

DOL Investigations & Audits



Matt Rogers
Co-Founder, General Manager,
AgSocio

Rebecca Hause-Schultz
Partner, Fisher Phillips LLP
rhause-schultz@fisherphillips.com
916.210.0391

**Fisher
Phillips**

January 24, 2024

fisherphillips.com

Discussions here:

- Not confidential.
- Not privileged.
- Not technically “legal advice.”
- But like our website materials at <https://www.fisherphillips.com/resources>, we hope the information and these documents will point you in the right direction.
- All discussions and questions are strictly hypothetical-no admissions against interest.

Who is in charge?

Who is the point person from your team?

Who is authorized from management to speak to DOL on the Company's behalf?
(Does that person understand H-2A Regs.? Does that person understand boots-on-the ground operations?)

Consider hiring legal counsel.

Who is the point person at DOL?



What is this about? Is there an agreed upon scope?

- If you have multiple job sites—which job sites are involved?
- For your H-2A workforce, is this limited to one H-2A application? One H-2A crew? Multiple? Don't involve more than what DOL is asking for.
- What is the timeframe of the request? (Do you really want a year of records?? Can we agree to a random sampling?)
- Have these conversations EARLY.

Document Management.

- **KEEP** all documents provided to you by DOL.
- **KEEP** records of who you talk to at DOL. Consider whether conversations should be memorialized in writing. (To confirm everyone has the same understanding of next steps. Good idea to confirm scope of investigation in writing.)
- **KEEP** a record of all documents you send to DOL. Consider involving counsel in this process.
- **ASK** whether DOL needs certain requested records or whether you can stipulate to certain requests.



Housing Resident Maintenance Report Process – A poster with a QR code has been posted in every AgSocio housing unit. Residents can scan the QR code to access a simple form they can use to report maintenance or compliance issues. They have the option to include a photo and to either include their name or not. Reports are posted automatically to AgSocio’s Microsoft Teams account where management and housing team monitor, discuss, and confirm resolution of reported issues.

1. QR Code posted at all housing locations



2. Simple digital form to report issues

9:43
Camera fs6.formsite.com

AGSOCIO
PROFESIONAL AGRICULTURAL LABOR

AgSocio se compromete a mantener un ambiente seguro, limpio y profesional en todas las viviendas de la compañía. Utilice este formulario para reportar fallas, solicitar mantenimiento, o hacer sugerencias de mejora. Gracias por su colaboración.

Numero o letra de unidad (ejemplo: Unidad #101)

Descripción de la falla:

Observaciones y sugerencias:

Opcional - Incluir foto
Choose file no file selected

Si desea que hagamos un seguimiento, incluya su nombre en este espacio

Powered by **formsite**

Submit

3. Reports post to Microsoft Teams for follow up

Example 1 – disconnected stove dial

Housing Resident Report - HOU8 Result #19649476	
Reference #	19649476
Status	Complete
Numero o letra de unidad (ejemplo: Unidad #101)	Unidad A #608
Descripción de la falla:	Está despegado un botón de la estufa
Observaciones y sugerencias:	No está bien colocado
Opcional - Incluir foto	

Yesterday 9:00 AM
Completado
1
Reply

← **4. Resolution by Housing Coordinator**

Example 2 – overhead light in kitchen needs repair

Housing Resident Report - HOU2 Result #19630238	
Reference #	19630238
Status	Complete
Numero o letra de unidad (ejemplo: Unidad #101)	23
Descripción de la falla:	Reporto la falla de un foco de la cocina. Prende y se apaga
Last Update	2023-05-21 16:21:19

5/23 3:57 PM
Quedó solucionado el problema. Se cambiaron las lámparas de la cocina.
1



LIST VIEW SUMMARY MAP VIEW REPORT BUILDER TEMPLATE LIBRARY

REPORT TYPE	DATE	TIME	EMPLOYEE	LOCATION	SEVERITY	REVIEWED	PDF
<input type="checkbox"/> Housing Inspection	12/15/2023	08:36 AM	Jesus [REDACTED]	Housing - [REDACTED]	Good	<input checked="" type="checkbox"/>	
<input type="checkbox"/> Housing Inspection	12/15/2023	08:32 AM	Jesus [REDACTED]	Housing - [REDACTED]	Good	<input checked="" type="checkbox"/>	
<input type="checkbox"/> Housing Inspection	12/14/2023	11:46 AM	Jesus [REDACTED]	Housing - [REDACTED]	Attention	<input checked="" type="checkbox"/>	

Flagged report with an item that needed attention.

REPORT DETAILS

Housing Inspection

ATTENTION | Reviewed

Date & Time: 01/18/2024 at 08:15 AM | Inspector: Jesus A [REDACTED] | Location: AgSocio / Housing - [REDACTED]

REPORT QUESTIONS REVIEW

1. Unit Name or Number: 115

1. SECTION 1

QUESTION	ANSWER	ATTACHMENT
<input checked="" type="checkbox"/> 1. Is the main entrance clean free of garbage?	Yes	
<input checked="" type="checkbox"/> 2. Is the living room area clean and organized?	Yes	
<input checked="" type="checkbox"/> 3. Is the kitchen area (countertops, stove, refrigerator, sink, trash can) clean and organized?	No	
<input checked="" type="checkbox"/> 4. Is the bathroom (toilet, shower, sink, trash can) clean?	Yes	
<input checked="" type="checkbox"/> 5. Are all beds made and personal areas clean organized?	Yes	

HEAVYCONNECT

View report with flagged items, photos, corrective actions necessary.

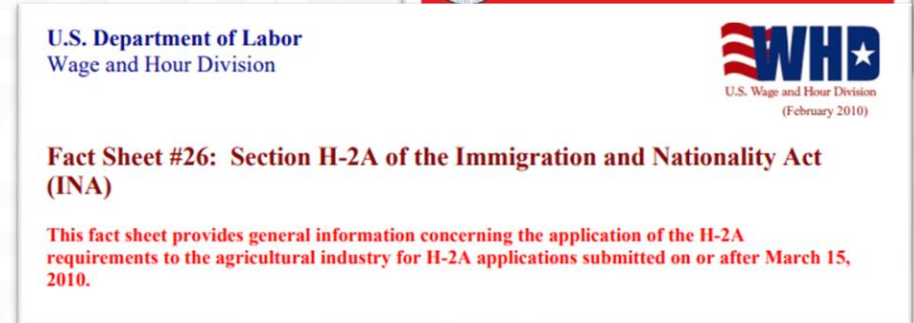
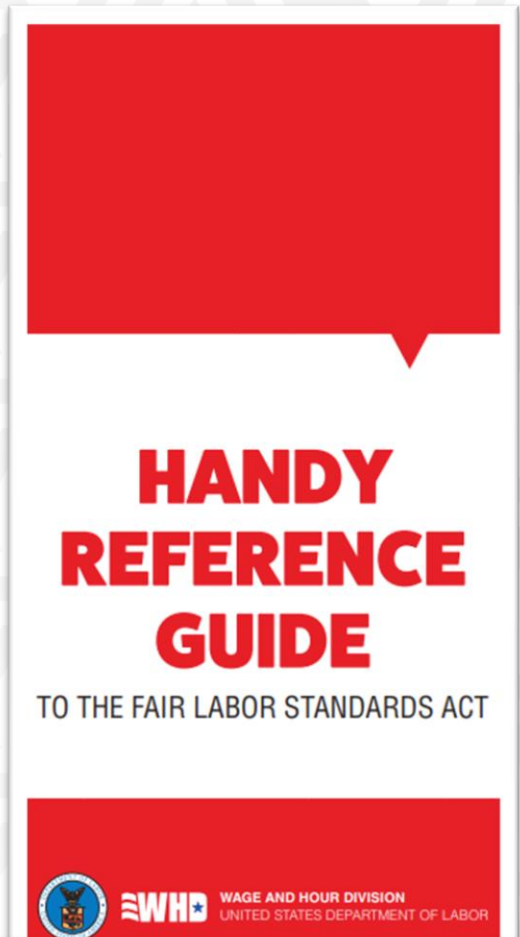
Be Prepared.

- Do supervisors/foremen know who to call if an agency shows up?
- Remind management the Company does not tolerate retaliation against an employee who may have made a complaint. Have this in your Company Handbook—have an HR hotline for employees to contact you about perceived retaliation.

DOL is Looking For Violations— Know the Rules.

In our industry, DOL Wage and Hour will look for potential violations of:

1. MSPA
 2. FLSA
 3. H-2A Regulations
- Good idea to establish a checklist or reference list for each contract. Be prepared to prove compliance. Assume the burden is on the employer.
 - Use the DOL's fact sheets! Go through the bullet points with your management team.



Assume You Will Be Investigated.

- Assume each contract will be investigated. The best defense is to be over-prepared.
- Do you have evidence on place of recruitment?
- Do you have evidence to show that the Company paid inbound/outbound?
- Do you have evidence to show that the Company provides adequate food?
- Ideal scenario—have a binder for each contract ready to go with your documentation. You establish right off that you are prepared and organized.



Communication is Key.

- When you respond to the document requests—good idea to do this in writing. Explain any unique forms you have. For example--place of recruitment form. Explain what it is and what you use it for. *Show off your compliance!!*
- Even after document production, check in with the investigator.
- What do they need to wrap up the investigation?
- If issues come up—is there evidence you have that shows compliance?

After the Investigation—Notice of Determination

- Negotiation process.
- Focus on commitment to future compliance. Have you “fixed” problems identified? How? Consider showing the fix to DOL.
- If resolution is not possible, consider litigation.



QUESTIONS?

THANKS

Rebecca Hause-Schultz

Partner | Sacramento

916.210.0391

rhause-schultz@fisherphillips.com

**Fisher
Phillips**