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Unemployment Insurance Fails to Serve Farm Workers

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1. Employee payrolls are deliberately under-reported by some California agricultural employers in paying mandated employer taxes. These payroll taxes, such as Social Security and Unemployment Insurance, are based on total payroll; so these employers are able to save millions of dollars in taxes each year.

This is nothing less than tax evasion and puts an extra burden on legitimate taxpayers. As described in more detail below, we estimate that the amount of under-reported payrolls by farm labor contractors may be \$290 million per year.

Not only is the state of California denied taxes owed, the individual employee also suffers. This is because the employer payroll taxes provide the funds for the employee's potential future benefits such as Social Security (FICA and Medicare) and Unemployment Insurance (UI as well as SUI and Employment Training).

In the CIRS survey of California farm labor contractors (FLCs), published by the California Department of Employment Development (EDD), our interviewers asked each contractor to provide us with a statement of their annual payroll. We then

compared this self-reported information for each employer against their actual EDD record of wages reported for tax purposes in the same year. For the 179 FLC employers who cooperated with our interviewers, the average reporting gap was 52%. In other words, these labor contractors told our interviewers that their true annual payroll was an average of 52% greater than what they reported when paying their employer payroll taxes.

In the case of California FLCs, the total of reported wages in 1991 amounted to \$556 million. Based on this figure we estimate that the under-reported wages by farm labor contractors may amount to as much as \$290 million per year. This results in uncollected state taxes of more than \$14 million per year.

2. Survey data obtained by the National Agricultural Workers Survey (NAWS), sponsored by the U.S. Department of Labor, provides independent evidence concerning this practice. The NAWS is a national survey of U.S. perishable crop employees and is conducted by Aguirre International, a private contractor, under the able direction of Dr. Susan Gabbard. Now in its sixth year, the NAWS has obtained useable data from more than 6,000 farm workers, including more than 2,000 in California. Among other data, the NAWS participants are asked to provide the name and Social Security number under which they have been employed.

The name and Social Security numbers of 783 NAWS participants who reported employment in California was provided to the Employment Development Department of the State of California. EDD searched its employer quarterly reports (Form DE-3) and was able to

find records for just 83%. In 17% of the cases (1 out of 6), no record was found in the EDD file. Correspondingly, no employment taxes were paid on the wages earned by these individuals and no unemployment insurance coverage was available for them.

It was also found that California farm workers without EDD records show a distinctive demographic pattern. They tended to be younger, foreign-born, or had worked fewer weeks per year in California than individuals who did have records in the EDD file.

Finally, those individuals who were found to have records of employment in the EDD file had fewer work days reported to EDD than they reported to NAWS. On average, this discrepancy amounted to approximately 7%.

3. There is substantial additional anecdotal evidence supporting the fact that these practices of non-reporting and under-reporting actually occurs. Legal service attorneys regularly report instances of farm workers who have been laid off at the end of the season only discover that there is no record of their employment in the EDD's files. These individuals are therefore found not to be eligible for UI benefits despite the fact that they have met all of the required tests. The full extent of this impact on otherwise eligible workers is not accurately known.

On December 8, 1993, the Committee on Revenue and Taxation of the California Legislature held hearings in Sacramento on the agriculture's underground economy at which several individual farm workers gave personal testimony concerning their experience with this practice.

4. Less than half of the farm labor contractors licensed to operate in California are properly registered with the U.S. Department of Labor and report paying required employer taxes as farm labor contractors. It is not possible to estimate the tax loss resulting from the operation of farm labor contractors whose entire operation is clandestine.

5. An additional significant category of non-payment of employer taxes concerns individuals who are forced to sign on as non-employee "independent" contractors but, in reality, are subject to the same set of working conditions as genuine employees. In this case the employer avoids payment of legally required employer taxes. This type of arrangement appears to be widespread in the strawberry industry in the Santa Maria area of Santa Barbara County but its full extent is not known.

We estimate that the total amount of unreported wages in the strawberry industry in Santa Barbara County is \$20 million per year. This estimate is discussed in detail in Appendix A of this report and is based on the known amount of production and well-established wage rates vs. total annual payroll reported to EDD.

6. Slightly more than one-third of farm employees in California seek to access Unemployment Insurance benefits. Many workers who do not seek UI benefits believe that they are not eligible for UI benefits (40%) or are unaware of unemployment insurance (5%). Some do not meet the minimum quarterly earnings test. Because the average farm worker only earns between \$5,000 and \$7,500 per year, the likelihood is great of falling short of the quarterly earnings

threshold of \$1,200 per calendar quarter. The effect of the increase in the minimum qualifying earnings from \$900 per calendar quarter to \$1,200 per calendar quarter in 1991 on farm worker participation is not known at this time.

Since this commission is especially interested in the issue of undocumented workers, it should be made aware that the NAWS survey found that just 4% of unauthorized farm workers report residing in a household where government needs-based services are provided. Few unauthorized workers seek to obtain benefits, primarily because they prefer to avoid government officials entirely. The overwhelming majority of undocumented workers come to the U.S. to work, not to draw benefits.

Recommendations

- A. Concentrate field audits among categories of employers known to be problematic, such as California farm labor contractors and strawberry farms in the Santa Maria area. The pattern of field enforcement actions of Labor Commissioner Victoria Bradshaw should be analyzed to guide future field audit efforts.
- B. Utilize the services of knowledgeable persons in designing and conducting field audits. For example, there are CPAs, economists and business investigators who specialize in agricultural labor issues. Such persons could provide guidance in conducting audits. It is not very much of a secret to determine how many hours of labor are needed to produce one acre of strawberries in Santa Maria.
- C. The California Labor Commissioner, Victoria Bradshaw, should

expand her field enforcement efforts in agriculture. Its time to clean up the mess in the fields. The latest reported enforcement efforts from her agency showing hundreds of criminal and civil citations are just an indicator of what is really going on. Moreover, the tax funds recovered as a result of this enforcement effort should be invested in expanding the these activities. By so doing we would insure an even larger return in the future.

D. When individuals are found to have been improperly classified as independent contractors, instead of employees, employers should be required to retroactively issue W-2 forms to all such persons. This practice would enable these individuals to demonstrate their eligibility for Unemployment Compensation insurance, Social Security and other benefits to which they are entitled.

E. Establish a more realistic earnings threshold for qualification for Unemployment Insurance benefits for those who work many short-term jobs, as compared with working a single long term job. This could easily be done by establishing an annual earnings threshold of \$4,800 as an additional alternative earnings test.

Appendix A

Estimated Under-Reporting of Wages, Santa Maria Berries

1. Santa Barbara County strawberry labor requirement, 1990

4,530 acres harvested (4,035 fresh; 4,530 processing)

Fresh: 11,903,815 trays, or 2,950 trays per acre

Process: 17,531 tons, or 7,740 lbs per acre

2. Demand-for-labor estimate

Mamer & Wilkie determined following

Orange County 1,534 total hours per acre

Ventura County 1,612 total hours per acre

Take average of these two figures and apply to SB County

Labor demand estimate: 1,573 hours per acre (Mamer & Wilkie)

Total hours of labor required: 7,125,690 hours (CIRS-Mamer)

3. Rate-of-pay estimate

Harvest, pack, haul labor: \$1.77 per tray fresh (AFBF-NAFTA);

strawberry harvest wage rate: \$6.36 per hour (1990 EDD survey)

Total wages for fresh harvest, pack, haul: \$21,069,753

Total wages for process harvest, pack, haul: \$2,283,300

Estimated wages for other production labor: \$13,627,508

Total wage bill for production labor: \$36,980,561

Supervision, administration (10%): \$3,698,056

Total wage bill: \$40,678,617

Estimated labor demand: 6,184,359 hours

Note: We have used \$6.36 per hour for field labor
and \$10 per hour for supervision and administration
labor in this estimate.

4. Comparison of employer-reported berry crop wages, Santa Barbara County, EED Report 882, 1990

First Quarter, 1990: \$1,557,985
Second Quarter, 1990: \$8,484,493
Third Quarter, 1990: \$7,619,065
Fourth Quarter, 1990: \$2,734,271

Total reported wages, 1990: \$20,395,814

Conclusion: Only about one-half of the labor required for 4,530 acres of actual berry production is accounted for by berry crop farm employers in the EDD wage report. The discrepancy represents labor contractor employment and crop share/independent contractor employment. The actual discrepancy is roughly 2,588 FTE workers.

This discrepancy could be accounted for by a combination of farm labor contractor employment and "independent contractor" arrangements. However, comparison of month-by-month employment data reported by Santa Barbara County farm labor contractors and strawberry farm employers shows no correlation of labor contractor hiring with berry farm hiring. This is shown below.

Santa Barbara County, Reported Employment, 1990

<u>Month</u>	<u>Berry Farms</u>	<u>Farm Labor Contractors</u>
January	633	1,949
February	584	2,082
March	597	2,171
April	3,356	2,158
May	5,068	2,634
June	3,639	2,880
July	3,262	2,819
August	2,890	2,972
September	2,347	2,905
October	1,212	2,449
November	1,050	2,139
December	782	2,043