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An End to Race-Based Discrimination Against Farm Workers Under Federal Unemployment Insurance

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**AN END TO RACE-BASED DISCRIMINATION
AGAINST FARM WORKERS UNDER FEDERAL
UNEMPLOYMENT INSURANCE**

Larry Norton
Marc Linder

I. THE INITIAL EXCLUSION AND CURRENT DISCRIMINATION
AGAINST FARM WORKERS UNDER THE FEDERAL
UNEMPLOYMENT TAX ACT IS ONE ASPECT OF RACE-
BASED DISCRIMINATION AGAINST THESE WORKERS.

Proposals to reform the welfare system emphasize work, its practical rewards, and the intangible benefits to families of having adults working rather than living on public assistance. Perhaps the group of workers most exemplifying the ethic we encourage are farm laborers.

More than ever it is ironic that these working people find their labor devalued by both the marketplace and the law. They either are discriminated against or excluded from virtually all federal worker protection. If we really want to make work pay, it is time these low-wage workers get the minimal protections afforded all other workers.

Discrimination against farm workers has a sordid past. Correcting it in the unemployment system would point the way toward ending the substandard, nineteenth century labor and social conditions of the agricultural labor market.

*A. It Is Not Mere Coincidence That Farm Workers
Are both the Only Group of Employees Largely
Excluded from Federal Unemployment
Compensation Coverage and that They Are
Overwhelmingly Hispanic and African-American*

Until 1978, the Federal Unemployment Tax Act (FUTA)¹ completely excluded farm laborers from federal unemployment insurance protection. Since 1978 the FUTA has covered

1. Current version codified at 26 U.S.C. §§ 3301-3311 (1988 & Supp. V 1993).

farm work only in limited fashion, covering work only when it is performed by the largest farm operators, and then providing effective coverage only where the farmer chooses not to use a crew leader to hire and pay workers.

Two provisions of FUTA provide an exclusion or subsidy to farm employers and discriminate against farm laborers. Growers must pay \$20,000 in farm wages in a calendar quarter to be covered—compared with \$1500 a calendar quarter for other employers—and growers can avoid all responsibility under FUTA if they use a crew leader as an intermediary between themselves and the workers. As a result, a large segment of farm workers are left either entirely uncovered and receive no insurance benefits or get reduced benefits because they are deprived of coverage for work performed for small employers and those who use crew leaders.

Seventy-five percent of farm workers are members of minority groups. It is not a coincidence that these workers are members of minority groups that historically have been subject to discrimination, and that they, as farm workers, have been and continue to be subject to discrimination in federal worker protection, including protection under FUTA.

*B. The Racially Discriminatory Impact of Their Partial
Exclusion from Federal Unemployment Insurance
Results from Historical Discrimination
Against Farm Workers Based on Race*

The discriminatory treatment of farm workers under FUTA originated in the 1930s with the New Deal exclusion of farm workers from the Social Security Act and from all other New Deal protective laws. This exclusion was motivated in part by intentional discrimination against black plantation workers in the South, whom white, southern Congressmen would not and could not allow to be protected by New Deal reforms. Providing federalized equal treatment to these black plantation workers under retirement, unemployment insurance, minimum wage, and overtime laws would have undermined the institutionalized discrimination against blacks that continued well into the 1950s and 1960s. Thus, intentional discrimination against protected minority groups that constitute

seventy-five percent of the current farm work force underlies the discriminatory treatment of farm workers under FUTA.

II. THE EXCLUSION FROM UNEMPLOYMENT INSURANCE COVERAGE, LIKE THE EXCLUSION FROM OTHER FEDERAL SOCIAL WELFARE AND LABOR PROTECTION, IMPOSES GREAT BURDENS ON FARM WORKERS AND THEIR FAMILIES

Farm workers are the lowest paid occupational group in the country. They are also involuntarily unemployed on a regular basis due to the seasonal nature of their work. The combination of these two factors makes these workers, more than all others, dependent on unemployment insurance payments to carry them through periods between employment. When they do not receive these benefits, or when the amount they receive is very small, they and their families either live without any income or they become dependent on public assistance benefits and food stamps.

Studies show that relatively few farm workers receive any form of public assistance, and that farm workers and their families frequently go without both income and benefits. This contributes to the fact that farm worker families suffer disproportionately from poor nutrition, poor health, and low life expectancy.

III. FARM WORKERS MUST BE BROUGHT INTO THE UNEMPLOYMENT INSURANCE SYSTEM AT THE FEDERAL LEVEL ON AN EQUAL BASIS WITH OTHER WORKERS

Justice requires covering farm workers on the same basis as other employees. Whatever administrative concerns might have justified excluding some farm employment in the past have been dispelled by the experience of universal coverage in some states and by coverage of this work for Social Security purposes. A change in FUTA will promote the purposes of the unemployment insurance system, and will level the playing field for all agricultural employers in all states. It is necessary to correct the injustice of the racially discriminatory exclusion that now exists.

FUTA should be amended to (1) reduce the \$20,000 per quarter payroll threshold to the \$1500 level applicable to other industries and (2) place responsibility for reporting and paying taxes on the grower, who is able and motivated to comply, not on the fly-by-night crew leader.

These simple legislative changes will equalize treatment of farm workers with that of all other workers. It also will provide the greatest possible assurance that wages will be reported and taxes paid, because there will be no question that the person responsible is the person to whom the crew leader is furnishing the workers, and this entity is capable and motivated to comply with the law. As a result, enforcement problems at the state level will be minimized and workers will get benefits without having to challenge their earnings records.

Complete coverage of farm workers under FUTA would result in a total supplement to their earned incomes of approximately ten percent per year. The amount paid these workers in benefits probably would be two to three times the taxes paid by their employers. The cost of benefits would be borne mostly by non-grower tax contributions to state agencies, since the maximum tax rates in most states of no more than 5.4% place a limit on rate increases through experience rating systems.

The cost to small farmers, who are subsidized by the current exclusion, will be minimal—on the order of one to two percent of production costs in labor intensive crops. Large farmers are now paying these costs, as are all farmers in states such as California and Washington that have essentially first dollar coverage for farm workers. A change in FUTA will level the playing field for all farmers.

To the limited extent that this added cost of production will lead to the elimination of marginal, inefficient farm producers, and to the extent this is deemed undesirable, Congress should counterbalance this effect by other, more direct subsidies of such operations. The current method of subsidy, excluding farmers from paying basic labor costs met by all other employers at the discriminatory expense of their low wage workers, must be ended.

To the degree that the cost of uniform coverage of farm workers under FUTA is passed on to consumers of farm products, this will be a small but positive step in moderating the cheap food policy that contributes to substandard conditions in the agricultural labor market.