

*via online submission form*

**November 2, 2021**

Representative Josh S. Cutler  
Massachusetts State Legislature  
House Chair, Joint Committee on Labor and Workforce Development  
Boston, MA 02133

Senator Patricia Jehlen  
Massachusetts State Legislature  
Senate Chair, Joint Committee on Labor and Workforce Development  
Boston, MA 02133

***RE: Letter in Support of Senate Bill 1205 & House Bill 1979***

Dear Representative Cutler, Senator Jehlen and Members of the Committee:

Central West Justice Center (CWJC) submits this letter in support of the Fairness for Farmworkers Act (FFA), also known as An Act establishing fairness for agricultural workers – Senate Bill 1205, and An Act establishing fairness for agricultural laborers – House Bill 1979. CWJC is a non-profit legal aid organization providing direct-client services to indigent populations in central and western Massachusetts. CWJC also houses the Migrant and Seasonal Farmworker Project which provides direct advocacy and support to migrant and seasonal farmworkers across the Commonwealth. On behalf of the affected workers of this proposed bill, CWJC stands in support and respectfully asks that the Committee give a favorable report to bills Senate 1205/House 1979.

There are approximately 13,000 farmworkers employed on Massachusetts farms. Most of these farmworkers engage in seasonal, rather than year-round, farm work, planting and harvesting fruits and vegetables, raising livestock, and tending to orchards and nurseries. It is both highly skilled and often back-breaking work. Compared to all other families in Massachusetts, twice as many farmworker families live in severe poverty – 17.6% compared to 8.3%.<sup>1</sup> And 38% of farmworker families live at or near poverty compared to 16.9% of all other families in Massachusetts.<sup>2</sup> Massachusetts has over 7,000 farms and produces more than \$475,000,000 in

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<sup>1</sup> See Jeannette Wicks-Lim, Estimates of The Potential Benefits and Costs of Extending Overtime Eligibility to All Farmworkers In Massachusetts 6 (2020).

<sup>2</sup> *Id.*

agricultural goods each year.<sup>3</sup> Only about one-third of the farms in the state employ farmworkers.<sup>4</sup>

Over the past year, during the COVID-19 pandemic, farmworkers – deemed an essential workforce – kept working to keep residents fed as an important facet of the food-supply chain. Farmworkers were constantly exposed to the COVID-19 illness, exempt from stimulus pay, and, when they quarantined, did so without sick pay. Their vulnerability was only compounded by the fact that they are overwhelmingly low-income, lack access to medical care, and have no transportation of their own. Moreover, farmworkers are typically not fluent in English, which limits their ability to relay critical health concerns to employers. Given this reality, CWJC impresses upon the Committee the unfair and disparate treatment of farmworkers, despite their important contributions to the state.

The purpose of these bills is to create equity for farmworkers and provide workers' rights to a workforce that has historically been excluded and denied such rights. The FFA will allow farmworkers to earn the state minimum wage that most other workers are already entitled to. The legislature first created the substandard agricultural wage in 1967 at \$1.20/hour,<sup>5</sup> it was raised to \$1.60 in 1970<sup>6</sup> where it remained until 2014. In 2014, the agricultural subminimum wage was raised a second time to \$8.00/hour where it remains to this day.<sup>7</sup> While the cost of living keeps rising, and other workers' pay rises yearly, farmworkers are impoverished by unsustainable wages, the \$8.00/hour subminimum wage is 40% lower than the state minimum wage. Whether a grower chooses to pay farmworkers beyond the \$8.00/hour agricultural wage should not eliminate the onus on the legislature to create fair and equitable wages for all workers that contribute to the Massachusetts economy. Farmworkers should not have to rely on the benevolence of their employer to be guaranteed the right to earn sustainable and fair wages in Massachusetts.

Secondly, the FFA proposes that farmworkers be entitled to a day of rest. Farmworkers contend with a host of safety concerns and health risks that are associated with long work hours and seven-day work weeks with no day of rest, making them more susceptible to injuries. This is particularly problematic because, along with inadequate rest opportunities, farmworkers often encounter an extremely fast-paced work environment and hazards associated with dangerous machinery, toxic chemicals, and animal-borne diseases. In Massachusetts, agricultural workers alongside fishermen have higher rates of occupational fatalities compared to workers in other

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<sup>3</sup> U.S. DEP'T OF AGRIC., 2017 Census of Agriculture Massachusetts State and County Data 7, 9, 88 (2019).

<sup>4</sup> *Id.* at 88.

<sup>5</sup> See 1967 Mass. Acts 718 (setting the agricultural minimum wage at \$1.20 and providing for annual wage increases through 1969); 1966 Mass. Acts 679 (raising the general minimum wage to \$1.40 and providing for increases through 1968).

<sup>6</sup> See 1970 Mass. Acts 509 (raising the agricultural minimum wage from \$1.50 to \$1.60). The Massachusetts legislature raised the general minimum wage from \$1.60 to \$1.75 in 1971.

<sup>7</sup> See An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms, S. No. 2195 (2014).

industries.<sup>8</sup> Furthermore, guaranteeing a day of rest for farmworkers will empower a workforce comprised of primarily immigrant and marginalized individuals to feel comfortable taking a day off work. As it currently stands, many farmworkers do not feel they have the privilege to turn down a day of work for fear of reprisal or losing their jobs altogether. A day of rest, backed by the Massachusetts legislature, will give farmworkers a voice and dignify their life, beyond being farmworkers.

Finally, the FFA proposes that farmworkers be entitled to overtime pay. Historically, farmworkers have been excluded from overtime pay from both federal and state laws since the inception of labor laws in the United States, including the Fair Labor Standards Act (FLSA). Excluding farmworkers from basic legal protections afforded to other workers is not a mistake or oversight. Rather, it is a symptom of structural racism that has its roots in the exploitation of the African American population, who, up until the Great Migration of the 20th century, resided primarily in the South. Segregationists in Congress unabashedly argued to exempt farmworkers from labor protections. Southern lawmakers opposed FLSA, arguing that requiring employers to pay the overwhelmingly African American farm workforce a minimum wage would undermine segregation and obstruct white employers' access to inexpensive labor. Consequently, in 1938, to secure the support of these Southern legislators for New Deal reforms, Congress created occupational exemptions, agricultural and domestic workers, who were primarily Black workers. Massachusetts has codified these exemptions into its own laws and as such preserves a legacy of racism that should be overturned. Ensuring overtime pay would be one way Massachusetts can right this wrong.

The FFA provides different thresholds for overtime pay by a farmworker's term of employment – seasonal farmworkers earn overtime after 55 hours per week and year-round farmworkers earn overtime after 40 hours per week. Drafters of the legislation took into consideration the concerns of seasonal farmers who expressed that the nature of their business – seasonal – did not lend itself for traditional applications of overtime law. In that regard, the 55-hour threshold takes into consideration that for farmers who grow seasonally it is not a viable option to pay overtime over 40 hours a week. However, CWJC takes the position that farmworkers employed year-round are no different than factory workers, or any other worker in the Commonwealth employed by a small business. Farmers who grow and produce year-round are no different than a business who has ebbs and flows during the year, like a restaurant owner, and produces commodities for sale. Year-round farmworkers should be treated no differently than any other worker in the Commonwealth and should be entitled to overtime pay after 40 hours a week. Currently, six states across the country offer overtime pay to farmworkers: California, Hawai'i, Maryland, Minnesota, New York, and Washington; farmers in these states have learned, or are learning, to balance the interests of both farmworkers and farmers, for the good of society. Massachusetts, a state that prides itself in protecting workers beyond federal protections, can join this growing number of states and institute the rights being proposed in the FFA for

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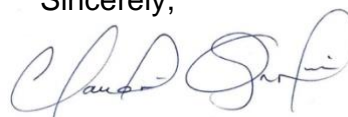
<sup>8</sup> MASS. DEP'T OF PUB. HEALTH, Fatal Injuries at Work Massachusetts Fatality Update 2016-2017 2 (2019).

farmworkers. Federally, the Biden Administration has proposed eliminating the overtime exemption for farmworkers in the U.S. Citizenship Act of 2021.

Now is the time for Massachusetts to create equity for farmworkers, given their essential contributions to the Commonwealth. A good portion of food grown in Massachusetts is sold to consumers here in the state; residents are benefitting directly from the work of farmworkers. Farmers who sell wholesale to buyers – such as grocery stores and other large purchasers – should put the onus on the buyers and not the workers to offset costs. Farmworkers should not continue to live in poverty or bear the burden of labor costs while everyone else benefits from their work. Farmers may note that the Arias-Villano v. Chang and Sons Enterprises, Inc., 481 Mass. 625 (March 15, 2019), decision provides more protections for farmworkers, this is untrue. The Arias-Villano decision narrowed the scope of who is engaged in farm work in the Commonwealth and expanded the number of eligible workers for overtime. Workers who fall under the purview of the Arias-Villano decision **are not** considered farmworkers and are thus entitled to overtime pay. The Arias-Villano decision does not address nor consider the larger problem that farmworkers, who are “planting, raising and harvesting crops,” are still exempt from overtime pay. Furthermore, farmers do not believe that the Arias-Villano decision is beneficial to them and have filed Senate Bill 1184 – also before this committee, which would overturn the Arias-Villano v. Chang decision.

Central West Justice Center urges the Committee to support farmworkers and issue a favorable report on the Senate Bill 1205 and House Bill 1979. Please do not hesitate to reach out to me should you have any further questions, [cquintero@cwjustice.org](mailto:cquintero@cwjustice.org).

Sincerely,



Claudia Quintero, Esq.  
Staff Attorney