

# Legal Aid of North Carolina, Inc.

## Farmworker Unit

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## **Know Your Rights: H2A workers in North Carolina after Hurricanes in 2018**

### **What can I do if my housing was damaged in the storm?**

Your employer has a duty to provide you housing and a work site free from recognized hazards that are causing or are likely to cause death or serious physical harm. If you are housed in a labor camp where the damage is such that the conditions are likely to cause death or serious physical harm, the North Carolina Department of Labor can require the operator of that labor camp to immediately provide alternative housing. The housing site must also be well drained. It must not be within 200 feet of standing water unless the water has been treated for mosquitos. To make a confidential complaint regarding your labor camp conditions, you may contact the North Carolina Department of Labor by calling 1.800.625.2267. You can take cell phone pictures of the issues you would like to report so that you can make them directly available to the inspector. If you are living in a hotel, other protections may apply. Feel free to call our office at 1.800.777.5869 to discuss your options free of charge. All calls are confidential.

### **What if the crops we were supposed to harvest were damaged as a result of the storm?**

If your services are no longer required after the damage caused by Florence, and the government decides that as a result it would be impossible for your employer to complete the contract, your employer has the right to ask for permission from the government to end the labor contract. In this case, your employer must still comply with the  $\frac{3}{4}$  guarantee, but the time period changes so that it covers only the hours of work offered to you starting from your arrival date until the date that the contract had to be terminated due to natural disaster. Your employer should make a reasonable effort to transfer you to another comparable job acceptable to you that complies with immigration laws. This may be an option, for example, if you came with a grower association. If an alternative job is not available, your employer must pay your transportation costs and subsistence costs (\$12.26 for each day of travel) during the return journey to your home country, and your employer must pay whatever reimbursement for costs from your journey here that still remain.

*Let's do the math:* Box 11 on the first page of your H2A contract lists the anticipated hours of work per week. Under the H2A regulations, your employer has to provide you with 75% of these hours over the life of your contract. So, in the example below, the worker Juan is promised 35 hours per week over the life of his 25 week contract in 2018. The  $\frac{3}{4}$  guarantee requires his employer to offer Juan at least 75% of those hours over 25 weeks, which means at least 656 hours of offered work  $[(35\text{hrs.} \times 25\text{wks.}) \times .75]$  over the entire season. If the employer does not offer 656 hours of work, he must pay Juan the amount the worker would have earned had he, in fact, worked for the guaranteed number of days. If the government decides that, as the result of a natural disaster, the employer is not able to complete his labor contract with Juan after the hurricane hit at 17 weeks, and the employer wants to stop the contract, then the  $\frac{3}{4}$  guarantee in this example requires the employer to offer at least 75% of 35 hours over only 17 weeks, or at least 446 hours of offered work. If the

employer has not offered Juan at least a total of 446 hours of work, he has to pay Juan for the difference in hours offered and hours guaranteed. **AS OF OCTOBER 3, 2018 NO NORTH CAROLINIAN EMPLOYERS HAD RECEIVED PERMISSION FROM THE U.S. GOVERNMENT TO AMEND THEIR ORDERS SO ONLY THE MATH IN EXAMPLE 1 APPLIES TO WORKERS RIGHT NOW.**

<p><b>Example 1: The Employer Can Complete the Entire Contract with Juan</b></p> <p># of Weeks in the Entire Season = 25 weeks</p> <p>Box 11 on Page 1 of the H2A Contract (Anticipated Hours of Work Per Week) = 35 hours</p> <p>25 weeks x 35 hours = 875 Hours</p> <p>875 Hours x 0.75 = approximately 656 hours</p> <p><i>If the worker has not been offered 656 hours of work prior to the end of the contract, his employer has to pay the difference upon his departure from the U.S. plus transportation costs and subsistence (\$12.26 per day) during the return journey to his home country. The employer must also pay whatever reimbursement of the costs of the worker's journey here that remain.</i></p>	<p><b>Example 2: The Government Declares That Employer Cannot Complete the Contract with Juan</b></p> <p># of Weeks Until Government Declaration= 17 weeks</p> <p>Box 11 on Page 1 of the H2A Contract (Anticipated Hours of Work Per Week) = 35 hours</p> <p>17 weeks x 35 hours = 595 Hours</p> <p>595 Hours x 0.75 = approximately 446 hours</p> <p><i>If the worker has not been offered 446 hours of work prior to the government declaration that the employer cannot complete his contract with the worker, his employer has to pay the difference upon the worker's departure from the U.S. plus transportation costs and subsistence (\$12.26 per day) during the return journey to his home country, and the employer must pay whatever reimbursement of the costs of his journey here that remain.</i></p>
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**Can I quit my H2A job without getting in trouble with the US government/ ICE and without affecting my ability to get a visa in the future?**

Although some employers will make threats, it is important that workers know that anyone can leave their job at any moment. Sometimes employers say that if a worker abandons or quits their job, it is the responsibility of the employer to report the worker to immigration. Be calm! Although the employer is obligated to report to the government that you left, this does not mean that you will have any problems. Instead, the reporting is solely to establish when the grace period for returning begins, or the time that the government gives you to leave the country without having any problem with your immigration status. There is no punishment from the government solely for leaving your job! Your right to quit your job is protected under the United States Constitution.

*This general legal information has been provided by the Farmworker Unit of Legal Aid of North Carolina. Call the Farmworker Unit of Legal Aid of North Carolina to confidentially discuss your particular situation with an attorney free of charge. Services are available in Spanish. Call 1.800.777.5869 or connect via WhatsApp to 919.523.6665. We are here to assist you.*