

News Release

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US Department of Labor recovers \$240,000 in back wages, damages and penalties from 3 Oregon berry farmers

SALEM, Ore. – The U.S. Department of Labor recently filed complaints against and then obtained signed consent judgments from three Oregon blueberry farmers, following investigations by its Wage and Hour Division that disclosed failure to pay workers the minimum wage under the Fair Labor Standards Act and required wages under the Migrant and Seasonal Agricultural Worker Protection Act. The employers also failed to maintain required records of the workers they employed, the number of hours employees worked and the wages they were paid.

U.S. District Court Judge Michael Hogan of the District of Oregon has signed the consent judgments submitted by the Labor Department to resolve all three cases. Collectively, the growers already have paid more than \$240,000 in back wages, liquidated damages and civil penalties.

The FLSA requires employers to pay their employees the federal minimum wage of \$7.25 per hour and prohibits employers from shipping in commerce any goods produced in violation of its minimum wage, overtime or child labor provisions, which is commonly referred to as the FLSA's "hot goods" provision.

"The law is very clear. Growers in the area are fully aware of their obligation to pay their workers proper wages and the consequences for failing to do so," said Nancy Leppink, deputy administrator of the Wage and Hour Division. "As a result of the Wage and Hour Division's actions, vulnerable workers will receive the wages they are legally owed and have worked under grueling conditions to earn, wages that their families count on and should have received from the outset."

The Wage and Hour Division's investigations identified minimum wage violations, when growers allowed multiple workers to hand pick berries on a single employee's "ticket" and then paid only one worker the piece-rate for each pound picked without regard to the number of workers contributing to each bin of blueberries. These additional workers helped fill the bins, yet their names never appeared on the employer's required payroll records. Each of the workers should have had his or her own ticket and was entitled to at least the federal minimum wage.

Pan-American Berry Growers LLC of Salem voluntarily agreed to hold the shipment of the produce that was picked pending resolution of its violations. Pan-American has paid to the department \$41,790 in back wages and liquidated damages for the 239 employees, as well as a civil money penalty of \$7,040. Upon Pan-American Berry Growers' voluntary resolution of its violations, it was able to legally ship its goods.

B&G Ditchen Farms and E&S Farms also voluntarily agreed to pay the back wages owed to their employees, after which they were permitted to ship their goods. Pursuant to the agreement reached with the department, B&G Ditchen and E&S were provided additional time to produce evidence related to the amount of back wages they owed their employees. Neither produced evidence that resulted in changes to the department's calculations of wages owed employees. Under the terms of the consent judgments, B&G Ditchen Farms, Robert Ditchen and Gregg Ditchen of Silverton paid \$156,616 in back wages and liquidated damages directly to 810 employees, along with \$13,200 in penalties to the department. E&S Farms Inc. and Stanley Danskey of Woodburn paid \$11,301 in back wages and liquidated damages to 52 employees and \$10,500 in penalties to the department.

In addition to its wage violations, E&S Farms also was found to have violated the child labor provisions of the FLSA when the grower employed a child under the legal age of employment to harvest berries and failed to maintain a record of that child's date of birth.

The consent judgments permanently enjoin the growers from future violations of the FLSA, require third-party monitoring of pay practices during future harvests and provide notice to the affected workers.

The FLSA requires that covered employees be paid at least the federal minimum wage of \$7.25 per hour. Employees who are not employed in agriculture and are not otherwise exempt from overtime compensation are entitled to time and one-half their regular rates of pay for every hour they work beyond 40 per week. The law also requires employers to maintain accurate records of employees' wages, hours and other conditions of

employment, and prohibits employers from retaliating against employees who exercise their rights under the law.

Most agricultural employers, agricultural associations and farm labor contractors are subject to the MSPA, which provides additional protections for migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and record keeping. Information on the MSPA is available at <http://www.dol.gov/whd/regs/compliance/whdfs49.pdf> and <http://www.dol.gov/compliance/guide/mspa.htm>.

Employees who worked for one of these three farmers in the last month are asked to contact the Wage and Hour Division's Portland District Office at 503-326-3057 so it can be determined if they are due back wages. For more information about the FLSA and the MSPA, contact the Wage and Hour Division's toll-free helpline at 866-4US-WAGE (487-9243). Information also is available at <http://www.dol.gov/whd>.

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