruiters get workers workers to gather the product on forest land and then often do not pay them, resulting in wage theft. How can we access the issuance of salal permits, is there a central location where we can easily acquire data on permit holders? After various discussions, Michael Dale provides that permits are handled by each ranger district and you would have to contact each for that information. Even then, you won't know if pickers are on state, federal or private lands. There is no current easy way to access all the data on permit holders.

Update on H-2b case action: Lori Hoeffler (Legal Aid Services of Oregon): Our office just settled case involving H-2b workers. Filed lawsuit, Michael Dale with Northwest Workers Justice Project also represented. Both parties signed consent judgment whereby employer 1) agreed to reimburse expenses to workers, 2) agreed to provide adequate disclosure to workers, 3) agreed to list Workers Comp name of carrier, policy, and time limit for notice, 4) agreed to pay workers all hours worked, and 5) agreed to state of OR requirement of issuing statement on pay stub advising of the applicable prevailing wage.

**ACTION ITEMS:**

- For next meeting, check on viability of providing “virtual” communication, as lots of people like to see face to face but can’t attend in person. Karen Clark (DOL) will check on viability of web communications for next meeting.
- Check on DOL Wage and Hour to supply memo to regional USFS on expectations from contract officers during investigative process (Tom Silva/Karen Clark DOL)