

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION ES/MSPA
	CORRESPONDENCE SYMBOL TEE
	DATE April 11, 1988

DIRECTIVE : FIELD MEMORANDUM NO. 57-88
 TO : All REGIONAL ADMINISTRATORS
 FROM : DONALD J. KULICK *DJK*
 Administrator
 Office of Regional Management
 SUBJECT : Coverage of Forestry Workers under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)

- Purpose. To advise State and Regional staff of change in status and protection provided forestry workers.
- Reference. 20 CFR 653.104; 20 CFR Parts 621 and 655; 20 CFR 658.401; and ESPL No. 7-88 dated February 16, 1988.
- Background. On November 18, 1987, the U.S. Court of Appeals for the 9th Circuit issued a decision in Bresgal v. Brock, 833 F.2d 763 (9th Cir. 1987). The court held that forestry workers are agricultural workers for the purposes of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and, therefore, are covered by MSPA. The court further required the Secretary of Labor to enforce MSPA "as to recruiting, soliciting, hiring, employing, furnishing or transporting any migrant or seasonal worker for all predominantly manual forestry work, including but not limited to tree planting, brush clearing, precommercial tree thinning and forest fire fighting." (Emphasis added). The injunction became effective January 7, 1988.
- Registration of Forestry Contractors. The injunction impacts on both the Wage and Hour Division of the Employment Standards Administration (ESA) and certain functions of the Federal-State Employment Service System. Forestry contractors engaged in the activities described above in the Background section are required to register with DOL as farm labor contractors and to comply with all the provisions of MSPA. Further, State Employment Service Agencies, before referring workers to any contractor for employment, will be required to ascertain that the contractor is registered with DOL.

RESCISSIONS	EXPIRATION DATE April 30, 1989
-------------	-----------------------------------

DISTRIBUTION

5. ES Complaint System. Effective immediately, the Wage and Hour Division must respond to and investigate all valid complaints regarding the activities of forestry contractors. State agency staff must accept, log and forward to the Wage and Hour Division all complaints received from forestry workers as required by 658.401(c). However, forestry workers are not farm workers under the employment service regulations. Complaint referrals shall be made in the same manner as complaints alleging violations of employment-related federal laws other than employment service regulations.

6. Interstate and Intrastate Clearance. Unless performing forestry work on a farm, forestry workers are not farm workers as defined in the ES regulations at 20 CFR 651.10. Therefore, clearance orders for forestry workers generally fall outside the scope of agricultural clearance activity in 20 CFR Part 653, Subpart F; and State ES agencies are not required to provide to forestry workers the services provided to migrant and seasonal farmworkers pursuant to 20 CFR Part 653, Subpart B.

7. Effect on SESA/Forest Service Recruitment Effort. A recent Employment Service Program Letter (No. 7-88) provided guidelines to the SESAs on recruitment and referral service to the U.S. Forest Service of applicants for Federal employment as temporary seasonal and summer forestry aides and technicians. Since the workers sought will be employed by the Federal Government, and not by forestry contractors, the injunction does not affect this Forest Service project.

8. Effect on H-2A Program. The Ninth Circuit's decision has no effect on the H-2A program, since forestry activities other than on a farm are not "agricultural labor or services" under the Immigration and Nationality Act. Employers seeking temporary alien labor certification for activities such as tree planting, brush clearing, precommercial tree thinning, and forest fire fighting file applications under the H-2B regulations at 20 CFR Part 621 and under GAL No. 10-84 (April 23, 1984), (49 Fed. Reg. 25837, 25842 (June 25, 1984)). Employers seeking temporary alien labor certification for logging work file applications under the H-2B regulations at 20 CFR Part 655, Subpart C. Employers seeking temporary alien labor certification for forestry activities on farms file applications under the H-2A regulations at 20 CFR 655, Subpart B.

9. Action Required. RAs are requested to provide the above information to appropriate Regional and State agency staff.

10. Inquiries. For further information, contact Gil Apodaca at 8-535-0163.