



COMMONWEALTH of VIRGINIA  
Virginia Employment Commission

Ellen Marie Hess  
Commissioner

Post Office Box 1358  
703 East Main Street  
Richmond, Virginia 23218-1358

October 28, 2019

Mr. Leo Miller  
Regional Administrator  
U.S. Department of Labor  
Employment and Training Administration  
170 South Independence Mall, West  
Suite 825 East  
Philadelphia, Pennsylvania 19106-3315

Dear Mr. Miller:

As requested by U.S. Department of Labor Regional Office and in accordance with 20 CFR 653.108(t), I am submitting the Virginia Employment Commission Annual Summary of Services to Migrant and Seasonal Farmworkers for PY 18.

Two copies of our summary are enclosed for your review.

Please direct all questions to Michelle Abraham, State Monitor Advocate, at the address above, or by phone at (804) 786-6094, or by e-mail at: [Carolyn.Abraham@vec.virginia.gov](mailto:Carolyn.Abraham@vec.virginia.gov).

Sincerely

  
Ellen Marie Hess  
Commissioner

Enclosures

# VIRGINIA EMPLOYMENT COMMISSION



## SERVICES TO MIGRANT AND SEASONAL FARMWORKERS

### ANNUAL REPORT

### PROGRAM YEAR 2018

#### VIRGINIA STATE MONITOR ADVOCATE'S ANNUAL REPORT OF SERVICES

#### TO MIGRANT AND SEASONAL FARMWORKERS FOR PROGRAM YEAR 2018

20 CFR 653.108(t)

October 4, 2019

1. Activities Undertaken by the State Monitor Advocate pertaining to her responsibilities as set forth in 20 CFR 653:
  - a. Throughout PY 18, the VEC State Monitor Advocate (SMA) reviewed the services provided to MSFWs on a statewide basis and advised the Agency of any problems, deficiencies and/or improper practices as appropriate. She advised Agency Management on means to improve the delivery of services to MSFWs and made recommendations for corrections when needed.
  - b. In PY 18, the State Monitor Advocate formally reviewed two significant MSFW local offices. The Winchester office was reviewed, October 3-5, 2018 and the Eastern Shore office was reviewed June 24-26, 2019. The reviews were guided by the content and procedures described in the U.S. Department of Labor Technical Assistance Guide, *Review of JS Services to MSFWs*, which implemented the Federal Regulations listed at 20

CFR 651, 653 and 658, dated June 10, 1980. No deficiencies were noted that required corrective actions in either office. The State Monitor Advocate also visited Petersburg, Fredericksburg and Emporia One-Stop locations on an informal review to provide technical assistance and training. When feasible the SMA coordinated her visits with the Agency's EO federal program monitor and conferred with Agency EO staff as needed.

- c. The SMA received and reviewed monthly reports outlining the outreach activities of the Farm Placement Specialists in our eight Agricultural Service Areas. All offices met their individual outreach goals for PY 18.
- d. The Virginia Employment Commission's State Monitor Advocate is responsible for the management of the Employment Service Complaint System on a statewide basis and is identified as the Agency Complaint Specialist. During PY 18, the State Monitor Advocate monitored the performance of the Employment Service Complaint System, as set forth at 20 CFR 658.400, reviewed the Local Office Managers' resolution of complaints as well as local office complaint logs. She conducted Statewide Complaint training for Agency Management and staff.
- e. In PY 18, the State Monitor Advocate worked continuously to improve services for MSFWs within the workforce services system and provided guidance and technical assistance regarding the integration of services to MSFWs within the Virginia Career Works one stop locations in accordance with the Workforce Innovation and Opportunity Act of 2014.
- f. The VEC, on behalf of and supported by the SMA, has an established Memorandum of Understanding (MOU) with the NFJP grantee, Telamon, and during PY 18, the VEC and Telamon worked together in accordance with the MOU to serve MSFWs throughout Virginia.
- g. In addition to Telamon, the State Monitor Advocate worked with other organizations serving farmworkers and employers including Central Virginia Legal Aid's Farmworker Assistance Project, Virginia Agricultural Growers Association and the Frederick County Fruit Growers Association. She also coordinated the activities of the Governor's Migrant and Seasonal Farmworker Interagency Policy Committee, which met as needed to address MSFW and agricultural employment-related issues in Virginia.
- h. During PY 18, the State Monitor Advocate made numerous field visits and conducted outreach to provide information on VEC services, the employment service complaint system and other employment-related programs to MSFWs, farm labor contractors, and agricultural employers. She made approximately 160 outreach contacts with MSFWs across the Commonwealth.
- i. During PY 18, the State Monitor Advocate participated, as requested, in meetings with the U.S. Department of Labor, Wage and Hour Division, and presented information on VEC services to other Agencies, employers and groups with interest in MSFWs. She

also served as a presenter for the U.S. Department of Labor's national training event in June of 2019.

- j. The State Monitor Advocate accompanied the Farm Placement Specialists (outreach workers) assigned to our significant MSFW local offices on visits to MSFWs working and living areas in PY 18 to ensure that their outreach efforts were in compliance with 20 CFR 653.107. She also accompanied other Farm Placement Specialist staff on outreach visits and provided training to new FPS staff and managers.
  - k. The State MSFW Monitor Advocate reviewed, on monthly basis, all MSFW-related statistical data reported state-wide and by significant MSFW local offices in order to ensure continued compliance with regulations at §653.100 and provided technical assistance as needed to ensure accurate reporting.
  - l. The State Monitor Advocate reviewed, commented on and made recommendations as appropriate regarding proposed VEC Employment Service directives. She also formulated policy directives and worked as an Advisor to the Commissioner and VEC management on matters related to MSFWs. She recommended and successfully argued for a discontinuation of employment services to an employer who physically threatened H-2A workers and who demonstrated preference for foreign workers by offering less favorable employment and benefits to U.S. workers who replaced the foreign workers he threatened.
  - m. The State Monitor Advocate updated and approved the Virginia Employment Commission's Agricultural Outreach Plan (AOP).
  - n. The State Monitor Advocate provided training to Farm Placement Specialists, Local Office Managers and other Agency Management as needed on employment services to MSFWs, outreach and the employment service complaint system. She reviewed outreach workers' daily logs and other reports, including those showing or reflecting staff activities in the Virginia Workforce Connection system.
2. The Virginia State Monitor Advocate position reports directly to the Deputy Commissioner of the Virginia Employment Commission. The Agency hereby assures that the State Monitor Advocate has direct ongoing access, whenever she finds it necessary, to the Commissioner and the SMA has the status and compensation approved by the civil service classification system.
  3. The Virginia Employment Commission hereby assures that the Virginia State Monitor Advocate works full time in the performance of the duties of said position.
  4. A summary of the monitoring reviews conducted by the SMA during PY 18:
    - a. As previously noted, there were two formal monitoring reviews conducted during PY 18. The federally-designated significant local office at Winchester was reviewed by the State Monitor Advocate October 3-5, 2018. The scope of the review covered the program year

performance for PY 17. The review is scheduled each year to coincide with the height of apple harvest which peaks in late September to early October. The Farm Placement Specialist was evaluated on her outreach techniques by the State Monitor Advocate. Her performance was exceptional. She was comfortable with both workers and employers and demonstrated competency with describing services available at the One-Stop, worker rights and responsibilities and the employment service complaint system. There were no violations of federal regulations noted. The FPS also exceeded the office outreach goal of 200 and actually contacted 380 MSFWs in her service area during PY 17.



*Kenia Brooks, Winchester FPS conducting outreach*

- b. The federally-designated, significant bilingual office on the Eastern Shore of Virginia was reviewed June 24-25 with the field portion conducted July 15-19 because of a scheduling conflict. There were no violations found. The office exceeded projected goals for services to MSFWs. The Eastern

Shore FPS staff contacted 1,455 MSFWs during PY 18. Statistical equity was achieved in all five equity indicators and in all six minimum service level indicators. The FPS staff member was evaluated on his outreach techniques by the State Monitor Advocate during the review. His performance was exceptional and he has a long-standing good relationship with both workers and employers in the service area. He is also fully bi-lingual, is Hispanic and is from a MSFW background. The vacant Eastern Shore position remains unfilled at this time due to the difficulty with recruiting qualified applicants who are bi-lingual.



*Fruit Hill's Dianne Kearns with migrant farm workers in the orchard.*

5. A summary of the outreach efforts undertaken by all significant and non-significant MSFW Employment Services (ES) offices:

During PY 18, the VEC conducted an extensive program to provide employment services to the Migrant and Seasonal Farmworker (MSFW) population living and working in Virginia. The provision of services was made available to MSFWs on an equal basis in each of our Virginia Career Works One-Stop offices. Within the Commonwealth during PY 18, the VEC had eight Agricultural Service Areas. These service areas are situated around eight Virginia Career Works one-stop offices with nine Farm Placement Specialist (FPS) positions assigned to them in order that they may serve the MSFWs and agricultural employers in the Commonwealth. Most of the staff are bilingual and provided statewide coverage for MSFWs speaking Spanish. The VEC had one full-time Farm Placement Specialist position located in each of the following offices: Bristol, Charlottesville,

Emporia, Fredericksburg, Lynchburg, Petersburg and Winchester. There were two full-time, bilingual Farm Placement Specialist positions in the Eastern Shore office but as noted, one remains unfilled at this time. The Petersburg and Charlottesville positions were vacated during Program Year 18. We have been recruiting to fill those two positions, but have encountered significant difficulty in finding qualified applicants.

The following table denotes VEC's estimates for peak seasonal and migrant farmworkers by office for PY 18 and the individual and state outreach goals:

**MSFW OUTREACH GOALS BY OFFICE PY 18**

OFFICE	PEAK SEASONAL	PEAK MIGRANT	PEAK TOTAL	OUTREACH GOAL
Bristol	618	455	1,073	355
Charlottesville	518	40	558	185
Eastern Shore	455	1,420	1,875	619
Emporia	236	163	399	132
Fredericksburg	633	256	889	294
Lynchburg	366	113	479	159
Petersburg	485	178	663	219
Winchester	244	145	389	129
State	3,555	2,770	6,325	2091

The following table reflects outreach performance by office for PY 18:

**MSFW OUTREACH PERFORMANCE BY OFFICE PY 18**

OFFICE	OUTREACH GOAL PY 18	OUTREACH ACHIEVED PY 18	RESULTS PY 18
BRISTOL	355	552	MET
CHARLOTTESVILLE	185	212	MET
EASTERN SHORE	619	1,455	MET
EMPORIA	132	228	MET
FREDERICKSBURG	294	395	MET
LYNCHBURG	159	167	MET
PETERSBURG	219	298	MET
WINCHESTER	129	144	MET
STATE	2288	3451	MET

**6. A summary of the Virginia Employment Commission's actions taken under the complaint System as described in 20 CFR 658, Subpart E:**

**Challenges**

- MSFW continue to be reluctant to file complaints in writing for fear of retaliation by the employer or of not being hired in the future.
- U.S. Department of Labor's Wage and Hour Division investigation information is not readily provided in regard to follow-up on complaint referrals.
- The transitory nature of MSFW employment and the lengthy investigative process inhibits satisfactory complaint resolution.

**Complaint trends-** PY 18 MSFW complaints and non-MSFW, ES-related complaints remained steady.

**Tracking resolution of complaints-** FPS and Agency Management performed well in resolving complaints at the local level and resolved many before they rose to the level of a formal written complaint. The Agency's EO staff worked closely with the SMA to assist with internal complaint resolutions, to provide training and guidance, and to provide technical assistance as needed.

**Findings from reviews of the complaint system-** An electronic Statewide Complaint Log data share file has been implemented and is operational for use by each Local Office Manager and Agency Management. Virginia Career Works complaint logs are uploaded by the Local Office Manager to the shared drive.

**Trainings-**The State Monitor Advocate provided training to FPS and Agency Management on the Complaint System, associated policy, and developed written materials and power point presentations staff may refer to when working with complaints. The State Monitor Advocate also attended all training conducted by USDOL.

**Steps taken to inform MSFWs employers and farmworker advocacy groups about the complaint system-** The Virginia Employment Commission operates the Employment Service Complaint System in accordance with 20 CFR 658. The State Monitor Advocate is the VEC official designated as the Agency Complaint System Manager. At the local office level, the Virginia Career Works Local Office Manager is responsible for handling complaints. Whenever an individual indicates an interest in filing a complaint, the individual receiving the complaint explains the operation of the complaint system, takes the complaint in writing on the ETA 8429 form and each local office maintains a complaint log in which all complaints are recorded. During PY 18 the State Monitor Advocate in conjunction with the Agency EO Manager and EO staff, provided training to staff and management on the requirements regarding the processing of complaints. In order to publicize the Employment Service Complaint System to both MSFWs and the general public, each local office prominently displays the Employment Service Complaint

Poster. Each Farm Placement Specialist provides written materials in both English and Spanish regarding the Complaint System, and explains it verbally during outreach. Each local office complaint log lists all complaints taken by the office and the logs contain all of the following information:

- **Complainant name**
- **Respondent name**
- **Date the complaint was filed**
- **Whether the complaint is by or on behalf of MSFW(s)**
- **Whether the complaint concerns employment-related law or the ES regulations (if it is “ES-related”)**
- **Action taken and whether the complaint was resolved**

For PY 18, LEARS report data reflects that the VEC received a total of 24 complaints. The following reflects the breakdown of those complaints:

<b>MSFW-ES Related</b>	<b>10</b>
<b>MSFW Non-ES Related</b>	<b>0</b>
<b>Non-MSFW-ES Related</b>	<b>0</b>
<b>Non-MSFW-Non-ES Related</b>	<b>14</b>

Eight of the MSFW complaints and all of the non-MSFW complaints were referred for investigation and all complaints were resolved either informally to the satisfaction of the complainant or by the enforcement agency to which it was referred.

During PY 18, the State Monitor Advocate continued to meet quarterly with Farmworker Advocacy groups in order to receive and help resolve complaints. She made referrals of alleged violations to enforcement agencies as appropriate.

7. A summary of how the SMA is working with Workforce Innovation and Opportunity Act (WIOA) sec. 167 NFJP grantee and other organizations serving farmworkers, employers and employer organizations and an assurance that the SMA is meeting at least quarterly with representatives of these organizations:

During PY 18, the State Monitor Advocate worked with Telamon and many other Virginia organizations serving farmworkers and employers, including Central Virginia Legal Aid’s Farmworker Assistance Project, Virginia Agricultural Growers Association, Eastern Shore Vegetable and Potato Growers Association and the Frederick County Fruit Growers Association. She met at least quarterly (and more frequently when warranted) with Telamon and facilitated interactions and teamwork between VEC Farm Placement Specialist and Telamon staff. During the significant office reviews, the SMA and FPS staff met with the Telamon staff serving in the area. She also coordinated the activities of the Governor’s Migrant and Seasonal Farmworker Interagency Policy Committee, which met as needed to address MSFW and agricultural employment-related issues in Virginia.

As previously noted, the VEC, on behalf of and supported by the SMA, has an established Memorandum of Understanding (MOU) with the NFJP grantee, Telamon, and during PY 18, the VEC and Telamon worked together in accordance with the MOU to serve MSFWs throughout Virginia. Telamon provides staff in our Eastern Shore Office and is recruiting to hire a Regional Manager to serve the area full time. We are exploring other opportunities to co-locate Telamon staff in Virginia Career Works locations where feasible.

8. A summary of the statistical and other MSFW-related data and reports gathered by the State Workforce Agency (SWA) and ES Offices for the year including an overview of the SMA’s involvement in the SWA’s reporting systems.

The Farm Placement Specialist Staff and State Monitor Advocate conducted an extensive assessment of the MSFW population in Virginia in PY 18 and developed estimates for each county. Based on this assessment, we estimate that there were approximately 12,015 farmworkers in Virginia during PY 18. The Virginia Workforce Connection (VWC) system reflects that 1,493 migrant and seasonal farmworkers were registered, 333 were referred to a job, and 109 were placed in a job. We are currently working to integrate MSFW data into our PIRL reporting structure.

The VEC collected the data listed below in accordance with the USDOL definition for MSFWs and information contained herein was obtained using the data from our VWC reports, which for PY 18 was based on the format and definitions of the PIRL System.

<b>A.</b>	<b>Contacted Through Outreach Activities</b>	<b>3,525</b>
<b>B.</b>	<b>Registered for Service</b>	<b>1,493</b>
<b>C.</b>	<b>Referred to Jobs</b>	<b>25.42 %</b>
<b>D.</b>	<b>Placed in Jobs</b>	<b>6.12 %</b>
<b>E.</b>	<b>Referred to Supportive Service</b>	<b>1.48 %</b>
<b>F.</b>	<b>Received Staff Assisted Services</b>	<b>29.31 %</b>

During PY 18, the State Monitor Advocate was involved in the development of policy regarding services to MSFWs and monitored the performance of the local offices in serving MSFW using statistical data gathered through our Virginia Workforce Connection System, monthly reports submitted by the FPS Local Office Managers and utilizing the Migrant Indicators of Compliance and PIRL reports. The Virginia Employment Commission Information Technology staff consulted with the State Monitor Advocate, as appropriate, when changes were implemented to our reporting systems and considered her input regarding changes that impacted MSFWs within the One Stop System.

9. A summary of the training conducted for SWA personnel on techniques for accurately reporting data:

All Farm Placement Specialists attended training from December 12 to 14, 2018. Training topics covered reporting requirements of the local offices, the Farm Placement Specialists and the oversight responsibilities of the Local Office Manager. Specific guidance and

webinars were provided throughout the year. Training was provided to staff on a statewide basis by the Agriculture and Foreign Labor Certification Manager related to H-2A and H-2B program requirements and data reporting. Our significant office FPS staff attended the National Monitor Advocate Training with the State Monitor Advocate June 24 to June 27 2018.

10. A summary of activities related to the Agricultural Outreach Plan and an explanation of how those activities helped the state reach the goals and objectives described in the AOP.

The Virginia Employment Commission’s Agricultural Outreach Plan for PY 16-20 set policies and objectives in providing workforce services to the agricultural community, MSFWs and agricultural employers, in accordance with 20 CFR 653 and the Workforce Innovation and Opportunity Act (WIOA). During PY 18, the Commonwealth of Virginia provided equitable services to MSFWs utilizing the Virginia Workforce System to ensure that the full range of employment, training and educational services were available on a basis which were qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

The following table reflects H-2A program use and FPS staff activities associated with its use:

Program year	H-2A Job Orders received	No. of workers	Estimated wages paid to H-2A workers	No. of employers
2019	147	3,904	\$49.8 million	327
2018	126	4,120	\$49.1 million	302
2017	108	3,714	\$44.3 million	274

FY	2019	2018	2017
H-2A staff assisted referrals	15	27	85
Housing inspections completed	385	463	399
# of sleeping units inspected	1,388	1,586	1,456
Capacity of sleeping units inspected	4,863	5,388	4,935

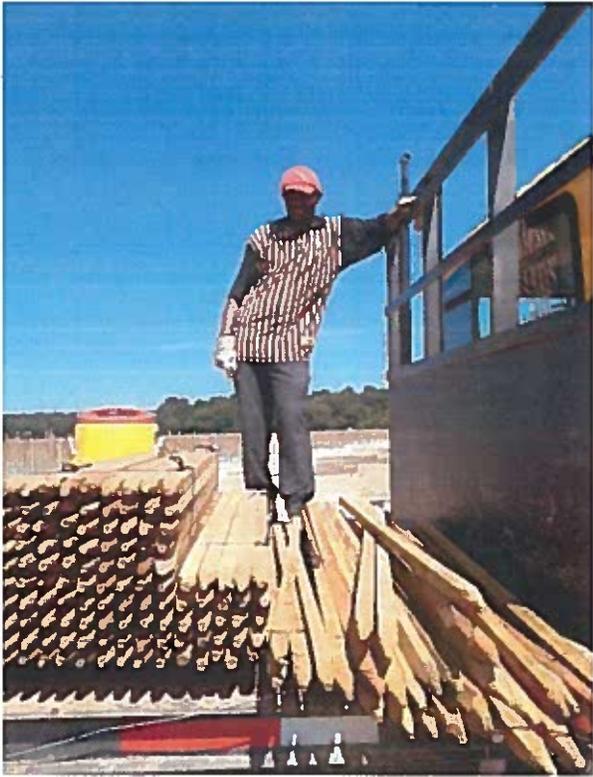
As shown above, for FY 18 the Virginia Employment Commission received 147 H-2A agricultural clearance job orders. We continued to see an increase in H-2A submissions over the year and crop activity is diversifying. We also processed two Agricultural Recruitment System

orders. Staff completed prevailing wage and practice surveys in 26 crop areas and completed 385 housing inspections with a total capacity for 4,863 workers. The Agriculture and Foreign Labor Certification Manager participated in employer conferences and seminars, and provided training to staff and technical assistance to employers utilizing the H-2A program to supplement their agricultural workforce. Use of the program is increasing as there has been a significant decrease over the past few years in the number of MSFWs in the Commonwealth.

For PY 18, an extensive statewide survey of previous and projected agricultural and farmworker activity was conducted and an assessment of need was developed in conjunction with input from local office personnel, Farm Placement staff, extension agents, Telamon, and members of numerous other organizations with knowledge of MSFWs. Based on the assessment of need, and the number of MSFWs estimated to be in Virginia, outreach goals were established for each of our Agricultural Service Areas. The Farm Placement Specialist staff were provided with clear expectations, as outlined in the Agricultural Outreach Plan, regarding services to MSFWs in the One Stop and their outreach performance was monitored by the Local Office Managers and State Monitor Advocate throughout PY 18. See page 6 for actual PY 18 outreach performance data. On an ongoing basis throughout PY 18, the State Monitor Advocate reviewed MSFW registration data, Migrant Indicators of Compliance reports, and monthly local office MSFW data and reports and compared actual performance to equity and minimum service level indicators. Quarterly LEARS data was reviewed and disseminated to Agency Management and FPS staff so that they remained cognizant of their individual office performance in meeting AOP goals. Such ongoing review provided for early recognition of areas where improvement was needed. For PY 18 the VEC met all five equity indicators and met six of the seven minimum service level indicators and we exceeded our statewide outreach goal.

11. For significant MSFW offices, a summary of the functioning for the State's affirmative action staffing program under 20 CFR 653.111:

As noted previously, the Virginia Employment Commission has two significant MSFW offices. With the guidance and oversight of the Agency's Equal Opportunity Manager and the State Monitor Advocate, the Agency has maintained an affirmative action program and plan for staffing our significant MSFW offices. For PY 18, the significant office at Winchester was staffed with a fully bi-lingual (Spanish and English) Hispanic female FPS. Our Eastern Shore significant bi-lingual office was staffed with one bilingual Hispanic male and the other position is currently vacant. Both offices recruitment activities are closely monitored by the Agency EO Officer to ensure EO/affirmative action and LEP requirements are observed.



*Eastern Shore worker, grape tomatoes in bloom and some of Virginia's finest produce.*

MCA 100419