

January 20, 2020

The final version of the COMPS Order will be coming out soon. We are optimistic that the final rule will maintain many of the critical protections for workers that were contained within the proposed rule, and we appreciate everything the CDLE has already done to date to advance worker protections as part of this rulemaking. We also hope, however, that as the CDLE finalizes its rule and decides whether to extend more protections for farmworkers--who were largely left out of the proposed rule--the CDLE draws inspiration from the legacy of one of the greatest champions for worker, economic, and racial justice: Dr. Martin Luther King Jr.



MLK: Fighting for Worker Justice then and today

Dr. Martin Luther King Jr. and Cesar Chavez never met during their lifetimes. But Dr. King did issue a telegram to Chavez on two occasions. One of those times was on March 5th 1968, during Chavez' 25-day hunger strike for nonviolence, after some grape farmers had begun inciting violence during their 2-year strike. In his telegraph, Dr. King expressed being "deeply moved" by Chavez' "courage in fasting" as a "personal sacrifice for justice through nonviolence."

On December 16th, 2019, in that same spirit, workers, advocates, faith leaders, and community members gathered at the Colorado Department of Labor and Employment's offices in Downtown Denver to publicly weigh in one last time on the potential reforms being considered to the COMPS (Colorado Overtime and Minimum Pay Standards) Order at the agency's public hearing on its proposed rulemaking. Faith leaders like Revered Reagan Humber of House for All Sinners and Saints and Rabbi Evette Lutman from B'nai Havurah, shared moving words in support of reforming the rule to provide greater protections for farm workers. They along with other clergy channeled the "Gandhian tradition" of nonviolent resistance that King described in his 1968 telegraph to Chavez and fasted in honor of those that currently find themselves outside of the COMPS Order's protections.

Lutman was clear with her demands, "We demand: Fair wage for farm workers. Overtime wages. Meal breaks. *Meaningful* rest breaks." As was Humber with his, "We decided to forgo eating today to remember the gifts we receive everyday from our sisters and brothers who work the fields. The same sisters and brothers who are being forgotten by the Colorado

Department of Labor in the proposed wage order. By fasting, praying, and speaking out, we are calling the broader community, but especially Governor Polis and Mr. Barela, director of CDLE, to remember Colorado farmworkers and extend the same protections to them that most of us enjoy.”

Exemptions May Apply The COMPS Order sets important rules regarding minimum wages and overtime and importantly sets out which workers are covered by these critical protections. While COMPS extends many essential protections to millions of workers who have not been covered by many of Colorado’s minimum labor standards—including construction and manufacturing workers and hundreds of thousands of salaried professionals who will now benefit from overtime pay—it leaves agricultural workers carved out of many of its most basic protections.

There are 3 areas of the proposed COMPS order that treat agricultural workers differently than other workers in Colorado.

Minimum Wage

Currently, agriculture workers are not entitled to Colorado minimum wage, unless their farms are covered by the Fair Labor Standards Act (via the “Man Day” test, later explained).

Meal and Rest Break

Currently, nearly all workers in Colorado are entitled to receive 30 minute unpaid and undisturbed lunch breaks if they work more than 5 consecutive hours in a day as well as 10 minute breaks for every 4 hours of work. But agriculture workers are not entitled to receive meal breaks. Those covered by the FLSA can have 10 minutes rest breaks, but those breaks *need* not be 10 minutes long. They only need to be at least 5 minutes, as long as an agricultural worker’s breaks overall, in a day, average out to be 10 minutes for four hours of work. Simple. I know.

Overtime

Under the proposed rule, no agricultural workers are entitled to overtime.

Many “Man-days” of Exclusion

The “man-day” test is the test that must be applied in order to determine whether an agriculture worker is entitled to the federal minimum wage, and then in turn, the COMPS order. The test is part of the federal Fair Labor Standards Act. To determine COMPS order inclusion, a worker must determine whether or not the farm they are employed by has used more than 500 “man-days” in any calendar quarter in the preceding calendar year. Per federal law, “‘man-day’ means any day during which an employee performs any agricultural labor for not less than one hour.” This means that the over 13,000 agricultural workers who find themselves working on smaller farms across Colorado, as well as anyone who is “principally engaged in the range production of livestock,” a separate FLSA exemption that includes shepherders, remain completely outside the protection of the COMPS order.

Historically Speaking

The carve outs from Colorado aren't specific to Colorado and they aren't new. Initially, farmworkers were entirely exempted from the FLSA. It wasn't until January of 1978, that farmworkers were entitled to receive federal minimum wage, but to this day, they continue to be exempted from overtime. The exemptions for agriculture workers are byproducts of racist policies that sought to deprive the black and latino farmworkers of the south and west with the most essential protections of the New Deal.

Colorado can begin to undo this racist legacy by extending the three aforementioned areas of protection to farm workers. By treating agriculture labor equally as all other labor, it can begin to repair the decades long racial injustices that have plagued such a historically marginalized class of workers. In doing so, it will bring worker protections into the 21st century and make draconian exclusions a thing of the past.

It is especially vital that the CDLE move to protect this group of workers because these workers are much less likely to be able to achieve these basic protections through negotiations in the workplace. Unlike other workers, agricultural workers are not protected from retaliation for engaging in collective concerted protection under the National Labor Relations Act (NLRA). It's clear now to historians that the exclusion of farmworkers from the NLRA was also racially motivated; a tool to hold economic power over African Americans in the south.

As we take off for our long weekends in honor of one of the most inspiring champions of civil rights, consider the rights that are still not in place in our state in 2020. Consider Dr. King's final hours were spent fighting for worker justice while supporting sanitation workers on strike in Memphis, Tennessee. And lastly, consider how the fight for work protections now is just as necessary and relevant as when Dr. King sent Chavez this telegram in 1966:

"The fight for equality must be fought on many fronts—in the urban slums, in the sweatshops of the factories and fields. Our separate struggles are really one—a struggle for freedom, for dignity and for humanity. You and your fellow workers have demonstrated your commitment to righting grievous wrongs forced upon exploited people. We are together with you in spirit and in determination that our dreams for a better tomorrow will be realized."

Dr. King's fight for the plight of the workers cost him his life. This year, let's stop treating agriculture laborers like second class workers. Lets stop letting the injustices of the past century continue to shape our labor force conditions in this new decade. Let's honor Dr. King's legacy for economic and racial justice and extend basic worker protections to all. No exemptions.