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Feature Article

**The Invisibility of Female Farmworkers:
How Current Workers' Rights Legislation Fails to
Adequately Protect Female Farmworkers and Exposes
Them to Serious Health and Safety Risks**

Martha Laura Garcia

Migrant and seasonal farmworkers are one of the most isolated and vulnerable population groups in the United States. Not only is the nature of their work exhausting and dangerous, but many times, the workers face other challenges, like cultural and language barriers and limited access to legal, health, and educational services. Female farmworkers are particularly vulnerable to the many risks seasonal and migrant farmworkers face, with the additional challenge of having limited forms of legal relief. By giving an overview of current labor laws and presenting the main risks female farmworkers face, this article will demonstrate that labor laws and safety regulations today are insufficient to adequately protect female farmworkers and remedy the risks that they face.

LAWS THAT PROTECT FARM WORKERS

There are three main federal laws that regulate farm worker rights and protections: the Fair Labor Standards Act (FLSA), the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), and the Occupational Safety and Health Act (OSH Act).

The FLSA was enacted in 1938¹ and established the minimum wage, overtime pay, recordkeeping, and youth employment standards for private and public sector state and government jobs.² However, for almost thirty years, the FLSA excluded farm workers from the protections it granted.³ It was amended in 1996 to expand its protections to farm workers, but it still excludes agricultural workers from the overtime pay provisions.⁴

¹ *US Labor Law for Farmworkers*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/advocacy-and-programs/us-labor-law-farmworkers> (last visited Mar. 19, 2016).

² *Compliance Assistance-Wages and the Fair Labor Standards Act (FLSA)*, UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION, <http://www.dol.gov/WHd/flsa/in dex.htm> (last visited Mar. 19, 2016).

³ FARMWORKER JUSTICE, *supra* note 1; Fair Labor Standards Act (FLSA), 29 U.S.C. § 213(a) (2006).

⁴ FARMWORKER JUSTICE, *supra* note 1.

The AWPA provides a wider range of protections for farm workers than the FLSA. The AWPA established standards with regards to transportation, housing, and work conditions.⁵ For example, the recruiter has a duty to disclose the terms of employment in the worker's native language, and the pay records must include the basis on which wages are paid.⁶ Similarly, the OSH Act established the minimum work conditions that must be met to ensure a safe and healthy work environment.⁷ Additionally, the OSH Act has a specific section dedicated to field sanitation standards that must be met for agricultural workers, like worker access to clean water during the workday.⁸ It is also worth noting that the Occupational Safety and Health Administration started a campaign to raise awareness about heat illness and aims to educate workers and employers on how to avoid this illness.⁹ In addition, both the OSH Act and the AWPA have sections dedicated to housing standards in farm worker camps.¹⁰

The Environmental Protection Agency has also set out standards that must be met by employers whose workers are exposed to pesticides and other hazardous materials and environments.¹¹ In 1992, it passed the Agricultural Worker Protection Standard, while its most recent amendment will take effect in January 2017.¹² The new amendment will expand protections for workers who work directly with pesticides or are at risk of pesticide exposure and also includes anti-retaliation provisions for workers who file claims.¹³

⁵ *Agricultural Employment*, UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION, <http://www.dol.gov/whd/ag/index.htm> (last visited Mar. 19, 2016).

⁶ Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. § 1821(a), (d)(1)(A)-(F) and § 1842 (2015).

⁷ *Summary of the Occupational Safety and Health Act*, OCCUPATION SAFETY AND HEALTH ADMINISTRATION, <https://www.epa.gov/laws-regulations/summary-occupational-safety-and-health-act> (last visited Mar. 23, 2016).

⁸ Occupational Safety and Health Standards for Agriculture, 29 C.F.R. § 1928.110(c)(1)(i) (2011).

⁹ *Campaign to Prevent Heat Illness*, UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <https://www.osha.gov/SLTC/heatillness/index.html> (last visited Mar. 19, 2016).

¹⁰ Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 29 U.S.C. § 1823 (2015); Occupational Safety and Health Standards, 29 C.F.R. § 1910.142 (2011).

¹¹ *Agricultural Worker Protection Standard (WPS)*, ENVIRONMENTAL PROTECTION ADMINISTRATION, <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps> (last visited Mar. 23, 2016); Worker Protection Standard § 170 (2016).

¹² *Revision to the Worker Protection Standard*, ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-worker-safety/revisions-worker-protection-standard> (last visited Mar. 19, 2016).

¹³ *Id.*

Overall, farm workers are granted a wide range of protections. In practice, though, few workers are aware of these protections, and those who are have little to no means of enforcing them.

THE RISKS OF BEING A FEMALE FARM WORKER

Female farmworkers face many dangers. According to Suzy Stockton, a social worker at the legal aid organization LAF who works with farmworkers, the overarching issue for female farmworkers is invisibility.¹⁴ Closely linked to the notion of female invisibility in agricultural work is what Meghan Vanleuwen, Litigation Director at the Farmworkers Advocacy Project (FALP), calls “the power imbalance” between women farmworkers and their employers.¹⁵ Essentially, female farmworkers are in a more vulnerable position than their male co-workers from the get-go.

To begin with, women tend to be worse off than men when it comes to protection from pesticides and work-related injuries and illnesses. Advocates from the Kankakee office of the Community Health Partnership (CHP) found that in their experience, women farmworkers are often hired and simply asked to report to work, whereas men receive training on pesticides and safety before reporting to work.¹⁶ As a result, women rely on male co-workers to inform them about health issues and workplace safety.¹⁷ This makes female workers dependent on male supervisors and co-workers and leaves them exposed to greater perils, such as sexual violence. Additionally, advocates from CHP’s Aurora office stated that many times, women do not have access to portable toilets during the work day, and are thus forced to expose themselves in these circumstances.¹⁸ This is yet another example of a situation in which women workers are left vulnerable to more serious dangers. Suzy Stockton states that

¹⁴ E-mail from Suzy Stockton, Client Support Services Coordinator, LAF, to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (March 28, 2016, 03:52PM CST) (on file with author).

¹⁵ E-mail from Meghan Vanleuwen, Litigation Director, FLAP to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (Apr. 1, 2016, 04:04PM CST) (on file with author).

¹⁶ E-mail from Community Health Partnership of Illinois to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (Apr. 12, 2016, 04:57PM) (on file with author).

¹⁷ *Id.*

¹⁸ E-mail from Community Health Partnership of Illinois to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (Apr. 12, 2016, 04:57PM) (on file with author).

the overall health issue women endure is the emotional and psychological harm that stems from exposure to these risks.¹⁹

The greatest risk female workers face is “becoming a survivor of workplace violence”.²⁰ A 2012 Human Rights Watch report about the vulnerability of immigrant farmworkers to sexual violence in the United States found that “although anyone can be a victim, members of some groups may be more vulnerable than others, with [i]mmigrant women and girls in agricultural work fac[ing] unique vulnerabilities to sexual violence and harassment.”²¹ This same report found that “several farmworkers, including those who had worked as supervisors and foremen. . .view the possibility of sexual relations with workers simply as ‘a perk of the job.’”²² This demonstrates that this power imbalance is even a part of the mentality of most agricultural workers.

Unfortunately, many times, the assaults and violence go unreported. In Suzy Stockton’s experience, women who are victims of sexual violence do not come forward until they are also facing another issues, such as wage theft.²³ Esperanza Gonzalez from the Illinois Migrant Council adds that in many cases, women are afraid to come forward.²⁴ When Olivia Tamayo, a sexual assault survivor, commented on this fear, she stated that “[my supervisor] took advantage of me because he knew I wasn’t going to say anything. It was a trauma that followed me everywhere.”²⁵ José Alonso, an attorney for the Immigrant and Workers’ Rights Practice Group at LAF, emphasizes that “there is a culture of silence when it comes to reporting incidents of workplace sexual violence and threats of violence.”²⁶ In part, he adds, this culture stems from reliance on the job, lack of other employment opportunities, fear of retaliation and vio-

¹⁹ Stockton, *supra* note 14.

²⁰ *Id.*

²¹ *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, HUMAN RIGHTS WATCH, May 2012, <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>.

²² *Id.* at 33.

²³ Stockton, *supra* note 14.

²⁴ E-mail from Esperanza Gonzalez, Director of Minority Health Problems, Illinois Migrant Council, to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (Apr. 12, 2016, 08:50PM) (on file with author).

²⁵ José R. Padilla and David Bacon, *Protect Female Farmworkers*, THE NEW YORK TIMES, Jan. 19, 2016, <http://www.nytimes.com/2016/01/19/opinion/how-to-protect-female-farmworkers.html>. Oliva Tamayo filed a suit against her employer and won her case in 2005.

²⁶ E-mail from José Alonso, Senior Attorney, LAF, to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (Apr. 8, 2016, 10:52AM) (on file with author).

lence, fear of cultural repercussions, poverty, and lastly isolation.²⁷ This statement is echoed in the *New York Times* Op-Ed piece, titled “Protect Female Farmworkers,” and the documentary *Rape in the Fields*, which aired on PBS in 2013.²⁸

SAFETY MEASURES AND ADVOCACY EFFORTS

Due to the many risks that female farmworkers face, farmworker advocates focus part of their efforts on educating women about their rights and teaching them to decrease exposure to risks. José Alonso focuses on five main points when he speaks to female farmworkers about protecting themselves: (1) take a strong stance against any kind of sexual harassment or violence; (2) tell someone they trust about their experience; (3) have a support group that will help them take action, like a counselor or co-worker; (4) take action whether it is confronting the assailant or reporting the event someone; and (5) create a written record of the event.²⁹

Suzy Stockton helps her clients think about safety planning so that they can learn to minimize risks and feel empowered.³⁰ One tactic that Stockton recommends is for workers to come up with a safe word with a trusted co-worker.³¹ However, she believes that “the responsibility should not be on the workers to protect themselves (. . .) rather it should be on the employer to prevent it or on the perpetrator to do something about it or get help.”³² Similarly, Meghan Vanleuwen states that “it is incumbent upon anyone who is able to be in a position of relative trust with women farmworkers to work towards informing them of their rights and the processes that exist for reporting issues.”³³ There are, therefore, many ways in which farmworker advocates are working towards raising awareness about the dangers these women face.

While this advocacy empowers women and gives them the tools to assert their rights, it also aims to make up for the fact that “the current laws have a long way to go to fully protect women from sexual harassment and workplace

²⁷ E-mail from José Alonso, Senior Attorney, LAF, to Laura Garcia, PILR Staff Writer, Loyola University Chicago School of Law (Apr. 8, 2016, 10:52AM) (on file with author).

²⁸ Padilla and Bacon, *supra* note 25; *Rape in the Fields*, PUBLIC BROADCASTING STATION, June 25, 2013, available at <http://www.pbs.org/wgbh/frontline/film/rape-in-the-fields/>.

²⁹ Alonso, *supra* note 26.

³⁰ Stockton, *supra* note 14.

³¹ *Id.*

³² *Id.*

³³ Vanleuwen, *supra* note 15.

sexual violence.”³⁴ In José Alonso’s experience, the main challenges that survivors face are (1) difficulty navigating the civil court system when it comes to filing a workplace sexual violence claim; (2) facing case law precedent that does not take a strict stance with initial acts and then falling victim to more serious assaults; (3) receiving inadequate remedies, while employers face little legal consequences; (4) being excluded, as farmworkers, from workers’ rights legislation³⁵; (5) making a claim within a system where governmental agencies and law enforcement agencies do not communicate or work together to address this issue; and finally, (6) if the survivor is undocumented, facing an immigration system that provides no relief options for survivors.³⁶

Therefore, the few women who do choose to report workplace sexual violence often face a whole set of added challenges. This can sometimes discourage them from making any claims. A report by the Center for Investigative Reporting stressed the difficulty women face taking these cases to court.³⁷ It gave the example of Washington state, where sixty-seven out of ninety-two cases of workplace sexual violence filed between 2005 and 2012 were dismissed for having no reasonable cause or uncooperative witnesses.³⁸ The current laws and court system do little to encourage workplace violence survivors to bring their cases forward.

CONCLUSION

Overall, female farmworkers face numerous institutional and personal risks to speaking out about workplace injustice. First of all, due to the nature of the work and mentality of the workers, they are vulnerable to workplace violence—in particular, sexual violence. Secondly, if they do become survivors of workplace sexual violence, they must decide whether they will report it, which in itself is an emotionally draining and traumatic experience. Finally, if they do choose to report the violence, they must face a legal system that fails to

³⁴ Alonso, *supra* note 25.

³⁵ The National Labor Relations Act (NLRA) has, since its inception in 1935, excluded agricultural workers from its definition of “employee”. National Labor Relations Act (NLRA), 29 U.S.C. § 152(3) (2015).

³⁶ Alonso, *supra* note 25.

³⁷ *Female Workers Face Rape, Harassment in U.S. Agriculture Industry*, THE CENTER FOR INVESTIGATIVE REPORTING, June 25, 2013, <http://cironline.org/reports/female-workers-face-rape-harassment-us-agriculture-industry-4798>.

³⁸ *Id.*

provide them with adequate remedies and support while simultaneously putting a heavy investigative burden on them.³⁹

Female farmworkers may not be part of our immediate communities, but we certainly benefit from their labor. As such, it should be our responsibility to raise awareness about the risks that they face and change the pitfalls of our current laws. We need to create or amend legislation that increases protections for women in the workplace and, more importantly, we need to make sure that the legislation is enforced by courts, law enforcement, and employers. Another important measure is to require that workplaces, courts, and administrative bodies develop trauma-informed practices that encourage and support the survivors as they seek justice.⁴⁰ We need to support the advocates who provide help to female farmworkers and ensure that their advocacy projects are sufficiently funded, because these advocates inform female farmworkers about their rights and ultimately empower them to seek justice.⁴¹

While there has been some progress in expanding protections for women in the workplace, there is still a lot of work to be done.⁴² The threats and risks farmworker women face are by no means new, but recent media coverage on this topic has helped raise red flags in this topic and will hopefully provoke greater institutional changes.

³⁹ Alonso, *supra* note 25

⁴⁰ Stockton, *supra* note 14.

⁴¹ Alonso, *supra* note 25.

⁴² For example, in 2015, Illinois passed an amendment to the Illinois Human Rights Act that increases protections and rights for pregnant women in the workplace. The amendment is known as the Pregnancy Accommodation Act. 775 ILCS 5/1 et seq. (2015).