

JAY R. INSLEE
Governor



SUZAN G. LEVINE
Commissioner

STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT

PO Box 9046 • Olympia WA 98507-9046

Sent via email

July 26, 2018

Brian Pasternak
Director of Programs
Office of Foreign Labor Certification
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: 2017 Agriculture Wage and Practice survey

Dear Mr. Pasternak,

The state of Washington is writing to express our concerns regarding the results of the 2017 Agriculture Wage and Practice survey. As you know, the state of Washington is one of the largest apple producers in the world with a significant foreign and domestic labor force working every year on the apple harvest. Unfortunately, this year our survey response rate is slightly below the required thresholds set by the U.S. Department of Labor (U.S. DOL) in the ETA Handbook 385. As we have expressed in previous conversations, we believe these arbitrary thresholds fail to consider valid statistical findings and in this case lead to a large decrease in the required wage for workers in the Washington apple harvest. This requirement is in direct conflict with the fundamental goal of the H-2A temporary agricultural program to ensure domestic workers are not adversely effected by the use of foreign labor. We respectfully request U.S. DOL consider the combination of employer and worker analyses included below as sufficient to publish a prevailing wage determination for those apple varieties for which we conducted a worker survey.

In 2016, the Washington State Employment Security Department (ESD) began conducting a worker survey in parallel with the employer agricultural wage and practice survey. As the worker survey covers the same content as the employer survey, it can be used to supplement employer analyses, in addition to verifying employer responses as required by USDOL's Employment Training Administration (ETA) Handbook 385. Although data received from employers was in several cases not enough to meet U.S. DOL's thresholds and thus resulted in no findings, ESD believes that data received was sufficient enough to allow a prevailing wage determination,

especially as reported piece rates are more in line with apple harvesting culture than paying the AEW. *Figure 1* shows that employer responses, when compared to associated worker responses for select crop-variety-activities, are representative of what is happening on the ground.

Figure 1: Comparison of employer and worker reported median rates
Washington state, 2018

Source: Employment Security Department/WITS, 2017 Agricultural Wage and Practice Employer and Worker Surveys

Crop/Variety/Activity	Employer median rate*	Worker median rate*	Number employers responding hourly	Number employers responding per bin	Number workers responding hourly	Number workers responding per bin
Apple/Braeburn/Harvesting	\$25	\$25	3	13	4	29
Apple/Cripps Pink/Harvesting	\$30	\$30	7	15	16	48
Apple/Fuji/Harvesting	\$30	\$30	12	68	40	178
Apple/Gala/Harvesting	\$27	\$26	22	122	41	265
Apple/Granny Smith/Harvesting	\$35	\$26	11	57	29	173
Apple/Honeycrisp/Harvesting	\$35	\$35	43	59	111	125
Apple/Red Delicious/Harvesting	\$22	\$20	10	103	21	250

*All rates are per bin; however, bin size specified may differ between responses.

The majority of employer responses line up with the worker responses and ESD feels that defaulting to the AEW is inadvisable as both the employer and worker responses reported piece rates well above the AEW. One employer advised that the average worker picked 0.886 bins per hour for Red Delicious apples. Using this conversion, a worker who is paid \$25/bin (the estimated prevailing wage found for 2018 before testing for representativeness) would make approximately \$22.15/hour, as opposed to making \$14.12/hour when paid the AEW. In addition, the majority of respondents, both employer and worker, responded with a piece rate as opposed to an hourly wage.

Figure 2 compares the percent of workers represented by employer respondents to U.S. DOL's sample size thresholds. The requirements of the ETA Handbook 385 lead to all of the crop-variety-activities listed in *Figure 2* to have no findings, as each is slightly below the 15 percent threshold. ESD feels that the addition of the worker survey analysis to the employer analysis enhances the overall representativeness of the employer analysis. The wage structures identified in both the employer and worker apple harvest surveys were statistically similar and clearly show the findings are representative despite not reaching the required response rate in the ETA Handbook 385.

Figure 2: Comparison of employer response rates to USDOL thresholds
Washington state, 2018

Source: Employment Security Department/WITS, 2017 Agricultural Wage and Practice Employer Survey, USDOL ETA Handbook 385, p. I-114

Crop/Variety/Activity	U.S. workers reported by employers	Estimated number of U.S. workers	Percent of worker population represented	USDOL threshold to have findings
Apple/Braeburn/Harvesting	385	3,585	10.74%	15%

Crop/Variety/Activity	U.S. workers reported by employers	Estimated number of U.S. workers	Percent of worker population represented	USDOL threshold to have findings
Apple/Cripps Pink/Harvesting	875	7,789	11.23%	15%
Apple/Fuji/Harvesting	2,453	19,500	12.58%	15%
Apple/Gala/Harvesting	3,632	27,129	13.39%	15%
Apple/Granny Smith/Harvesting	2,022	17,214	11.75%	15%
Apple/Honeycrisp/Harvesting	2,991	24,593	12.16%	15%
Apple/Red Delicious/Harvesting	2,831	21,336	13.27%	15%

We respectfully request U.S. DOL consider the combination of employer and worker analyses sufficient to publish a prevailing wage determination for those apple varieties for which we conducted a worker survey. To account for the combination of worker and employer analyses, ESD will re-submit ETA 232s for affected apple variety harvest for U.S. DOL's consideration. In the interim, we request that U.S. DOL publish all determinations for Washington state on its Agricultural Online Wage Library at this time, and that U.S. DOL reconsider the re-submitted ETA 232s from Washington for those apple varieties for which we conducted a worker survey for overall representativeness and prevailing wage determination.

If you have any questions, please contact Nick Streuli at nstreuli@esd.wa.gov or by phone at (360) 485-5175.

Thank you.

Sincerely,

/s
 Nick Streuli
 Legislative & Executive Operations Director
 Washington State Employment Security Department