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RE: Agricultural Workers and COVID-19

Thank you for your strong response to the COVID-19 crisis and genuine commitment to assisting all impacted New Mexicans. We write to ask the NM Department of Workforce Solutions, the NM Department of Health, and the Occupational Health and Safety Bureau, state agencies tasked with protecting workers, enforcing agricultural workers' rights, and protecting public health, to take immediate action to ensure agricultural workers in New Mexico can safely perform their essential work.

Agricultural workers are a critical part of the New Mexico economy and identity, providing essential labor that grows our local economy while addressing food insecurity and supporting our rich agricultural culture. Yet these workers often labor under substandard conditions. In non-pandemic times, agricultural workers face extreme challenges in securing food, transportation for basic services, livable wages, and proper medical care and face many other significant economic and societal barriers. COVID-19 has only fortified these barriers and heightened the stakes for workers.

In response to our urgent concerns as community organizations from agricultural communities and advocacy organizations that work with agricultural workers, we have specific recommendations to ensure worker safety described below:

Ensure agricultural workers can work in safety

Agricultural workers, like many other essential workers, cannot stay home during this time. Instead, to all of our benefit, they show up every day and work long hours, putting themselves and their families at risk of contracting and spreading COVID-19.

We have heard from agricultural workers that they lack information regarding proper safety measures to take as they continue to work, and that employers are ignoring social distancing

guidelines by having them work in compact settings. Even further, agricultural workers are not given the proper protective clothing to wear while they labor in agricultural fields.

New Mexico should take the following steps to ensure compliance with the law and with the Centers for Disease Control Interim Guidance for Business and Employers:

- 1) Enforce NMAC § 11.5.4.11, which requires agricultural employers to provide field-workers with a) potable drinking water; b) toilet and handwashing facilities; and c) proper sanitary maintenance of potable drinking water, toilet, and handwashing facilities, including the following:
 - i. Drinking water containers shall be covered, cleaned, and refilled daily
 - ii. Toilet facilities shall be operational, including adequate amounts of toilet paper, and maintained in clean and sanitary conditions
 - iii. Handwashing facilities shall be maintained in clean and sanitary conditions
- 2) Require agricultural employers to do a quick “symptoms check” of all their employees before they start work for the day. Many employers around the country are doing this and, in most instances, it merely requires a few questions and checking the worker’s temperature.
- 3) Require agricultural employers to send workers that exhibit COVID-19 symptoms (e.g., shortness of breath, fever, or cough) to a testing facility, without workers having to pass through immigration checkpoints. Workers should stay home with pay until lab results show they do not have COVID-19 or until symptoms pass and without retaliation or discrimination. Workers should not lose their job if they are forced to stay home.¹
- 4) Require employers to enact social distancing policies whenever possible.
- 5) If agricultural workers are working in close proximity, require employers to provide adequate facemasks.
- 6) Require that agricultural employers promote healthy habits, such as proper instruction on washing hands and covering the mouth when coughing.
- 7) Require agricultural employers to provide supplies to prevent the spread of COVID-19, such as alcohol-based hand sanitizer, tissues, and lined trash cans at worksites.
- 8) Require agricultural employers to notify the local health agency if a worker tests positive for COVID-19.

Ensure that agricultural employers provide safe housing

Last year New Mexico hosted around 620 foreign guest-workers and will likely host a similar amount of guest-workers this season. These workers rely on employer-provided housing and transportation while they work and live in the United States. Many U.S. workers also receive employer-provided housing and transportation. All these workers, regardless of their work status

¹ Many farmworkers should receive paid leave if they are forced to stay home pursuant to the Families First Coronavirus Response Act. Additionally, a short leave is a reasonable accommodation under the New Mexico Human Rights Act under these circumstances.

or national origin, need protections during this time. New Mexico should take the following steps:

- 1) Require agricultural employers to determine where they will house workers with symptoms of COVID-19.
 - a) Employers should house people with symptoms of COVID-19 (e.g., fever, cough, or shortness of breath) in a separate room with a separate bathroom from people who are not sick.
 - b) Employers should provide facemasks near the room for people with COVID-19. Adequate facemasks should be worn by sick people when they are outside of their room or when other people are in their room, and by caretakers.
 - c) Employers should ventilate the room where persons with COVID-19 are housed on regular intervals, if possible.
- 2) Require agricultural employers to allow workers who have symptoms of respiratory illness to rest in designated housing areas until they feel better.
 - a) Employers should make sure they have enough food and water, as the workers will not be able to go to the store and may not have any funds to buy their own.
 - b) Employers should monitor for worsening symptoms, and take workers to the nearest healthcare facility if symptoms worsen.
 - c) Employers should create a plan for what to do if many workers are sick at the same time.
- 3) Require agricultural employers to promote healthy habits in employer-provided housing, such as proper instruction on washing hands and covering the mouth when coughing.
- 4) Require agricultural employers to provide supplies in employer-provided housing to protect against COVID-19, such as alcohol-based hand sanitizer, tissues, and lined trash cans.
 - a) Provide hand sanitizer containing at least 60% alcohol.
 - b) Provide disinfectants that are active against COVID-19 to sanitize counters, bathrooms, and other areas.

Ensure that agricultural employers provide safe transportation

Many agricultural workers are transported by their employers to the fields, between fields and housing, and to obtain necessities. To protect these workers, New Mexico should take the following steps:

- 1) Require agricultural employers to identify the nearest healthcare facility that provides free or low-cost care to uninsured people and to have a plan for taking a worker to a medical facility.
 - a) Employers should provide a list of facilities in Spanish and English to all workers.
 - b) Workers with symptoms of respiratory illness should be transported to the medical provider. If they do not have their own vehicle, employers should assist with transportation.
- 2) If agricultural employers are transporting workers to and from work and other locations, require employers to create a social-distancing plan for these trips.

- a) Workers should maintain 6 feet of distance between each other at all times, including during transportation.
- b) If workers need groceries or something that does not require personally identifiable information, employers should ask workers to send one or two people to do the task for a group.

Provide resources and information to protect our agricultural communities

During this time, it is particularly important that New Mexico's state agencies take necessary steps to ensure proper health and safety measures are taken within agricultural communities. Without the State's attention and action, many of these communities will be left with insufficient resources for fighting this pandemic.

- 1) Ensure that free testing and treatment for COVID-19 is accessible to all agricultural workers, such as testing locations that are easy to reach, are close to major populations of agricultural workers, prohibit the presence of immigration officers, and do not require passing through an immigration checkpoint.
- 2) Establish emergency funding for community health providers serving migrant workers to expand access to care.
- 3) Create and distribute linguistically accessible health-and-safety and know-your-rights materials targeting agricultural communities, including audio-visual materials for workers with limited literacy.
- 4) Coordinate with local food pantries and other essential service providers so that the basic needs of agricultural workers (including food, hygiene products, and hand sanitizer) are met, regardless of immigration status.
- 5) Task all relevant state agencies with developing a coordinated plan to address and respond to the unique needs of the agricultural workforce during this crisis. This plan should include:
 - a) Designated points of contact within each relevant government agency to ensure responsiveness to agricultural worker community concerns.
 - b) Removal of barriers to accessing all available benefits to eligible agricultural workers.
 - c) Immediate response plans to localized outbreaks affecting the agricultural workforce.
- 6) Conduct outreach to enroll eligible agricultural workers into SNAP, Medicaid, and TANF benefits through the NM Human Services Department.
- 7) Conduct outreach to enroll eligible agricultural workers into Unemployment Insurance (UI), particularly when the harvest season starts to wind down, and ensure that these workers have adequate access to UI's application and certification processes.
- 8) Ensure that all agricultural workers who contract COVID-19 at work can receive workers' compensation benefits.
- 9) Create and distribute community resource guides that give agricultural employers and workers a clear sense of State and community resources.

Thank you for your efforts, thus far, and for considering these important changes. Moving forward, we recommend your agencies post agricultural worker-specific guidelines on your websites, and that one or all of your agencies host bi-weekly "check-in" meetings with

agricultural worker advocates. Please contact Felipe Guevara with the NM Center on Law and Poverty at felipe@nmpoertylaw.org if you have any questions.

Sincerely,

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