

# HUMAN RIGHTS ALERT: NEW MEXICO'S INVISIBLE AND DOWNTRODDEN WORKERS



RESULTS OF A 2012 SURVEY OF NEW MEXICAN  
FIELD AND DAIRY WORKERS

CONDUCTED BY THE NEW MEXICO CENTER ON LAW AND POVERTY

New Mexico's agricultural workers labor in some of the most difficult, dangerous and abusive working conditions of all workers. They are paid devastatingly low wages, perform backbreaking work and toil in unsafe and unhealthy conditions. They are often victims of wage theft and are retaliated against when they try to assert their rights. Additionally, there are very few laws that protect them and many that specifically exclude them from their protections. This report summarizes the results of a 2012 survey of New Mexican agricultural workers and shines light on the abusive working conditions these workers labor under, in hope that we as a state call for just treatment of the people who feed us.

### **Nick- A New Mexico Dairy Worker\***



*In 2008 Nick was hired as a milker to work at a dairy in central New Mexico. He worked 6 days a week, 9 hours a day for \$65 a day. When he started his work at the dairy, he received no safety training, nor was he provided with any safety equipment. One day while working, Nick was attacked by a bull. The bull pinned Nick against a metal fence, breaking his ribs and back and puncturing one of his lungs. Nick was rushed to the hospital and has not been able to work since. He is now*

*permanently disabled. His medical bills from the injury at the dairy exceeded \$40,000, but his employer's insurance only covered \$5,000. He lost his home, his vehicle, and most importantly his means of earning a living for his family. Nick is now on food stamps and other government assistance programs. He has been denied Social Security disability benefits and struggles every day to make ends meet.*

### **Isabel - A New Mexico Fieldworker\***

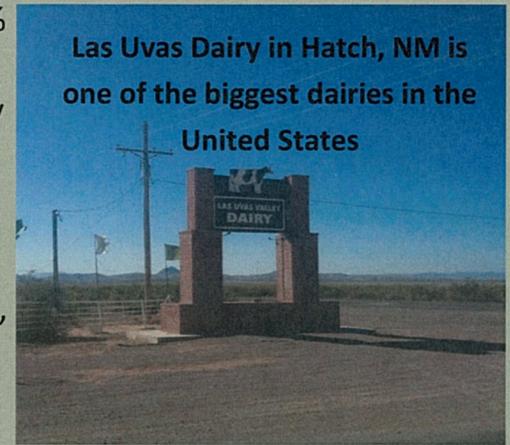
*Isabel has been a farm worker since she was a child. Every year she works in New Mexico's chile fields planting and harvesting green and red chile. It is common for Isabel to be paid as little as \$30 for a long day's work. Recently, while picking red chile in a field in southern New Mexico, Isabel tripped and fell, severely injuring her wrist. After a long wait, the farm labor contractor agreed to take her to a local medical clinic, but only after insisting that she tell the clinic staff that she did not fall in the field. He abandoned her at the clinic with no means of transportation to get home, no identification and no cell phone. Since then, the farm owner has refused to take responsibility for Isabel's work-related injury even though she was left with no money, no job, and inadequate medical care.*



\*The names of the workers have been changed to protect their privacy. None of the other details of these workers' experiences as New Mexican agricultural workers were changed.

## New Mexico's Agricultural Industry Is No Longer Comprised of the Small Family Farms of the Past

- ◆ While there are over 20,000 farms in New Mexico, 10% (about 2,000) of those farms generate 90% of the agricultural industry's income from farming and employ almost all of New Mexico's 15,000 to 20,000 agricultural workers.
- ◆ In 2011, the most recent data available, the net profit for New Mexico's agricultural industry was \$1.35 billion, the highest ever, surpassing the previous record set in 2010 of \$1 billion.
- ◆ New Mexico's 150 dairies have the largest average herd size in the country, with a total of 329,000 milk cows in the state and an average of 2,200 cows per dairy.
- ◆ New Mexico's agricultural industry has received an average of \$80 million per year over the last five years in government payments (i.e. agricultural subsidies).
- ◆ In 2011, New Mexican agriculture had cash receipts of \$4.1 billion.



In the past, laws were passed to support small family farms which were the foundation of America's food system and the most common form of small business in the country. Today, the majority of our nation's food is produced on large, corporate farms. Despite this drastic change, the laws that were created to protect small farms remain on the books today though they are no longer needed and are a great detriment to the agricultural workers to which they apply. Large agribusiness now takes advantage of these laws to maximize profits on the backs of the workers. These laws include:

- The exclusion of dairy workers from the New Mexico minimum wage.
- The exclusion of all agricultural workers from overtime protections in both federal and state law.
- The exclusion of all agricultural workers from the right to participate in collective bargaining with their employers under the National Labor Relations Act.
- The exclusion of many agricultural employers from the enforcement and oversight activities of the Occupational Health and Safety Bureau (OSHA).

# New Mexico's Farm Workers

## New Mexico's Farm Workers Are Poorer Than Farm Workers Nationally.

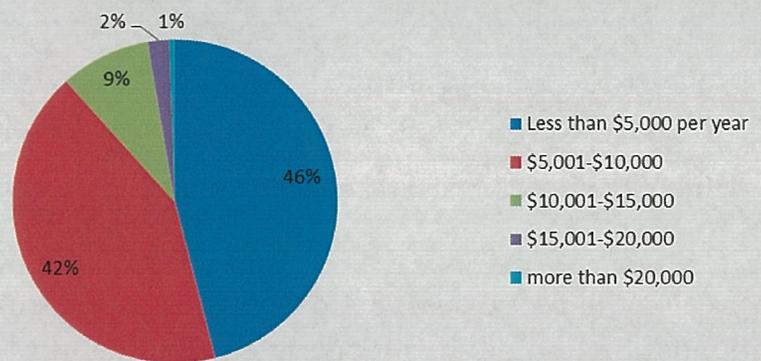
The average annual family income for farm workers nationally ranges from \$17,500 to \$19,999. The average household income for the New Mexican farm workers who participated in this survey was \$8,978, much lower than the national average. The average household size was 3.79 people. Thus, on average, the workers participating in this survey had an annual household income of under \$9,000 per year to support three to four people for the entire year.

## Wage Theft Is Rampant in New Mexico's Fields.

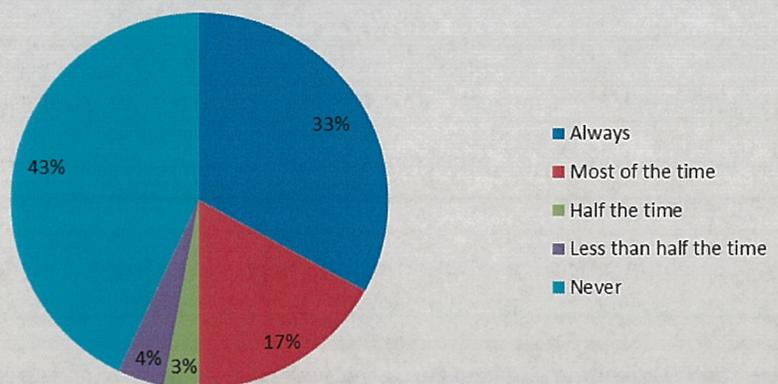
Wage theft is the unlawful failure to pay wages rightfully owed to a worker. Wage theft includes minimum wage violations, illegal deductions, working off the clock, and not being paid at all. New Mexican farm workers have the right to the state minimum wage of \$7.50 per hour, but many of them are not receiving it.

- ◆ 67% of the workers surveyed were victims of wage theft in New Mexico's fields in the last year.
- ◆ 95% of the workers surveyed reported that in the last year they were *never* paid for the time they spent in the field waiting to begin work at the start of the day, despite the fact that employers are required by law to pay workers for this time.
- ◆ Nearly one-fifth of workers surveyed reported that at least one of their employers had failed to report their income to the Social Security Administration in the last year. When this happens year after year, the devastating effect is that the farmworker does not qualify for Social Security benefits upon reaching retirement age.

**New Mexican farm worker income from agricultural work in the last year**



**How often New Mexican farm workers received minimum wage in the last year**



## New Mexico's Farm Workers Labor in Dangerous and Difficult Conditions

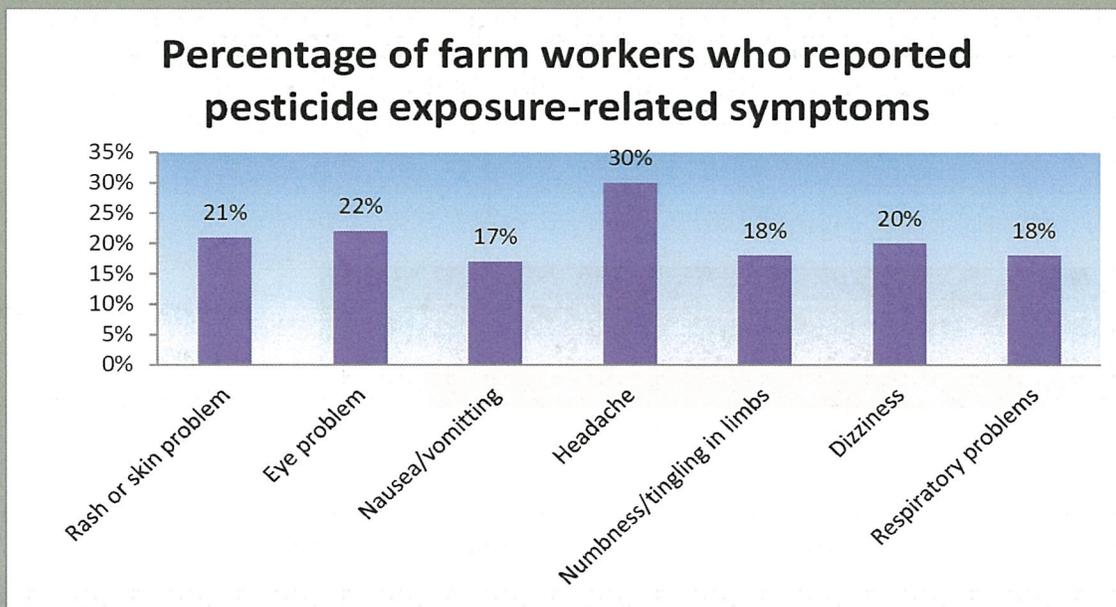
- ◆ 29% of the farm workers surveyed worked in a field with no drinking water in the last year.
- ◆ 61% of the farm workers surveyed did not have access to hand washing stations in the fields on at least one occasion in the last year. This leads to unsanitary working environments as well as public health concerns for the consumer.
- ◆ 52% of the farm workers surveyed worked on at least one field in the last year where they were not given any breaks for the entire day. 38% of those who did get a break stated that they did not have access to shade during those breaks.
- ◆ The United States Bureau of Labor Statistics consistently rates agriculture as one the most dangerous industries to work in. In this survey, 15% of the workers reported having been injured while working in the fields of New Mexico.

### Pesticide Poisoning Is Pervasive in New Mexico.



New Mexican farm workers are being exposed to dangerous pesticides and suffering medical consequences because of it.

- ◆ One-fifth of farm workers reported having worked in a field in the last year where pesticides were being applied at the same time the workers were working, in violation of the law.
- ◆ 47% of workers reported having experienced at least one pesticide-related health problem after working in a field that had been sprayed with pesticides.
- ◆ 88% of workers reported having no health insurance.



## New Mexico's Dairy Workers

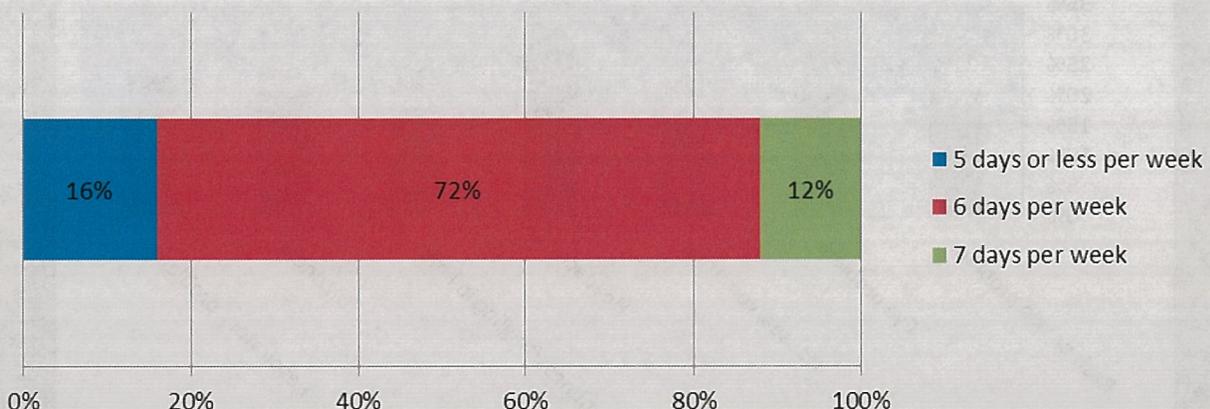
### New Mexican Dairy Workers Work Long Hours With No Overtime Pay

- ◆ 84% of the dairy workers surveyed work six or more days per week.
- ◆ 33% of the dairy workers surveyed *never* receive a lunch break and have to eat while working or forgo eating all together.
- ◆ 27% of dairy workers surveyed stated that they work more than 10 hours per day and 55% surveyed work more than eight hours per day.



Despite their long hours and work-weeks, agricultural workers are excluded from the overtime provisions in New Mexico labor law that mandate workers be paid time-and-a-half for work done in excess of 40 hours per week. Thus, dairy workers in our state are not entitled to be paid overtime when they work longer than 40 hours a week, which they almost always do. Additionally, dairy workers are excluded from the New Mexico minimum wage law, meaning that dairy employers in New Mexico are not required to pay their workers the New Mexico minimum wage of \$7.50 per hour.

### **84% of dairy workers work 6 or more days per week yet are not entitled to overtime**



### **New Mexican Dairies Are Dangerous Places to Work.**

- ◆ 53% of the dairy workers surveyed report that they have been injured while working on a dairy in New Mexico. Of those, 34% have been injured three or more times.
- ◆ Two-thirds of the dairy workers surveyed reported having been injured by either a bull or a cow.
- ◆ 77% of the dairy workers surveyed reported that they have *never* received any type of safety training at any of the dairies for which they have worked in New Mexico.

### **New Mexican Dairy Workers Do Not Have Adequate Access to Health Care.**

- ◆ 88% of the dairy workers surveyed reported having no health insurance.
- ◆ Of the 53% of dairy workers who reported having been injured on a New Mexican dairy, 91% stated their injuries were serious enough to necessitate medical care.
- ◆ 20% of the dairy workers who reported needing medical care for a work-related injury stated that they never received it.

### **Dairy Workers Are Fearful of Retaliation for Asserting Their Rights.**

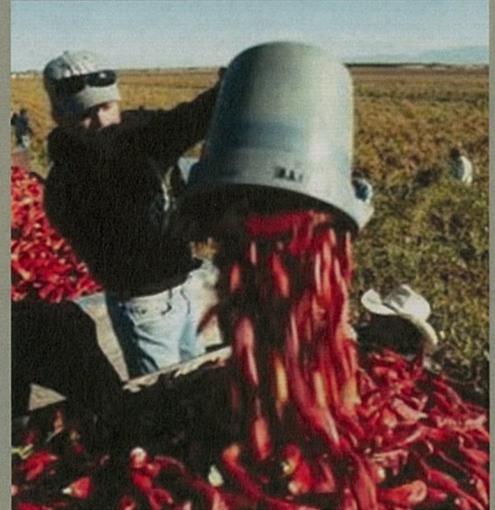
- ◆ 46% of dairy workers reported wanting to complain about poor working conditions in New Mexico's dairies in the last year, but did not do so. Nearly half of those wanting to complain reported having the desire to do so six or more times in the last year.
- ◆ Of those who wanted to complain about their working conditions, 93% stated that they chose not to do so out of fear of retaliation.
- ◆ 22% of those workers who reported having a desire to complain stated that they had seen other workers get into trouble after complaining, and thus, did not believe it merited the risk.



## Recommendations

There are several things that can be done through public policy changes that would improve the working conditions for New Mexico's agricultural workers.

- ◆ Amend the New Mexico Minimum Wage Act to include dairy workers under the protections of this law, which mandates that workers be paid the state minimum wage of \$7.50 per hour.
- ◆ Amend the New Mexico Minimum Wage Act to include overtime protections for agricultural workers. Currently, agricultural workers are exempt from the overtime provision of the law which mandates that workers be paid time-and-a-half for all hours worked in excess of 40 hours per week.
- ◆ Pass a law in New Mexico similar to California's Agricultural Labor Relations Act which would give agricultural workers the right to participate in collective bargaining. Under the federal National Labor Relations Act, agricultural workers are prohibited from participating in collective bargaining. A state law could change this.
- ◆ Pass laws that mandate breaks and shade for field workers.
- ◆ Pass a law that would allow the New Mexico Occupational Health and Safety Bureau (more commonly referred to as OSHA) to enforce occupational health and safety laws on New Mexico's farms with less than 11 employees. Currently, the agency tasked with ensuring a safe working environment for New Mexico's workers is prohibited from enforcing health and safety laws on New Mexico's farms and ranches with less than 11 employees.
- ◆ Convince the New Mexico Workers' Compensation Administration (WCA) to enforce the ruling of a New Mexico state court judge who recently held that excluding agricultural workers from workers' compensation protections is unconstitutional. Despite the ruling, the WCA continues to maintain its position that New Mexican farm, ranch and dairy workers do not have a right to workers' compensation.
- ◆ Support comprehensive immigration reform that allows undocumented farm workers and their families to earn legal immigration status and citizenship.



## Survey Protocol

In 2012, the New Mexico Center on Law and Poverty (NMCLP) commissioned a survey on the living and working conditions of New Mexico's dairy and field workers. Sixty dairy workers and 193 field workers were surveyed. The NMCLP partnered with the Colonias Development Council, Sin Fronteras Organizing Project, Tierra del Sol Housing Corporation, and La Clinica de Familia to administer the surveys. Each of these organizations provided interviewers to conduct the surveys. All interviewers were trained on the appropriate protocol for conducting the surveys in order to avoid bias and remain impartial. Surveys of field workers were conducted in the communities of Anthony, Berino, Deming, Hatch, Las Cruces, Salem, Sunland Park, and El Paso, Texas. (The El Paso interviews entailed interviews of workers who live in El Paso, but work in New Mexico). Surveys of dairy workers were conducted in the communities of Berino, Clovis, Deming, Los Lunas, Mesquite, Roswell and Vado.

### Eligibility Criteria for Field Workers

- ◆ Employed as field or dairy workers in *New Mexico* in the last year
- ◆ Worker could not have participated in a survey regarding the working and living conditions of field workers in the past six months
- ◆ The job could not have entailed the use of machinery for more than 50% of his/her time in the last year

### Eligibility Criteria for Dairy Workers

- ◆ Employed as a dairy worker in *New Mexico* in the last year
- ◆ Worker could not have participated in a survey regarding the working and living conditions of dairy workers in the past six months

Before commencing the interviews, all participants were informed of the purpose of the survey, the estimated length of time it would take to complete, our guarantee that their names would not be attached to the survey, that they could stop the interview at any time, and that they were not required to answer any questions which made them uncomfortable. As a token of gratitude for their time, all workers who participated in the survey and completed it were given a gift of \$15. We also offered to share the results of the survey with the participants, if they so desired.

***The New Mexico Center on Law and Poverty would like to thank the Sin Fronteras Organizing Project, the Colonias Development Council, La Clinica de Familia, Inc. and the Tierra del Sol Housing Corporation for assisting us on this project. Our gratitude also goes out to the Tides Foundation, the Public Welfare Foundation, and the Robert Wood Johnson Foundation for providing the funding needed to make this endeavor possible.***

**For more information on this report please contact the  
New Mexico Center on Law and Poverty at (505) 255-2840.**

