

# Unprotected: New Mexico's Agricultural Workers



Presented by:

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## NM center on law and poverty

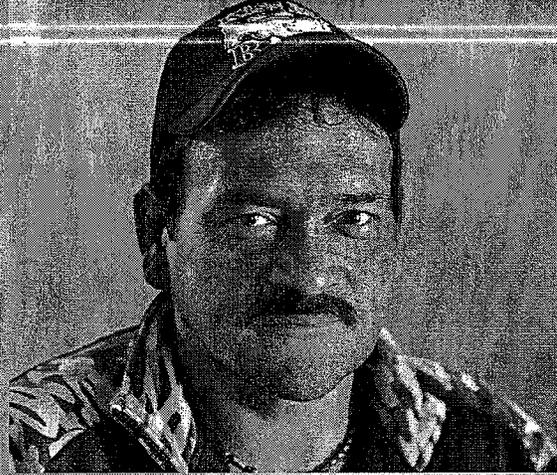
The New Mexico Center on Law and Poverty is dedicated to advancing economic and social justice through education, advocacy and litigation.

We work with low-income New Mexicans to improve living conditions, increase opportunities and protect the rights of people living in poverty.

[www.nmpovertylaw.org](http://www.nmpovertylaw.org)



Joe



Lupe

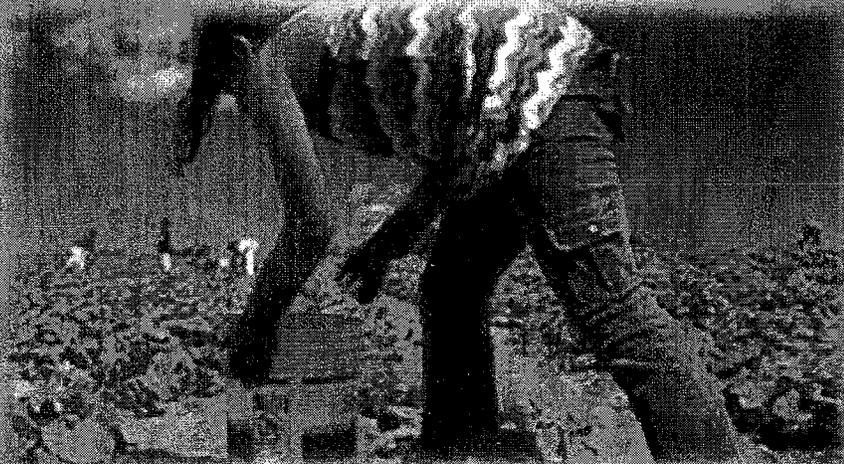


Tomás



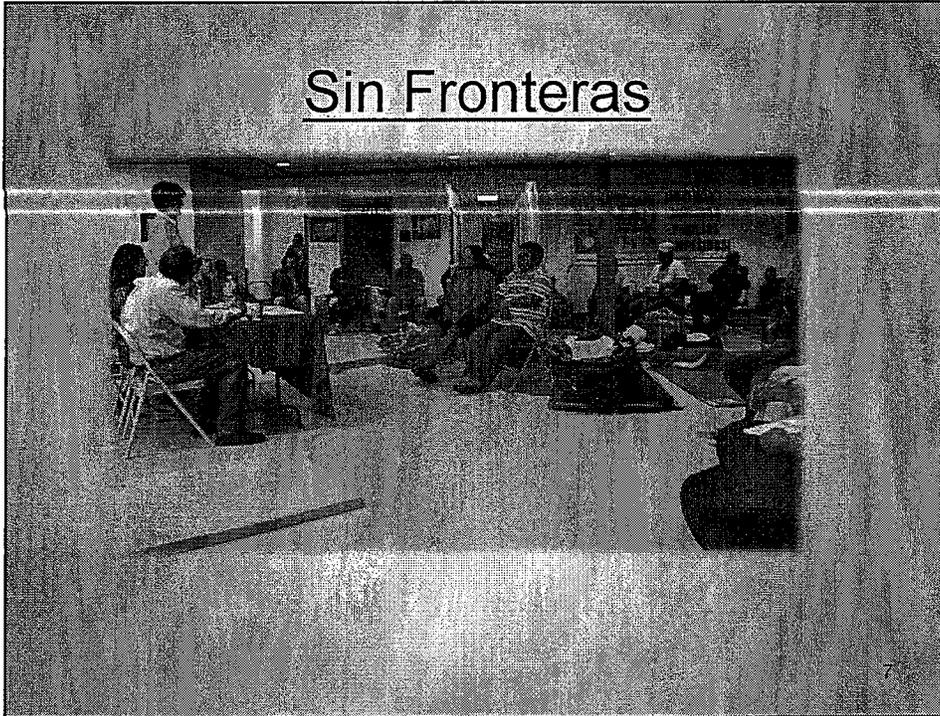
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Rosa



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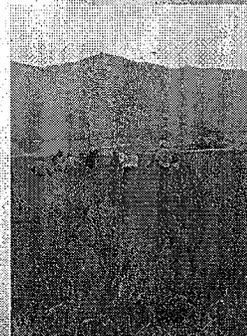
## Sin Fronteras



## New Mexican agriculture

The New Mexico Department of Agriculture and the U.S. Department of Agriculture report:

- There are 23,000 farms, dairies and ranches in NM
- There are 15,000 – 20,000 farm workers, approximately 3,500 of which are dairy workers.
- 9% of farms (about 2,000) employ 91% of New Mexico's agricultural workers



## New Mexican agricultural products

- 10% of New Mexican farms produce 90% of our agricultural products
- Largest cash commodities in 2011 (most recent available data):
  1. Cattle - \$1.7 billion
  2. Dairy - \$1.6 billion
  3. Pecans - \$163 million
  4. Hay - \$160 million

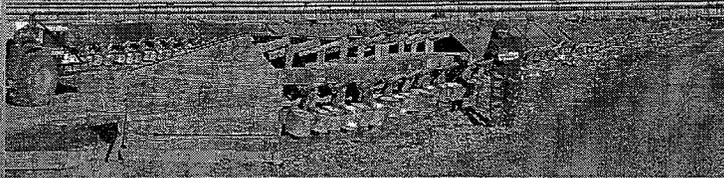
## New Mexican agricultural industry



- Over the last 20 years, the New Mexican agricultural industry has become large and industrialized
- Small farms are not a primary source of income for small farm owners in NM
- Large farms generate most of New Mexico's agricultural income
- Large farms received over \$88 million in subsidies in 2011
- The average net income from farming over the last five years is \$890 million
- Net income from farming in 2011 was \$1.3 billion, up from \$1 billion in 2010

# Cattle

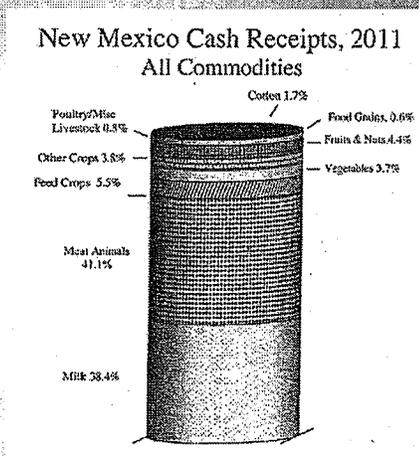
- In 2011, gross income from cattle and calves totaled over \$1.7 billion
- Cattle is New Mexico's #1 agricultural commodity. In 2009 New Mexico ranked 10<sup>th</sup> in the nation for cash receipts from cattle



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## The New Mexican Dairy Industry – Big Business

- Currently NM has 150 commercial dairies
- Over \$1.5 billion in annual gross producer income in 2011
- Average sales per dairy – over \$8 million



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## The New Mexican dairy industry is on the rise



- New Mexico's 150 dairies have brought in more than \$1 billion in total cash receipts per year for the past 5 years.
- From 1994 – 2008, milk productivity in NM quadrupled
- Dairy is New Mexico's second largest agricultural commodity.
- NM is the 9<sup>th</sup> largest dairy producing state in the country.

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Las Uvas Dairy, in Hatch, NM, is one of the biggest dairies in the United States



## Major New Mexico crops

### Cash receipts in 2011

- Pecans - \$163 million  
(In 2012, NM ranked #2 in the nation for pecan production.)
- Hay - \$160 million
- Cotton - \$68 million
- Corn - \$54 million
- Chile- \$47 million
- Onions- \$43 million
- Wheat – \$23 million

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## Chile

- According to the NM Department of Agriculture, in 2009 cash receipts from chile were \$57.4 million, rising 21 percent above the previous year
- In 2010 cash receipts were \$41.6 million and in 2011, they were \$46.8 million
- In 2007, NM was the leading producer of chile in the nation, followed by California and Arizona as a distant second and third. (USDA, most recent available data)



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## 2012 Survey of New Mexican agricultural workers

HUMAN RIGHTS ALERT  
NEW MEXICO'S  
INVISIBLE AND DOWNTRODDEN  
WORKERS



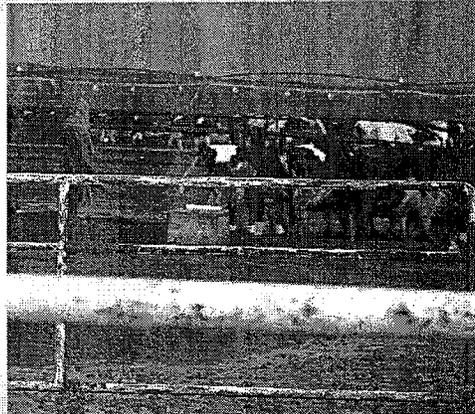
RESULTS OF A 2012 SURVEY OF NEW MEXICAN  
FIELD AND DAIRY WORKERS  
Center for Labor Education and Research

- 60 dairy workers
- 193 field workers
- Surveys conducted in Anthony, Berino, Clovis, Deming, Hatch, Las Cruces, Los Lunas, Mesquite, Roswell, Salem, Sunland Park, Vado and El Paso, Texas (of workers who work in New Mexico)

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## New Mexican dairy workers work long hours with no overtime pay

- 8 – 12 hour days
- 84% work six or more days per week = minimum work week of **48 hours**
- One-third never receive a lunch break and eat lunch while working
- Most put in more than 8 hours a day, with a third putting in 10 hour days



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## New Mexican dairies are dangerous places to work

- More than half of the dairy workers surveyed reported being injured while working on a dairy in N.M.
- Two-thirds of the dairy workers who reported having been injured stated they were injured by either a bull or a cow.

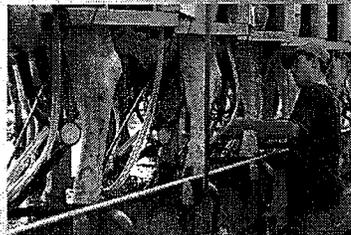


- 77% reported that they never received any type of safety training at any of the dairies for which they worked in New Mexico.

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## Dairy Workers Fear 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.



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## New Mexico's field workers are poorer than field workers nationally

- 88% of workers surveyed made \$10,000 or less in the last year working in the fields
- Average household income was \$9,000 a year, far less than the average household income of field workers nationally of \$18,000 a year
- This \$9,000 supports an average household size of 3.79 people
- No paid holidays
- No health insurance
- No sick leave
- Not entitled to overtime pay
- Until recently, not entitled to workers' compensation



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## Wage Theft is Rampant in New Mexico's Fields

- 67% reported not being paid the state minimum wage in the last year
- Almost all reported they were never paid for time spent in the field waiting for work to begin, contrary to law
- Nearly one-fifth reported that employer failed to report income to Social Security



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

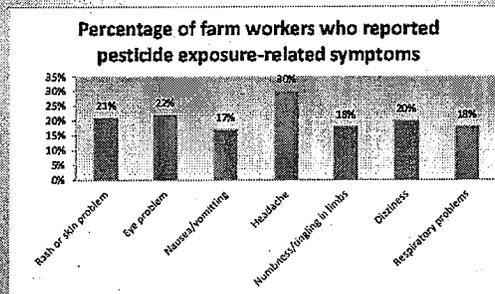


- 29% reported working in fields with no drinking water in the last year
- 61% did not have access to hand washing stations in the fields
- 52% worked on at least one field in the last year where they were not given any breaks for the entire day. 38% of those who did get a break stated that they did not have access to shade during those breaks.
- 15% of the field workers reported having been injured while working in the fields of New Mexico.

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## Pesticide poisoning in New Mexico

- One-fifth 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% reported having experienced at least one pesticide-related health problem after working in a field that had been sprayed with pesticides.



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## New Mexican agricultural workers do not have adequate access to health care

- Of the agricultural workers surveyed – both field and dairy – only 12% reported having health insurance
- 20% of the dairy workers who reported needing medical care for a work-related injury stated that they never received it



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## Working conditions for agricultural workers in New Mexico need to change

Our agricultural workers:

- Work long hours
- Work for low pay
- Have no health insurance
- Have no sick leave
- Work in dangerous conditions
- Are often victims of wage theft
- Don't have economic security
- Are not treated equally or fairly



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## New Mexican agricultural workers don't have the same legal protections as other workers

- Dairy workers excluded from state minimum wage (NMSA 1978 § 50-4-21 (12)(e))
- Many farmworkers excluded from the state the minimum wage (NMSA 1978 § 50-4-21(12)(c))
- All agricultural workers exempt from federal and state overtime (FLSA 29 U.S.C. § 213(b)(12) and NMSA 1978 § 50-4-24 (B))
- Occupational Health and Safety Bureau prohibited from enforcement activities on all farms with 10 or less employees, pursuant to federal law
- Until recently, agricultural workers excluded from workers' compensation protections (NMSA 1978 § 52-1-6(A))
- All agricultural workers excluded from protections of the National Labor Relations Act

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## **Five year campaign seeking workers' compensation for NM's agricultural workers**

**We started in the N.M. legislature**



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**We explained that:**  
Amending the law meant most  
agricultural workers would be covered while  
protecting New Mexico's small and family farms

- An amendment would only apply to farms and ranches with 3 or more non-family member employees.
- This would impact only 9% of all agricultural businesses in New Mexico.
  - There are 20,930 farms in New Mexico. 1,973 of them have 3 or more workers, totaling 9% of all farms in the state. These 1,973 farms employ 83% of all agricultural workers in New Mexico. (Source: 2007 U.S. Census of Agriculture).
- According to the Workers' Compensation Administration, the proposal would add 10,000 workers to the 717,000 workers that are already covered. That is a less than 1% increase in covered workers.
- *According to the State of New Mexico, the cost of providing workers' compensation to all agricultural workers is \$5-7 million -- less than 1% of the agricultural industry's annual profit.*

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The majority of states require workers' comp for  
agricultural workers

- 33 states (plus D.C., Puerto Rico, and the Virgin Islands) require mandatory workers' compensation for farm workers.\*
- 7 of the 8 states that are ahead of us in dairy production provide workers' compensation to all or many of their dairy workers and 8 of the 10 states that are ahead of us in cattle production provide workers' compensation to all or many of their cattle workers.
- In the southwest:
  - California, Colorado and Arizona require mandatory coverage for all farm workers
  - Utah requires coverage for workers on farms with more than \$50,000 in payroll
  - Texas doesn't mandate workers' compensation for any industry including farms/ranches.

\*some states exempt small farms and part-time employees

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The legislature isn't the only place to end discriminatory laws – there is also the court



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New Mexico Constitution's Equal Protection Clause offers stronger protections against discrimination than the federal constitution



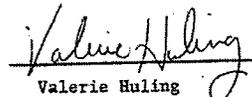
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We won! In 2011 the court struck down the farm and ranch laborer exclusion.

**Conclusion**

Because farm and ranch laborers do not constitute a sensitive class, they are not entitled to review under intermediate scrutiny. Under the rational basis standard, the Court concludes that the farm and ranch labor exclusion is unconstitutional.

**IT IS SO ORDERED.**

  
Valerie Huling  
District Court Judge

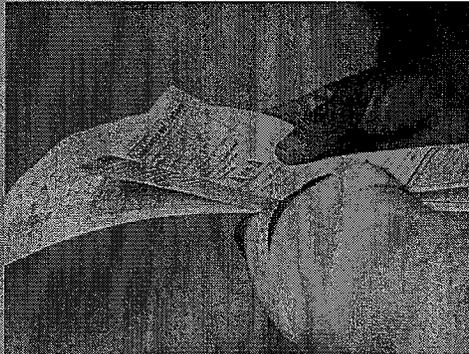
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***Now the tough part:  
Enforce the Court's ruling***

Public  
Speaking



Education



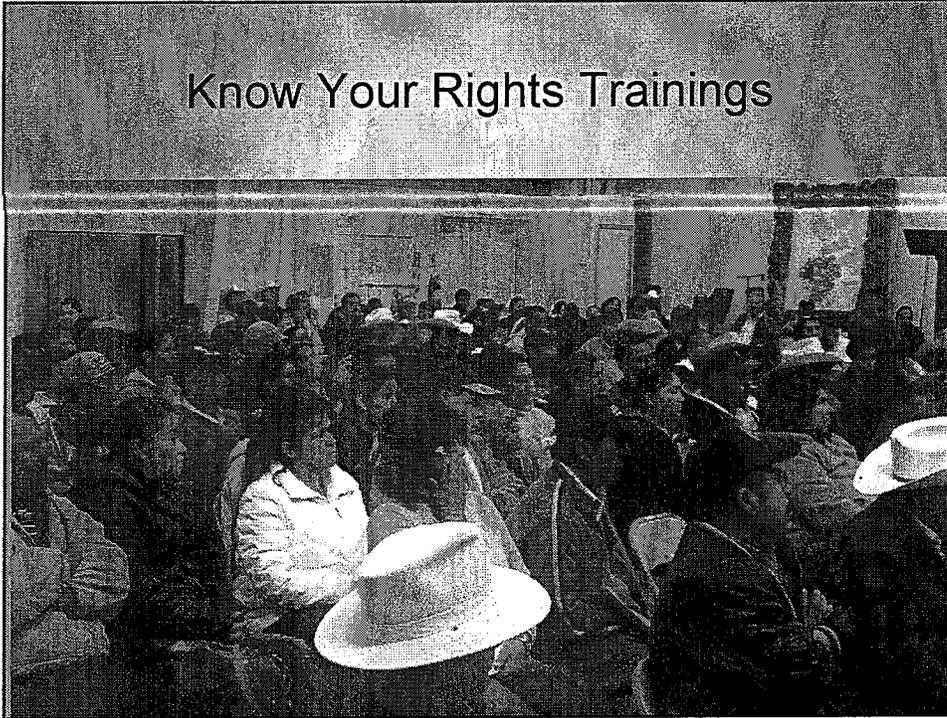
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Outreach

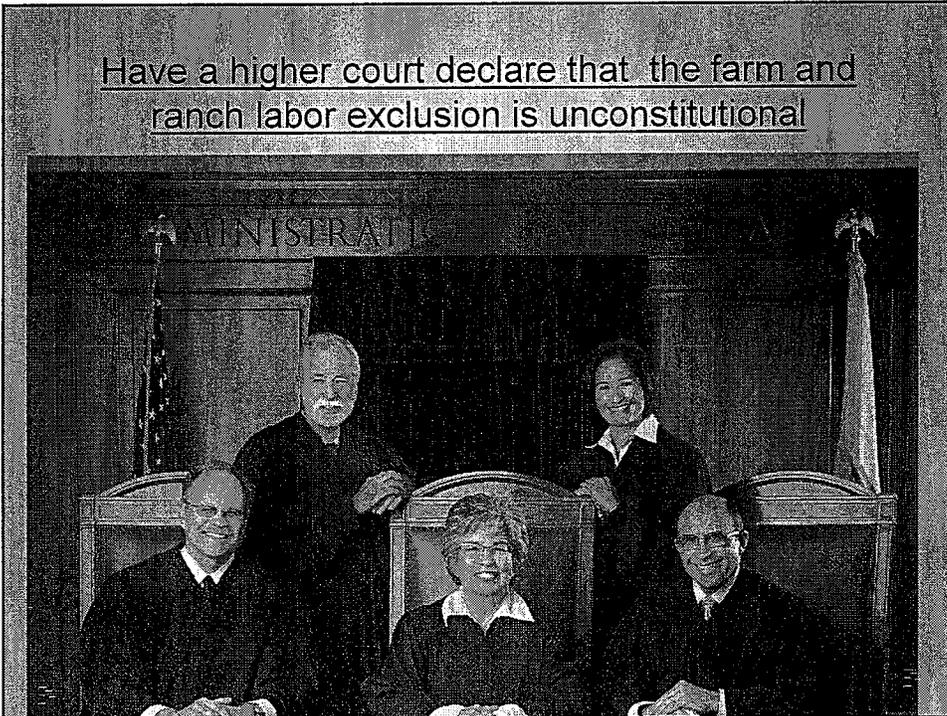


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## Know Your Rights Trainings



Have a higher court declare that the farm and ranch labor exclusion is unconstitutional



## Health and safety rules need to be enforced in New Mexico

- Currently, Occupational Health and Safety Bureau (OHSB) inspections are conducted only when there is a reported incident or a worker complains and only on farms with 11 or more employees.
- There are 150 commercial dairies in NM, yet our state OHSB office only has 34 dairies on their list. OHSB should be inspecting all dairies in New Mexico.
- Call on the NM Department of Agriculture to increase enforcement efforts of pesticide laws

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## The Workers' Compensation Administration needs to enforce the new law covering agricultural workers

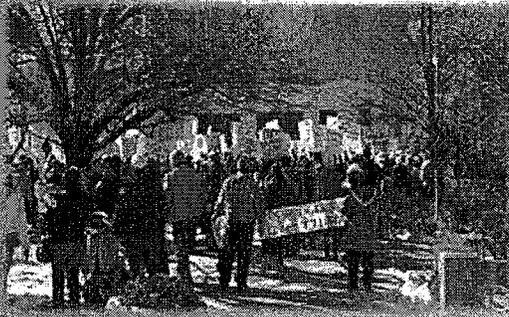
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## Department of Workforce Solutions enforcement

- Minimum wage laws for field workers
- Improve access to unemployment benefits for agricultural workers
- Language access for workers who do not speak English

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Laws need to be changed



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## Pass new laws to protect agricultural workers

- Amend the New Mexico minimum wage and overtime laws to include protections for dairy workers
- Mandatory shade for field workers
- Mandatory breaks
- Strengthen pesticide laws
  - More frequent and thorough training requirements
  - Medical monitoring of workers handling toxic pesticides
  - Spanish translation of pesticide labels

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For more information please contact the  
New Mexico Center on Law and Poverty  
[www.nmpovertylaw.org](http://www.nmpovertylaw.org)

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