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Maggie Hannon

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Tenant Rights for Employer-Provided Farmworker Housing

Margaret Hannon

I. INTRODUCTION

Farmworkers in Washington State play a crucial role in food production and distribution, and the success of Washington's economy rests heavily on its agricultural industry.¹ The agricultural sector employs the greatest amount of people in Washington, "generates more than \$5.3 billion in direct revenue, and has a total estimated economic impact on the state of more than \$28 billion each year."² In Washington State, there are about 36,000 farms, which encompass 15.3 million acres, "or 37 percent of the state's land mass."³

While farmworkers provide us with our food and are essential to the growth and function of our state economy, they often receive insufficient and unsafe housing conditions.⁴ Many farmworkers who work in Washington State face homelessness, and only a small portion of employers provide housing for their workers.⁵ The lack of adequate housing can cause problems for farmworker families such as "poor school attendance and limited learning; decreased nutrition and risk of various diseases; [and]

¹ WASH. STATE HUM. RTS. COMM'N, FARMWORKER HOUSING AND THE WASHINGTON LAW AGAINST DISCRIMINATION 2 (Dec. 2007), <http://lib.ncfh.org/pdfs/2k12/9438.pdf> [<https://perma.cc/XK6D-64ML>].

² STATE OF WASH. DEP'T. OF CMTY, TRADE, AND ECON. DEV, FARMWORKER HOUSING IN WASHINGTON STATE: SAFE, DECENT AND AFFORDABLE 1 (2005), <https://www.commerce.wa.gov/wp-content/uploads/2018/06/HTF-Reports-Farm-Worker-Housing-Report.pdf> [<https://perma.cc/A98D-WN3Z>].

³ *Id.* at 2.

⁴ Guadalupe T. Luna, *United States v. Duro: Farmworker Housing and Agricultural Law Constructions*, 9 HASTINGS RACE & POVERTY L.J. 397, 398–99 (2012).

⁵ STATE OF WASH. DEP'T. OF CMTY, TRADE, AND ECON. DEV, *supra* note 2, at 4–6.

increased stress and violence within the family”⁶ The community at large may also suffer from inadequate farmworker housing and experience difficulties like an “increase in social problems such as littering, noise, vandalism, and public nuisance; high rates of alcohol and drug use; and difficulty in finding future housing.”⁷

Employer-provided housing helps solve the problem of Washington’s lack of sufficient housing for farmworkers. When a farmworker’s employer provides housing, the employer must follow several regulations to ensure safe and sufficient housing conditions.⁸ Current regulations for employer-provided housing for agricultural workers in Washington State are insufficient to protect workers’ rights, such as staying in their homes and receiving visitors.

The Washington legislature should amend the state’s regulatory scheme for employer-provided housing to provide farmworkers greater protections. These regulatory amendments should include four key provisions: (1) provide harsher penalties for employers who do not abide by the housing laws currently in place, (2) require employers to post information about workers’ rights to receive visitors and rights against removal, (3) codify the case law that defines when farmworkers can receive visitors, and (4) codify how workers can be removed from their employer-provided housing.

II. ROADMAP

This comment has three main sections, which will discuss the issue of employer-provided farmworker housing in Washington State. First, Section III of this comment will examine the background of farmworker housing in Washington State by looking at its history. Then, Section III will explore what employer-provided housing entails and discuss the population of workers in Washington State who receive employer-provided housing.

⁶ WASH. STATE HUM. RTS. COMM’N *supra* note 1, at 14.

⁷ *Id.*

⁸ WASH. REV. CODE § 70.114A (1995).

Next, this comment reviews the regulatory scheme of employer-provided housing for temporary farmworkers in Washington, which is the most common kind of employer-provided housing available to farmworkers. Section III concludes the Background portion of this comment by outlining relevant caselaw that provides further protection to farmworkers who live in employer-provided housing.

Second, in Section IV, this comment will discuss some of the problems presented by employer-provided housing. For example, visitors (including legal services providers) are sometimes excluded from the premises by the employer.⁹ Also, farmworkers in employer-provided housing can be subject to ejectment proceedings for reasons as meager as the employer wanting them to leave.¹⁰ Often, employers do not follow the required ejectment proceedings and instead use “self-help” procedures to force the farmworker to immediately leave their housing.¹¹ Section IV concludes with a discussion of how the COVID-19 pandemic is creating new and exacerbating existing problems with employer-provided housing.

Third, Section V outlines a proposal to amend the current regulatory scheme to provide greater protection for farmworkers who live in employer-provided housing. The Washington State legislature should amend regulations to include provisions regarding both access to visitors at the housing sites and ejectment procedures. Also, the state legislature should provide informational materials for farmworkers who live in employer-provided housing that informs them of their rights to visitors and their rights for ejectment proceedings. In addition to amending the current regulatory scheme and raising awareness of individual rights, the Department of Health should increase enforcement of employer penalties

⁹ *Id.*

¹⁰ *See, e.g.,* Vasquez v. Glassboro Service Ass’n, Inc., 415 A.2d 1156, 106–08 (N.J. 1980).

¹¹ *Id.*

and impose the regulatory fines more harshly against employers who violate housing regulations.

III. BACKGROUND AND CONTEXT OF FARMWORKER HOUSING IN WASHINGTON STATE

This section explores the history of farmworker housing both in the United States and in Washington State. It then analyzes who receives employer-provided housing, what employer-provided housing looks like, and the regulatory structure for employer-provided housing in Washington and federally.

A. History of Farmworker Housing

With the arrival of the Northern Pacific railroad, Washington State became a “farmer’s paradise” where “massive tracts of land in central and eastern Washington” were sold off and granted by the federal government.¹² Local white workers and Indigenous Yakima natives initially made up the agricultural workforce in Central Washington, which is one of the most productive regions in the United States for cultivating fruits and vegetables. Since the 1920s, though, people have traveled into Washington State to work in the Yakima Valley.¹³ During the Depression Era, growers throughout the country provided housing to farmworkers, most commonly through on-farm tent camps.¹⁴ In 1959, the United States Secretary of Labor James P. Mitchell said that “the conditions under which far too many of our farmworkers live and work today is an affront to the conscience of the

¹² James N. Gregory, *Toward a History of Farm Workers in Washington State*, THE SEATTLE CIVIL RIGHTS & LAB. HIST. PROJECT, UNIV. OF WASH. (2009), https://depts.washington.edu/civilr/farmwk_ch1.htm [<https://perma.cc/M3CE-MKUW>].

¹³ *Id.*

¹⁴ FARMWORKER JUST., FARMWORKERS HOUSING AND HEALTH IN THE UNITED STATES: A GENERAL INTRODUCTION AND OVERVIEW 9 (2014), <https://www.farmworkerjustice.org/wp-content/uploads/2015/07/Intro-to-Farmworker-housing-and-health-FW-Housing-Symposium.pdf> [<https://perma.cc/2C69-2XNM>].

American people.”¹⁵ This sentiment can also be felt today—two decades into the 21st century.

Because the conditions were so poor, there was a large public movement in the 1960s and 1970s to fix farmworker housing, which resulted in the enactment of laws and regulations banning makeshift employer camps.¹⁶ While there has been definite improvement from the past, today, on-farm housing “often only affords the most basic arrangements (such as simple concrete barracks or older manufactured homes),” and it is typically of lower quality than off-farm housing.¹⁷

B. Employer-Provided Housing

This section will elaborate on current aspects of employer-provided housing, including what it looks like, who receives the housing, and the governing schemes used to regulate employers who provide housing to farmworkers.

1. Employer-Provided Housing for Farmworkers Varies by Employer

In 2014, about 13% of farmworker housing units were employer-owned.¹⁸ Employer-provided farmworker housing varies depending on each employer.¹⁹ Most employer-owned housing is provided free to the workers, but families who live in these units are often charged for utilities.²⁰

¹⁵ James P. Mitchell, *The Farm Worker in America*, 82 MONTHLY LAB. REV. 396–98 (1959).

¹⁶ FARMWORKER JUST., *supra* note 14, at 9.

¹⁷ *Id.*

¹⁸ *Id.* at 8.

¹⁹ WASH. STATE DEP’T. OF HEALTH, FREQUENTLY ASKED QUESTIONS: WHO ELSE REGULATES MIGRANT FARMWORKER HOUSING, <https://www.doh.wa.gov/LicensesPermitsandCertificates/FacilitiesNewReneworUpdate/TemporaryWorkerHousing/FrequentlyAskedQuestions#15> [https://perma.cc/9V63-84DM].

²⁰ FARMWORKER JUST., *supra* note 14, at 8.

Farmworkers who do not rely on employer-provided housing often access housing in the private market through traditional leases.²¹

Although sometimes migrant workers live in motels or other living arrangements within the cities or towns adjacent to their employers, employer-provided housing is more often located on land owned and controlled by the employer, in a rural setting typically isolated from the broader community.²² Sometimes, workers live in manufactured homes on the employer's property, while other times the "workers live in barracks-like conditions, where multiple people reside in a single room."²³ These camps can house between ten and several hundred workers.²⁴

Even the location of housing on employer land may vary; sometimes the housing is visible and accessible from the main road, and, other times, the housing is removed from the public road and the "workers live deep inside orchards."²⁵ When the workers live in employer-provided housing on the farm itself, the workers often "have no practical means to leave the labor camps except on buses owned and operated by the employer that provide weekly bus trips into town."²⁶ The workers are often at the mercy of their employers if they want to leave the property to access goods and services, such as grocery stores, legal support, health care, and anything else they may need.²⁷

²¹ *Id.* at 10–12.

²² Letter from William McGinty, Assistant Att'y Gen., Wash. State Att'y Gen.'s Off., to Maria Sigüenza, Executive Dir., Comm'n on Hispanic Affs. AGO 2020 No. 2. (Sept. 2, 2020), <https://www.atg.wa.gov/ago-opinions/access-legal-aid-representatives-private-property-where-migrant-workers-are-housed> [<https://perma.cc/8WJA-SJ3L>].

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

2. Migrant and Seasonal Workers Receive Employer-Provided Housing

There are about 187,000 migrant and seasonal farmworkers who “assist with the cultivation and harvest of Washington’s crops each year,” and it is estimated that 35% of these workers are classified as “migrant,” meaning they leave their homes to follow the harvest from one place to another.²⁸ The intent behind the statutory framework for employer-provided housing is to keep migrant and seasonal farmworkers housed due to an inadequate supply of housing for these workers in the state.²⁹

Employer-provided housing also includes workers who come into the United States on the H-2A Visa, which is a program that “allows agricultural employers to hire workers from other countries with temporary work permits to fill agricultural jobs for less than one year.”³⁰ The program is meant to help employers find workers when they cannot find farmworkers to hire within the United States.³¹ The H-2A program requires employers to either provide free housing or pay for the workers’ housing at a different site.³² Before providing housing through the program, an inspector must certify that the site complies with health and safety standards.³³ Although housing is required under the H-2A program, enforcement of health standards is often lacking, and “there are often misclassifications between H-2A workers who must be provided housing and H-2B workers who are not required to be provided housing.”³⁴ If an H-2A worker is incorrectly classified as an H-2B worker, the employer may negate its duty to provide housing to its employees, and the worker may be

²⁸ WASH. DEP’T. OF CMTY, TRADE, AND ECON. DEV., *supra* note 2, at 1.

²⁹ WASH. REV. CODE § 70.114A.010 (1995).

³⁰ FARMWORKER JUST., *supra* note 14, at 9.

³¹ Lilly Fowler, *WA Farmers and Laborers Are Struggling Under the H-2A Guest Worker Program — and It May Get Worse*, CROSSCUT (Aug. 28, 2019), <https://crosscut.com/equity/2019/08/wa-farmers-and-laborers-are-struggling-under-h-2a-guest-worker-program-and-it-may> [<https://perma.cc/SU44-AXQR>].

³² *Id.*

³³ *Id.*

³⁴ WASH. STATE HUM. RTS. COMM’N, *supra* note 1, at 12–13.

denied housing. The H-2A workers are contracted for a season, and, whether housed or unhoused, they cannot leave their employment without losing their visas.³⁵ Employers who fail to follow program requirements may be removed from the program.³⁶

Most agricultural workers' wages are too low to afford housing outside of that provided by their employers, and workers often must support their families financially as well.³⁷ Migrant workers have difficulty in the private rental market because they live on a low income, have a need for short-term leases, and face a shortage of housing supply in many agricultural communities.³⁸ So, employer-provided housing is not only legally mandated in many instances, as is the case for workers in the H-2A program, but it is also a virtual necessity for migrant workers in Washington State.³⁹

3. Farmworker Housing is Regulated by Both the State and Federal Governments

Both the Washington State and federal regulations surrounding farmworker housing focus primarily on the health conditions of the housing sites. The regulations neither impose requirements on employers or employees pertaining to whether the workers can receive guests, like legal aid service providers, nor address parameters for workers facing removal from the site. Although case law controls these issues,⁴⁰ the law is currently inadequate to protect workers in Washington because workers are often left to the will of their employers when they want to receive visitors or face

³⁵ Fowler, *supra* note 31.

³⁶ *Id.*

³⁷ WASH. DEP'T. OF CMTY, TRADE, AND ECON. DEV., *supra* note 2, at 7.

³⁸ *Id.*

³⁹ See WASH. DEP'T. OF CMTY, TRADE, AND ECON. DEV., *supra* note 2, at 9; see also FARMWORKER JUST., *supra* note 14, at 9.

⁴⁰ See, e.g., *State v. Fox*, 82 P.2d 230 (Wash. 1973); *State v. Shack*, 277 A.2d 369, 375 (N.J. 1971); *Najewitz v. Seattle*, 152 P.2d 722, 723 (Wash. 1944); *Turner v. White*, 579 P.2d 410, 412 (Wash. 1978).

removal from their housing. In practice, workers are not protected when it comes to removal procedures and access to visitors.

On the federal level, farmworker housing is regulated under two main bodies of law: (1) the Seasonal Agricultural Worker Protection Act (AWPA) and (2) the Occupational Safety and Health Act (OSH Act) as enforced by the Occupational Safety and Health Administration (OSHA).⁴¹ First, the AWP states that “each person who owns or controls a facility or real property which is used as housing for migrant agricultural workers shall be responsible for ensuring that the facility or real property complies with substantive Federal and State safety and health standards applicable to that housing.”⁴² Second, housing comes within the scope of OSHA’s temporary labor camp regulations “only when a close relationship exists between the housing and the employment, namely, when housing is a condition of employment.”⁴³ This regulation applies to employers who provide housing to their workers.⁴⁴

Farmworkers receive housing services from the U.S. Department of Agriculture’s Rural Housing Service, the U.S. Department of Labor, and the U.S. Department of Housing and Urban Development.⁴⁵ Any of these agencies may be contacted for farmworker housing questions if there is an issue with employer-provided housing.⁴⁶

⁴¹ VT. L. SCH. CTR. FOR AGRIC. & FOOD SYS. & NAT’L AGRIC. LIBR., FEDERAL AND STATE LAWS APPLYING TO AGRICULTURAL WORKERS (Feb. 2018), https://www.nal.usda.gov/sites/default/files/white_paper_web_new_7_30_2018.pdf [<https://perma.cc/E295-836X>] [hereinafter VERMONT L. SCHOOL].

⁴² 29 U.S.C. § 1823(a) (1983).

⁴³ VERMONT L. SCHOOL, *supra* note 41, at 22–23.

⁴⁴ *Id.* at 23.

⁴⁵ NAT’L CTR. FOR FARMWORKER HEALTH, INC., FARMWORKER HEALTH FACTSHEET: FACTS ABOUT FARMWORKERS 3 (2012), http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-facts_about_farmworkers.pdf [<https://perma.cc/4FW9-AR6X>].

⁴⁶ *Id.*

Employers who provide housing to farmworkers in Washington State are regulated by the Department of Health (DOH).⁴⁷ Washington State established a set of regulations for temporary housing, including the process by which employers are permitted to develop the housing.⁴⁸ According to DOH regulations, any person who provides temporary worker housing for five or more housing units that house ten or more occupants must secure an annual operating license prior to housing occupants, pay a fee, and conspicuously display the license on site.⁴⁹ A license may be suspended or revoked for failure to comply with the rules adopted by the legislature.⁵⁰

License revocation proceedings are governed by Washington's Administrative Procedure Act, which is codified at RCW 34.05.⁵¹ The DOH may assess a civil fine if an employer who provides housing fails to obtain a license as required.⁵² The DOH can proceed with legal action to assess a civil fine, or it can modify, suspend, or revoke the temporary worker housing license if it finds any violation of the housing rules.⁵³ However, the DOH must first send the employer a "notice of correction."⁵⁴ The employer then has time to submit an "attestation of correction form," which informs the DOH that the issue has been corrected or that the employer has a deadline for fixing the issue, which the employer accompanies with information about how the issue will be corrected.⁵⁵ If the employer does not correct the problem by the required date, the DOH may proceed with legal action.⁵⁶

⁴⁷ WASH. REV. CODE § 70.114A (1995); WASH. REV. CODE §§ 49.17.300–350 (1999); WASH. REV. CODE §§ 43.70.334–340 (1998); WASH. ADMIN. CODE § 246-358 (2015).

⁴⁸ WASH. REV. CODE § 70.114A (1995).

⁴⁹ WASH. REV. CODE § 43.70.335 (1998).

⁵⁰ *Id.*

⁵¹ WASH. REV. CODE Chapter 34.05 RCW (1988).

⁵² WASH. ADMIN. CODE § 246-358-028 (2015).

⁵³ *Id.*

⁵⁴ WASH. ADMIN. CODE § 246-358-028(2) (2015).

⁵⁵ WASH. ADMIN. CODE § 246-358-028(3–4) (2015).

⁵⁶ WASH. ADMIN. CODE § 246-358-028(7) (2015).

Employers who provide farmworker housing are also regulated by Washington State’s Department of Labor and Industries (“Labor and Industries”).⁵⁷ Labor and Industries regulations require inspection at all labor camps and that all employers post inspection certifications where residents can read them.⁵⁸ Camps must have enough toilet facilities (one per fifteen residents); safe water for drinking, bathing, and doing laundry; adequate heating equipment for cold weather; one shower with cold and hot running water for every ten people; at least fifty square feet of space per person in the sleeping area; proper doors, screens, and windows; cooking and food storage facilities; clean spaces with no rat or mice infestation; one stove for every ten people; and other requirements.⁵⁹

Washington State’s Residential Landlord Tenant Act (RLTA) governs the law pertaining to landlord and tenant duties and rights.⁶⁰ Under the RLTA, “[r]ental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment” are exempted from the Landlord Tenant Act.⁶¹ So, farmworkers who receive housing from their employer as a condition of employment are not covered under the RLTA. Thus, farmworkers who live in employer-provided housing are protected by the Washington State Department of Health and the Department of Labor and Industries.⁶²

Caselaw also governs employer-provided housing in Washington State as it relates to receiving visitors who are legal aid providers. The caselaw is premised under theories of property law principles that workers should be able to “enjoy the rights of free ingress and egress” and constitutional right

⁵⁷ WASH. REV. CODE §§ 49.17.300–350 (1999).

⁵⁸ WASH. ADMIN. CODE §§ 296-307-161 to -16190.

⁵⁹ Other requirements include providing readily accessible first-aid equipment; carbon monoxide alarms and smoke detectors; reporting standards for disease control; and regulations for tents. *See id.*

⁶⁰ WASH. REV. CODE § 59.18 (1973).

⁶¹ WASH. REV. CODE § 59.18.040(6) (1973).

⁶² WASH. REV. CODE § 70.114A (1995); WASH. REV. CODE §§ 49.17.300–350 (1999); WASH. REV. CODE §§ 43.70.334–340 (1998); WASH. ADMIN. CODE § 246-358 (2015).

theories of free speech and association.⁶³ Workers who live in private labor camps are generally considered tenants.⁶⁴ In *State v. Fox*, an attorney was convicted of trespass because the attorney would not leave the camp at the employer's request.⁶⁵ Since workers were deemed tenants in this case, they "had the right to invite others onto the premises."⁶⁶ Although migrant workers do not pay monetary rent, they still exchange their labor for housing, so the workers are considered tenants.⁶⁷ In *State of New Jersey v. Shack*, the New Jersey Supreme Court held that an employer's possessory interest in land under state property law is insufficient to prevent migrant workers from receiving aid and information.⁶⁸ While these cases are only persuasive authority in Washington, they may be cited to provide a framework for the property implications of allowing workers access to visitors in contradiction to the employer and property owner's demands.⁶⁹ The caselaw indicates that workers must be able to receive visitors who are legal aid workers, but these rules are not codified by statute or regulation.⁷⁰ Constitutional rights also may be violated by applying criminal trespass laws against visitors of migrant workers.⁷¹

⁶³ Allison Kidd, *Union Access to Migrant Farmworkers: The Mt. Olive Pickle Company, Cucumber Farmers, and Farmworkers*, 20 AM. BAR ASS'N J. LAB. & EMP. L., 339, 347 (2005).

⁶⁴ *State v. Fox*, 510 P.2d 230, 292 (Wash. 1973).

⁶⁵ *Id.*

⁶⁶ *Id.*; see also *Folgueras v. Hassle*, 331 F. Supp. 615, 624 (W.D. Mich. 1971) ("The migrants living in [the] labor camps are tenants within the meaning of Michigan law. Their tenancy entitles them, their guests, and representatives of assistance organizations to full rights of ingress and egress to and from their dwellings").

⁶⁷ *Folgueras*, 331 F. Supp. at 624.

⁶⁸ *State v. Shack*, 277 A.2d 369, 375 (N.J. 1971).

⁶⁹ Letter from William McGinty to Maria Sigüenza (Sept. 2, 2020), AGO 2020 No. 2.

⁷⁰ *Id.*

⁷¹ Letter from William McGinty to Maria Sigüenza (Sept. 2, 2020), AGO 2020 No. 2. (citing *Petersen v. Talisman Sugar Corp.*, 478 F.2d 73, 83 (5th Cir. 1973); *Rivero v. Montgomery Cnty., Md.*, 259 F. Supp. 3d 334, 355–56 (D. Md. 2017); *Franceschina v. Morgan*, 346 F. Supp. 833, 838–39 (S.D. Ind. 1972); *Folgueras*, 331 F. Supp. at 623–26; *People v. Rewald*, 318 N.Y.S.2d 40, 45 (N.Y. Cty. Ct. 1971); *People v. Medrano*, 144

IV. PROBLEMS WITH EMPLOYER PROVIDED HOUSING

The main problems with employer-provided housing stem from poor housing conditions, challenges that have arisen during the COVID-19 pandemic, and employer misbehavior, such as rejecting their workers' visits from service providers (like legal aid personnel) and abusing ejectionment procedures.

A. Health and Safety Conditions

Employer-provided housing for farmworkers is frequently located near pesticide-laden fields and lacks adequate sanitation facilities.⁷² Because the fields lack potable water, workers often carry the pesticides on their clothing into their residences after work.⁷³ The effects of pesticide exposure can vary drastically from mild symptoms like skin irritation to severe symptoms like convulsions, and dire cases exist where workers have died from pesticide exposure.⁷⁴ The state and federal agencies often poorly regulate compliance with farmworker housing requirements, or the agencies lack any sufficient regulation to prevent health and safety violations.⁷⁵ Furthermore, with a limited quantity of private housing in local communities, farmworkers have no choice but to accept poor quality housing.⁷⁶ Farmworkers fear retaliation, in both employment and housing, should they complain or seek help from authorities to remedy substandard conditions.⁷⁷ Retaliation can include the workers getting fewer hours, experiencing abusive treatment at work, being fired, not being rehired in the

Cal. Rptr. 217 (1978) *disapproved of on other grounds by Vista Verda Farms v. Agric. Lab. Rels. Bd.*, 29 Cal. Rptr. 3d 307, 325 n.8 (1981)).

⁷² See Luna, *supra* note 4, at 400.

⁷³ *Id.*

⁷⁴ Christos Damalas & Spyridon Koutroubas, *Farmers' Exposure to Pesticides: Toxicity and Ways of Prevention*, 4 TOXICS 1 (2016) <https://doi.org/10.3390/toxics4010001>.

⁷⁵ See FARMWORKER JUST., *supra* note 14, at 8.

⁷⁶ *Id.*

⁷⁷ *Id.*

next season, being blackballed from other farms, being evicted unlawfully, and being deported.⁷⁸

B. Accepting Visitors

Employers often instruct legal aid workers to leave farmworker housing sites even though legal aid representatives generally do not need a prior invitation to enter the properties where farmworkers live.⁷⁹ Sometimes, employers refuse to cooperate with legal advocates who wish to meet with migrant workers on the employer's land.⁸⁰ According to the Washington State Attorney General's Office, the employers may establish a reasonable time, place, and certain rules for visits to private property; however, it is not reasonable for an employer to require that legal aid workers obtain permission before they are able to enter the property and speak to farmworkers.⁸¹ In most instances, the employer cannot lawfully use or threaten to use force to remove a legal aid worker from the property, unless the legal aid provider is "trespassing maliciously" on the labor camp.⁸² A malicious trespass is one in which the trespasser has "an evil intent, wish, or design to vex, annoy or injure another person."⁸³ Trespassing to provide

⁷⁸ See HUM. RTS. WATCH, CULTIVATING FEAR: THE VULNERABILITY OF IMMIGRANT FARMWORKERS IN THE US TO SEXUAL VIOLENCE AND SEXUAL HARASSMENT 5 (2012), <http://www.farmworkerjustice.org/wp-content/uploads/2019/05/HRW-Cultivating-fear.pdf> (while this article focuses on sexual violence and sexual harassment that farmworkers face, the retaliation that workers face when speaking out against their employer's health and safety regulations may be similar to workers who speak out against sexual harassment or violence).

⁷⁹ Letter from William McGinty to Maria Sigüenza (Sept. 2, 2020), AGO 2020 No. 2; Shawn Goggins, *Legal Group Says Stemilt Workers in Mattawa Confirmed Presence of Coronavirus at Housing Facilities*, IFIBER ONE NEWS (Aug. 27, 2020), http://www.ifiberone.com/columbia_basin/legal-group-says-stemilt-workers-in-mattawa-confirmed-presence-of-coronavirus-at-housing-facilities/article_cbabc75a-e7e2-11ea-a7ee-7b37bede6a6d.html [<https://perma.cc/GY6D-JCV6>].

⁸⁰ *Id.*

⁸¹ AGO 2020 No. 2, *supra* note 79.

⁸² *Id.*

⁸³ WASH. REV. CODE § 9A.04.110; AGO 2020 No. 2., *supra* note 79.

legal services would not constitute a malicious trespass.⁸⁴ Although there are some protections for workers to receive visitors for legal aid support, this right is not absolute, and employers can place regulations on who may enter the property. Sometimes, employers turn away these legal aid workers who try to provide support for workers.

C. Ejectment Procedures

Employers often do not follow ejectment procedures when they seek to remove a worker from the employer-provided housing, and workers often face illegal ejectments when they are fired from employment.⁸⁵ If an employer wants to remove a worker from employer-provided housing, the employer must bring an ejectment action rather than an unlawful detainer action.⁸⁶ An unlawful detainer action allows a landlord to receive a default judgment against the tenant seven days after the tenant receives the summons and complaint for noncompliance with a previous notice, like a three-day notice to pay rent or vacate the property.⁸⁷ Once the tenant defaults in an unlawful detainer action, the court will order a “writ of restitution,” thereby ordering the sheriff to “restore possession of the property” to the landlord.⁸⁸ Unlawful detainer actions are governed by the RLTA.⁸⁹ In an ejectment proceeding, a resident defendant has twenty days to respond to a summons and complaint, and the action is used to determine who has a right to possession.⁹⁰ Ejectment usually takes longer and may

⁸⁴ AGO 2020 No. 2., *supra* note 79.

⁸⁵ *See, e.g.,* Vasquez v. Glassboro Serv. Ass’n, Inc., 415 A.2d 1156 (N.J. 1980).

⁸⁶ Najewitz v. Seattle, 152 P.2d 722, 723 (Wash. 1944); Turner v. White, 579 P.2d 410, 412 (Wash. 1978).

⁸⁷ *Unlawful Detainer vs. Ejectment*, THE GRAY L. FIRM P.S. (Jan. 27, 2016), <https://www.graylawtacoma.com/unlawful-detainer-vs-ejectment> [<https://perma.cc/2KDD-Y7FL>].

⁸⁸ WASH. REV. CODE § 59.18.370.

⁸⁹ *Id.*

⁹⁰ *Id.*

cost more than a summary unlawful detainer action.⁹¹ Before a farmworker can be taken to court for ejectment, the worker has a right to reasonable notice of when the worker will be expected to move.⁹² An employer must have a court order to make the worker leave.⁹³ A farmworker has a right to a court hearing before being removed from housing.⁹⁴ Because the ejectment procedures provide greater time for workers to stay in their housing, it is likely a better system than placing workers under the RLTA and requiring the unlawful detainer action. However, since ejectment procedures are not always followed, workers are sometimes forced to leave through self-help evictions.

D. Exclusion of Temporary Workers Under the RLTA and How Worker Housing is Treated in Other Jurisdictions

The RLTA gives responsibilities to both the tenant and the landlord when leasing housing.⁹⁵ Currently, Washington State excludes agricultural employees who are provided housing through their employers from the RLTA, so workers are not afforded the benefits of landlord-tenant laws.⁹⁶ However, some jurisdictions, as noted further in this section, treat farmworkers who live on employer-provided housing as tenants. These jurisdictions can provide a framework for how employer-provided housing would look if included under the RLTA. This solution, though, is not ideal for farmworkers in Washington State.

Other states and federal courts provide mixed results as to whether migrant workers should be protected as tenants under statutes similar to the RLTA or common law. In Michigan, there are two cases that expose the

⁹¹ *Id.*

⁹² NW. JUST. PROJECT, *Housing: Your Rights as a Farm Worker*, WASH. LAW HELP, (Jan. 14, 2020) <https://www.washingtonlawhelp.org/resource/housing-your-rights-as-a-farm-worker> [https://perma.cc/RU8Z-Y9YB].

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ WASH. REV. CODE § 59.18.020 (1973).

⁹⁶ WASH. REV. CODE § 59.18.040(6) (1973).

quasi-tenant status that migrant workers hold and in which workers sought protection as tenants: *De Bruyn Produce Co. v. Romero* and *Folgueras v. Hassle*. In *Folgueras*, the migrant workers were considered “tenants within the meaning of Michigan Law when determining whether the workers had a right to invite guests onto the labor camp property.”⁹⁷ Though, in *De Bruyn*, the Court of Appeals determined that migrant workers were not considered tenants in the sense that a landlord-tenant relationship does not result solely from an employment contract.⁹⁸ The United States District Court for the Southern District of Indiana held in *Franceschina v. Morgan* that “even though there was no requirement that they pay rent to the defendant employer,” the plaintiff farmworkers were still considered tenants.⁹⁹

Courts have held that farmworkers living in employer-provided housing are not meaningfully distinct from tenants and should receive similar protections as tenants. In *S.P. Growers Ass’n v. Rodriguez*, the California Supreme Court held there was no “meaningful distinction” between “tenant” and “employee” in the context of employer-provided housing.¹⁰⁰ In New Jersey, in deciding whether a migrant farmworker had the right to a judicial proceeding before eviction, the court in *Vasquez v. Glassboro Service Ass’n* held that “even though migrant farm workers were not considered tenants under New Jersey housing laws, they were still entitled to the same judicial proceeding as tenants.”¹⁰¹

Vermont treats workers who live in employer-provided housing as tenants with some exceptions.¹⁰² Agricultural employers who provide

⁹⁷ Sherylle Gordon, *Michigan Housing Laws Should Apply to Migrant Farm Workers*, 41 WAYNE L. REV. 1849, 1860 (1995) (citing *De Bruyn Produce Co. v. Romero*, 508 N.W.2d 150, 157 (1993)).

⁹⁸ *Id.*

⁹⁹ *Id.* at 1860–61 (citing *Franceschina v. Morgan*, 346 F. Supp. 833, 838–39 (S.D. Ind. 1972)).

¹⁰⁰ *Id.* at 1861 (citing *S.P. Growers Ass’n v. Rodriguez*, 522 P.2d 721 (Cal. 1976)).

¹⁰¹ *Id.* at 1862 (citing *Vasquez v. Glassboro Service Ass’n*, 415 A.2d 1156 (N.J. 1980)).

¹⁰² KATIE HANON MICHEL, NAT’ AGRIC. LIBR. U.S. DEP’T OF AGRIC., FEDERAL AND STATE LAWS APPLYING TO AGRICULTURAL WORKERS (2018),

housing to their employees may be entitled to an expedited eviction process under certain conditions.¹⁰³ In order to qualify for the expedited eviction process, the employer cannot charge the employee rent or require a security deposit.¹⁰⁴ If there is no rent and the housing is provided solely due to employment, the employer can evict the employee immediately when the employee's employment is terminated.¹⁰⁵ However, if the employer chooses to charge rent or require a security deposit, the employer cannot evict the employee without giving the employee notice.¹⁰⁶ Other provisions, such as the employer's obligation to provide habitable premises and the employee's protection against retaliation, still apply to agricultural employees living in employer-provided housing regardless of the expedited eviction process.¹⁰⁷

There are several problems with amending the RLTA to include agricultural workers who are provided housing by their employers. Although applying the RLTA to farmworkers who live in employer-provided housing would provide some protections to workers, it would also place some burdens on them if they needed to leave the housing. Also, unlike the unlawful detainer action permitted under the RLTA, the ejectment procedure provides workers more time to respond to an action by their employer. The California and New Jersey standards of treating farmworkers as "not being distinct from tenants" is preferable to the Vermont standard of allowing summary eviction proceedings against farmworkers under certain qualifying conditions because it gives farmworkers more time to challenge any eviction actions. By treating

https://www.nal.usda.gov/sites/default/files/white_paper_web_new_7_30_2018.pdf [<https://perma.cc/85Y3-XXXL>]; UNIV. OF VT., VERMONT FARM WORKER WAGE, HOUR AND HOUSING FACT SHEET 4, n.d., <https://www.uvm.edu/vtvegandberry/VermontFarmLaborWageAndHousingFactSheet.pdf> [<https://perma.cc/B9D3-YDRU>].

¹⁰³ UNIV. OF VT., *supra* note 102.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

farmworkers as tenants without placing them under the RLTA, the farmworkers may be provided greater rights to visitors while also preventing summary proceedings when facing eviction.

Amending the RLTA to include agricultural workers could drive some smaller agricultural growers out of providing necessary employee housing. It may be too difficult for smaller employers to obtain the necessary housing turnover for workers who stay for short periods of time. Small growers may have to provide month-to-month tenancies, and it may be too onerous for the employer to justify employer-provided housing.

E. COVID-19: New & Exacerbated Problems

In December 2019, the coronavirus disease caused by SARS-CoV-2 (COVID-19) was first identified in Wuhan, China and it quickly spread around the world.¹⁰⁸ COVID-19 is a respiratory illness,¹⁰⁹ and it is mainly spread from person-to-person: (1) between people who are in close contact with one another, usually within about 6 feet; and (2) through respiratory droplets produced when an infected person coughs, sneezes, or talks.¹¹⁰ Studies have shown that people who do not display symptoms of COVID-19 can still spread the virus.¹¹¹ A person can also get COVID-19 by touching a surface that has the virus on it and then touching their own mouth, nose, or eyes.¹¹² Farmworkers are especially vulnerable to the virus due to the close proximity of their work and living quarters.¹¹³

¹⁰⁸ *About COVID-19*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Nov. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/cdcesponse/about-COVID-19.html> [<https://perma.cc/W8B7-NCUQ>].

¹⁰⁹ *Agriculture Workers & Employers*, CTRS. FOR DISEASE CONTROL AND PREVENTION (June 11, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html> [<https://perma.cc/FLG9-4YE2>].

¹¹⁰ CTRS. FOR DISEASE CONTROL AND PREVENTION, *supra* note 108.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See Victoria Knight, *Without Federal Protections, Farm Workers Risk Coronavirus Infection to Harvest Crops*, KHN (Aug. 10, 2020), <https://khn.org/news/as-crisis-grows->

In late July 2020, 120 workers at Gebbers Farms in Okanogan County, Washington, tested positive for COVID-19, and two guest workers died during the summer season due to complications from the virus.¹¹⁴ Washington State Secretary of Health John Weisman ordered Gebbers Farms, which employs 4,500 farmworkers, to test their entire labor force.¹¹⁵ Due to this outbreak, Governor Jay Inslee implemented new health regulations that required broad testing whenever there are more than nine cases among workers at one agricultural employer within a fourteen-day period.¹¹⁶ These regulations also required employers to test their employees if the virus rate is ten percent of their employees (e.g., if a farm employs eighty workers and there are eight cases among the workers, the employer must provide the same broad testing as the nine-case standard).¹¹⁷

Some evidence suggests that farmworkers have had a higher rate of COVID-19 infections in Washington State than other populations. In 2012, the National Center for Farmworker Health determined that around “sixty-eight percent of all farmworkers were born in Mexico,” “three percent were born in Central American countries,” and “1 percent of farmworkers were born elsewhere.”¹¹⁸ While people who identify as Hispanic make up thirteen percent of the total Washington State population, they make up twenty-six percent of the total COVID-19 cases within the State, indicating

farms-try-to-balance-health-of-field-workers-and-food-supply/ [https://perma.cc/CQ4C-YMTY].

¹¹⁴ Hal Bernton, *Washington State Rolls Out New COVID-19 Testing Rules for Agricultural Workers*, SEATTLE TIMES (Aug. 19, 2020, 6:33 PM), <https://www.seattletimes.com/seattle-news/health/washington-state-rolls-out-new-covid-19-testing-rules-for-agricultural-workers/> [https://perma.cc/5RGK-FABA].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ NAT’L CTR. FOR FARMWORKER HEALTH, INC., FARMWORKER HEALTH FACTSHEET 1 (2012), http://www.ncfh.org/uploads/3/8/6/8/38685499/fs-migrant_demographics.pdf [https://perma.cc/R9PH-EAHF].

that this population is disproportionately impacted by COVID-19.¹¹⁹ While no conclusive evidence as to farmworker infection rates exists as of writing this comment, farmworkers may have had a higher rate of infection than the rest of the state's population due to the nature of their work, housing, and subsequent problems resulting from new health regulations.

New rules for employer-provided housing due to COVID-19 took effect on May 18, 2020.¹²⁰ Under the new rules, employers must provide cloth face masks and ensure physical distancing at the housing sites.¹²¹ The employers are also "required to frequently clean and disinfect surfaces in housing, and [they] must identify and isolate workers with suspected or confirmed cases of COVID-19."¹²²

On September 23, 2020, the rules were updated to include several more provisions.¹²³ The person who controls the housing is required to identify a single point of contact for COVID-19 related issues, have a camp management plan for the housing site, share the plan with workers on the first day the plan is operational or the first day the worker arrives, and designate a person to ensure workers are aware of all aspects of the plan and answer questions.¹²⁴ The employer must educate occupants on the virus

¹¹⁹ *COVID-19 Data Dashboard*, WASH. STATE DEP'T OF HEALTH (Nov. 5, 2021), <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard#dashboard> [<https://perma.cc/FCT4-3SXV>] (data reported as of Dec. 6, 2021; a significant number of confirmed COVID-19 cases and deaths are missing race and ethnicity information, which limits conclusions we can draw).

¹²⁰ Press Release, Dep't. of Health, Farmworker Housing Emergency Rules Increase Worker Safety During Pandemic (May 13, 2020), <https://www.doh.wa.gov/Newsroom/Articles/ID/1171/Farmworker-housing-emergency-rules-increase-worker-safety-during-pandemic> [<https://perma.cc/Q7C3-B33X>].

¹²¹ *Id.*

¹²² *Id.*

¹²³ WASH. STATE DEP'T. OF HEALTH, GUIDANCE FOR TEMPORARY WORKER HOUSING (2021), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/GuidanceforTemporaryWorkerHousingEmergencyRule.pdf> [<https://perma.cc/GJ5H-SFMC>].

¹²⁴ *Id.*

in languages understood by the occupants.¹²⁵ The employer must allow entry of community health workers and community-based outreach workers to provide additional information.¹²⁶ The employer must also conspicuously post information, provide cloth face coverings, and develop and implement a physical distancing plan.¹²⁷ Other mandates on operators include providing additional facilities to ensure social distancing in common areas, discouraging workers from visiting buildings that are not their assigned living spaces, and increasing ventilation inside housing sites.¹²⁸ Because workers live in shared housing and work near each other, they are at risk of contracting the virus. It is unknown whether these regulations are being followed by the employers, but some workers have reported “gaps in prevention efforts.”¹²⁹ Initial DOH plans had Farmworkers as one of the first groups to receive a COVID-19 vaccine.¹³⁰ Farmworkers became eligible to receive the COVID-19 vaccine on March 17, 2021.¹³¹

¹²⁵ *Id.* (educational materials pertain to how the virus spreads, how to prevent spread, common symptoms, risk factors, and what to do if a worker develops symptoms).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Hal Bernton, *Washington State Rolls Out New COVID-19 Testing Rules for Agricultural Workers*, SEATTLE TIMES (Aug. 19, 2020), <https://www.seattletimes.com/seattle-news/health/washington-state-rolls-out-new-covid-19-testing-rules-for-agricultural-workers/> [<https://perma.cc/WV9K-GDBJ>].

¹³⁰ WASH. STATE DEP’T. OF HEALTH, INTERIM COVID-19 VACCINATION PLAN (Version 1, Oct. 2020), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/WA-COVID-19-Vaccination-Plan.pdf>.

¹³¹ Mai Hoang, *Agriculture, Grocery Workers Move up on Vaccine Timeline to March 17 in Washington State*, YAKIMA HERALD (Mar. 11, 2021), https://www.yakimaherald.com/special_projects/coronavirus/agriculture-grocery-workers-move-up-on-vaccine-timeline-to-march-17-in-washington-state/article_2c2a1d6c-8d6b-5c7c-9614-c200d3de42d0.html [<https://perma.cc/2ZDF-66AL>]

V. INCREASING FARMWORKER HOUSING RIGHTS IN EMPLOYER-PROVIDED HOUSING

While Washington State does better than other states when it comes to health regulations of employer-provided housing, the regulations are not adequately enforced.¹³² Additionally, there is nothing in the statutes or regulations for employer-provided housing that specifically relates to ejection procedures, employees' rights to receive visitors like legal aid providers, or how employees can learn about these rights.¹³³ The existing scheme is not sufficient to keep workers and growers on notice of their rights and obligations related to employer-provided housing. Washington State needs to amend the current regulatory scheme to provide greater protections in these areas to farmworkers who live in employer-provided housing.

As discussed earlier in this comment, the current regulatory scheme for migrant farmworker housing is encompassed in both state and federal law, but none of these regulatory frameworks provide standards as to how to remove workers from the housing or whether and how the workers can receive visitors. The current regulatory scheme is insufficient to protect workers' rights in these areas of the law.

There are several ways Washington should address workers' housing rights. First, the Washington State Department of Health (DOH) should provide greater enforcement of the existing regulations and any new housing provisions. Second, the state legislature should amend the statutory scheme for employer provided housing to include provisions regarding (1) access to visitors and services at the housing sites, (2) ejection or eviction procedures, and (3) requirements that employers post information about workers' rights.

¹³² FARMWORKER JUST., *supra* note 14, at 8.

¹³³ WASH. REV. CODE § 70.114A (1995); WASH. REV. CODE §§ 49.17.300–350 (1999); WASH. REV. CODE §§ 43.70.334–340 (1998); WASH. ADMIN. CODE § 246-358 (2015).

A. Better Enforcement of Both Existing Regulations and Proposed Regulations

Employers do not always follow the regulations governing employer-provided housing because they often do not receive any repercussions for their actions.¹³⁴ Often, farmworkers do not have sufficient recourse in cases of housing violations.¹³⁵ Also, H-2A visa holders do not have the same tenancy rights as other farmworkers who live and work in employer-provided housing, and the workers are often misclassified as H-2B workers, for whom employers are not required to provide housing.¹³⁶ While the DOH could revoke an employer's license for noncompliance, it does not penalize or enforce its requirements adequately.¹³⁷

On the federal level, the U.S. Department of Labor is authorized under the Occupational Health Standards Act (OSH Act) to issue citations to enforce violations of the occupational health and safety standards.¹³⁸ Under the AWP, an employer who violates the law may be liable for both criminal and administrative sanctions such as a fine not to exceed \$1,000, a prison sentence for a term not to exceed one year, or both.¹³⁹ Workers can also bring a civil action in federal district court seeking damages from a violation of the AWP.¹⁴⁰ Putting the onus on a worker to report violations is problematic due to fear of retaliation and the desire to keep working for an employer regardless of housing issues.¹⁴¹ Workers are unlikely to report housing violations due to these fears, so employers can continue to shirk their housing obligations without regulation.

¹³⁴ See Luna, *supra* note 4, at 419.

¹³⁵ WASH. STATE HUM. RTS. COMM'N, FARMWORKER HOUSING AND THE WASHINGTON LAW AGAINST DISCRIMINATION 13 (Dec. 2007), <http://lib.ncfh.org/pdfs/2k12/9438.pdf> [<https://perma.cc/2NPR-CY3P>].

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ VERMONT L. SCHOOL, *supra* note 41, at 25.

¹³⁹ *Id.* at 20.

¹⁴⁰ *Id.* at 18–21.

¹⁴¹ See Luna, *supra* note 4, at 426.

Currently in Washington State, the DOH can proceed with legal action to assess a civil fine, or modify, suspend, or revoke the temporary worker housing license if there is any violation of the housing rules.¹⁴² As discussed earlier in this comment, several steps must take place before an employer faces any regulatory consequence for violating housing rules on the state level. The current procedure provides too much flexibility for employers to quickly address a problem and then return to the noncompliant behavior.

When the employer-provided housing is insufficiently regulated, employers feel emboldened to provide substandard housing to their workers.¹⁴³ Because workers already have minimal legal protections at their disposal, lack of enforcement by regulatory agencies along with a lack of affordable housing enable employers to ignore housing requirements.¹⁴⁴ Even if farmworkers try to report their employers to the DOH, they may fear retaliation in their employment or housing.¹⁴⁵ Retaliating against employees who report violations is against the law, but workers still face this fear that growers will fire them or not hire them for future work.¹⁴⁶ Employers who retaliate against employees may face fines, penalties, or a civil damages claim.¹⁴⁷ The DOH should better enforce its regulations in order to lessen an employer's ability to thwart the rules. If the DOH effectively regulates the housing on its own, without input from farmworkers, workers' fears of retaliation can be alleviated.

¹⁴² WASH. ADMIN. CODE § 246-358-028(2).

¹⁴³ Luna, *supra* note 4, at 419

¹⁴⁴ *Id.* at 420.

¹⁴⁵ FARMWORKER JUST., *supra* note 14, at 8.

¹⁴⁶ UNIV. OF VT., *supra* note 102, at 4; Daisy Contreras, *Farmworkers who face extreme heat fear retaliation or deportation if they complain, says nurse*, WORLD (July 21, 2021), <https://theworld.org/stories/2021-07-21/farmworkers-who-face-extreme-heat-fear-retaliation-or-deportation-if-they> [<https://perma.cc/HJ7H-WWL7>].

¹⁴⁷ WASH. ADMIN. CODE § 296-128-780 (2018); WASH. ADMIN. CODE § 296-128-790 (2018).

Workers face adverse circumstances in their housing when state agencies fail to inspect and regulate employer-provided housing, and there are not enough low-income alternatives for workers to go elsewhere.¹⁴⁸ Often, workers do not earn enough money to afford anything other than low-income housing, so the lack of alternative housing options is especially concerning for this group.¹⁴⁹ Farmworkers only recently obtained eligibility for overtime pay if they work over forty hours.¹⁵⁰ Due to the nature of their work, it is difficult for migrant farmworkers to find housing in the private rental market.¹⁵¹ They are often low-income earners, need short-term rentals, and face a shortage of housing supply in many agricultural communities. Community-based solutions also face challenges when communities face local opposition from people who subscribe to NIMBYism (“not in my backyard”).¹⁵² In 2002, there was an estimated need for 46,659 new units of farmworker housing in Washington State.¹⁵³

Many growers are already reluctant to provide housing to employees because of the costs involved with regulation, maintenance, and administering the housing.¹⁵⁴ If the regulations are more strictly enforced, it may discourage employers from providing this much needed housing in the

¹⁴⁸ See Luna, *supra* note 4, at 442.

¹⁴⁹ *Id.* at 417.

¹⁵⁰ WASH. STATE DEP’T. OF LAB. & INDUS., AGRICULTURAL POLICIES: WAGES, <https://lni.wa.gov/workers-rights/agriculture-policies/wages> [https://perma.cc/D6XY-Q7BM]; but see Gene Johnson, *Washington Supreme Court: Farmworkers to Get Overtime Pay*, THE SEATTLE TIMES (Nov. 5, 2020), <https://www.seattletimes.com/seattle-news/farmworkers-to-get-overtime-pay-washington-state-high-court-rules/> [https://perma.cc/7MBD-RREN]; Eilis O’Neill, *Washington Farmworkers Ask State Supreme Court for Overtime Pay*, NPR (Aug. 2, 2020), <https://www.npr.org/2020/08/02/897211483/washington-farmworkers-ask-state-supreme-court-for-overtime-pay> [https://perma.cc/CX9S-CJU2] (the Washington State Supreme Court will review a case on whether Farmworkers should receive overtime pay).

¹⁵¹ STATE OF WASH. DEP’T. OF CMTY, TRADE, AND ECON. DEV., *supra* note 2, at 7.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See FARMWORKER JUST., *supra* note 14, at 8.

first place. Without a feasible alternative to the employer-provided housing, it may create a problem for workers when there is insufficient affordable housing in many of the areas in which they work, and the workers could face homelessness. Conditions could end up being worse for farmworkers if there is less employer-provided housing available due to increased costs stemming from increased regulation.

When employers provide housing to their workers, though, more workers can support the farms on which they work. Growers in Washington State continue to face labor shortages.¹⁵⁵ If larger growers are concerned about stricter enforcement of the housing rules, they will need to weigh that concern against their need for workers. Also, employers who already built housing that complies with the regulations should not be concerned about greater enforcement. With the change in regulations due to COVID-19, the need for stronger enforcement is critical to the safety and health of farmworkers in Washington.¹⁵⁶ There is no point in implementing these new rules if they will not be enforced and workers feel as though they must put their lives at risk to support the farms on which they work.

B. Amend Temporary Working Housing Laws

Although caselaw created obligations on employers to allow visitors in the camps and provide notice for eviction-like proceedings, this law is insufficient to protect workers who cannot access services or who are summarily removed from their housing if they are fired from employment. The Washington legislature needs to amend the existing laws so that employers are on notice about their obligations to their workers and so farmworkers have notice of their housing rights.

¹⁵⁵ See WASH. STATE HUM. RTS. COMM'N, *supra* note 1, at 9.

¹⁵⁶ News Release, Wash. State Dep't of Health, Release Farmworker Housing Emergency Rules Increase Worker Safety During Pandemic (May 13, 2020), <https://www.doh.wa.gov/Newsroom/Articles/ID/1171/Farmworker-housing-emergency-rules-increase-worker-safety-during-pandemic> [<https://perma.cc/EZX2-7QMM>].

1. Provisions Regarding Access to Visitors

Few federal and state courts, including Washington's, have recognized migrant farmworkers' right to receive visitors.¹⁵⁷ These decisions are primarily based on property law and constitutional grounds.¹⁵⁸ Even though workers are supposed to have access to legal aid providers, these providers are still often asked to leave the premises at farmworker housing camps.¹⁵⁹ Further, actions and provisions exist that make it clear that workers are not free to have guests in the same way a tenant would be able to receive them. For example, employers can establish "reasonable time, place, and manner rules for visits to private property."¹⁶⁰ Workers should be able to have visitors, especially service providers, without regulation by their employer. Unless a visitor is being disruptive in some way, an employer should not be able to ask them to leave or impose restrictions on when and how the visitor can visit the property. By amending the DOH housing regulations to include a provision about guests on the premises, any confusion on whether visitors should be allowed on the property will be alleviated, and the DOH can regulate the employers accordingly.

The law should state that legal service providers cannot be removed from farmworker housing sites unless the provider's actions constitute a "malicious trespass."¹⁶¹ The regulations should state that if an employer excludes a legal services provider from the premises, they will face a fine no less than \$1,000. If an employer is found to violate such a law more than once, the fine should double with each violation. These new regulations should be conspicuously posted in the housing site, and the workers should be informed of where it is posted when the worker arrives on the premises.

¹⁵⁷ Allison Kidd, *Union Access to Migrant Farmworkers: The Mt. Olive Pickle Company, Cucumber Farmers, and Farmworkers*, 20 LAB. L. 339, 346 (2005).

¹⁵⁸ *Id.*

¹⁵⁹ See Goggins, *supra* note 79.

¹⁶⁰ AGO 2020 No. 2, *supra* note 79.

¹⁶¹ WASH. REV. CODE § 9A.04.110; AGO 2020 No. 2, *supra* note 79.

The posting should be written in all languages readable by the workers who live on the premises.

Employers would likely push back against adding further regulations to their housing provisions. Since the caselaw already exists, employers will argue that this is not necessary to add regulations and that doing so is a waste of money. Also, the legislature may not want to enact legislation or create new regulations that permit visitors on properties that have had high rates of COVID-19 infections. During the pandemic, it may be too risky to allow visitors onto these properties when workers are tightly compacted in their housing units. These critiques lack merit, however, because under caselaw, workers have a right to access services that they have difficulty receiving due to the remote locations of their housing. Even if the farmworkers' rights are often ignored, the rights still exist whether they are codified by statute or not. Also, workers should be able to associate with whomever they want as per their constitutional rights of free association.

2. Provisions Regarding Eviction or Ejection Procedures

Currently, there are no codified ejection procedures as it relates to employer-provided housing. Farmworkers cannot legally be summarily removed from the employer-provided housing.¹⁶² Before a farmworker can be taken to court for ejection, a worker has a right to notice of when the worker will be expected to move.¹⁶³ An employer must have a court order to make the worker leave, and the worker has a right to a court hearing before eviction.¹⁶⁴ Often, though, a worker who is fired will be told to leave the housing and return to the country from which they came or, if they reside in the U.S., find somewhere else to live.¹⁶⁵ The legislature needs to include provisions about eviction or ejection proceedings in the employer-

¹⁶² See NW. JUST. PROJECT, *supra* note 92.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See *Vasquez*, 415 A.2d at 106–08.

provided housing statutes in order to prevent workers from being summarily removed from their housing. While ejectment procedures are outlined in caselaw, a new statutory provision should provide that an employer must serve a farmworker with a summons and complaint for an ejectment action. A statute would provide certainty to farmworkers and employers alike, and codifying caselaw can help ease enforcement.¹⁶⁶ The worker would then have twenty days to respond to this notice. The statute should note that an employer cannot summarily tell the farmworker to leave without following the ejectment procedure.

Many growers are already discouraged from providing housing to employees because of the costs involved with regulation, maintenance, and administering the housing.¹⁶⁷ It can be very difficult for farmworkers to find “available, affordable housing because of extremely low and sporadic incomes and mobility.”¹⁶⁸ Similarly to the problems with codifying access to visitors, if the legislature codifies even more regulatory provisions, such as rights to visitors or ejectment procedures, growers may view these actions as creating additional costs for providing housing.

Although it may be more costly to growers, farmworkers should receive greater protections from self-help eviction because they have many barriers to housing. These barriers have been exacerbated by the pandemic, especially for workers who are undocumented.¹⁶⁹ During the COVID-19 pandemic, Washington State has sought to protect these workers by creating a relief fund specifically for undocumented workers who were passed over

¹⁶⁶ Giacomo A. M. Ponzetto & Patricio A. Fernandez, Case Law Versus Statute Law: An Evolutionary Comparison, 37 J. LEGAL STUD. 379, 382 (2008); AM. LEGAL PUBL’G CORP., *Why Codify?*, <https://www.amlegal.com/codification-services/codification/> [<https://perma.cc/ZXE6-8ZNP>].

¹⁶⁷ See FARMWORKER JUST., *supra* note 14, at 8.

¹⁶⁸ See WASH. STATE HUM. RTS. COMM’N, *supra* note 1, at 9.

¹⁶⁹ Lilly Fowler, *Washington State to Create \$40M Fund For Undocumented Workers Hurt By Pandemic*, NW PUB. BROAD. (Aug. 11, 2020), <https://www.nwpb.org/2020/08/11/washington-state-to-create-40m-fund-for-undocumented-workers-hurt-by-pandemic/> [<https://perma.cc/PUY9-E4A9>].

for federal assistance and by imposing an eviction moratorium, which applies to everyone who cannot pay their rent on time, regardless of immigration status.¹⁷⁰ If the legislature includes a provision in the law to prevent forcible evictions of these workers, it will increase worker safety and security in their housing.

3. Post Information for Farmworkers Regarding Evictions and Rights to Visitors

The DOH and LNI could create written materials for farmworkers regarding their rights on evictions and rights to visitors. Washington agencies already create these kinds of materials for migrant workers.¹⁷¹ Providing this type of information to workers would likely be a low cost to the agencies, and it would enable workers to have a better understanding of their rights. It would need to be provided in the languages understood and readable by workers at the specific housing camps so that the workers may understand their rights.

VI. CONCLUSION

Farmworkers in Washington State live through tough conditions as they provide necessary produce and other foods to communities throughout the country. They should be treated with dignity regardless of their service to our communities. The conditions they live in have only been exacerbated by the COVID-19 pandemic where they face fear of not only pesticide exposure but also of a deadly virus. Workers need adequate housing to protect their health and safety while they do work that provides so much to our communities. Employers fill a much-needed gap in the need for

¹⁷⁰ *Id.*

¹⁷¹ See, e.g., WASH. STATE DEP'T. OF LAB. & INDUS., H-2A GUEST WORKERS' GUIDE TO WASHINGTON STATE WORKPLACE SAFETY AND RIGHTS, <https://lni.wa.gov/forms-publications/F101-197-000.pdf> [<https://perma.cc/7UC9-DHTM>]; WASH. STATE DEP'T. OF LAB. & INDUS., POCKET GUIDE TO WORKER RIGHTS, <https://lni.wa.gov/forms-publications/F101-165-909.pdf> [<https://perma.cc/5GGH-SAX4>].

farmworker housing. While employer-provided housing is important and often necessary for workers, it is insufficient in its current form, and current regulations of employer-provided housing often do not protect workers to an adequate extent in allowing for visitors like legal service providers and preventing self-help evictions.

When farmworkers in Washington State live in housing provided by their employer, they are at risk of losing rights that most people take for granted. Employers often tell their workers that they cannot receive visitors who have information about their rights, or worse, they fire employees and tell them that they need to leave the housing site immediately. Workers often must try to find a way back to their native country on a moment's notice. Farmworkers must have the opportunity to know their rights and have their rights upheld.

There are a few ways farmworkers can receive greater protection in their housing rights. First, the current regulations could be better enforced. Often enforcement is contingent upon workers reporting against their employers. This is insufficient because workers fear retaliation if an employer discovers the worker reported against them. Retaliation can mean not receiving work opportunities in the future, being fired from their current job, unlawful eviction, abuse at work, and possible deportation. By putting the onus on workers, the regulations are insufficient, and employers do not have the incentives to follow the existing rules.

The second way that farmworkers could receive greater housing rights is if the legislature amends the current laws to codify caselaw that governs how workers can receive visitors like legal service providers and how workers may be ejected from their housing. By codifying these rules, employers and farmworkers will be on notice as to their obligations and rights regarding housing. Currently, access to visitors and the correct eviction procedures are sometimes not followed by employers. By amending the statute, employers are more likely to follow the law.

Lastly, the regulators should require notices be placed at the housing sites that notify farmworkers about their rights regarding visitors and ejection procedures. Regulatory agencies in Washington provide informational materials to workers already, so it would not be burdensome to require that materials on these subjects be provided to workers in order to better inform them about their rights.

The legislature must better address the housing issues that farmworkers face when employers provide their housing because doing so would treat these workers with the dignity that they deserve. The current procedures do not adequately protect workers, and workers should feel safe and secure in their housing.